

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

KURT ROBINSON,)	
)	
Plaintiff,)	
)	
v.)	C.A. No.: 2004-06-109
)	
RICHARD HARTLAND,)	
)	
Defendant.)	

Date Submitted: June 1, 2007
Date Decided: June 26, 2007

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ORDER
ON DEFENDANT’S MOTION TO DISMISS
FOR FAILURE TO PROSECUTE

Defendant Richard Hartland (“Hartland”) brings this motion to dismiss the pending proceeding, which is claim for injuries resulting from an automobile accident. Defendant alleges Plaintiff has repeatedly refused to accept a settlement check or to execute a release in accordance with an arbitrator’s order, and that such refusal constitutes a failure to prosecute justifying dismissal. Plaintiff Kurt Robinson (“Robinson”) opposes the motion. Plaintiff admits that he has refused to accept payment or execute a release, but argues that he has not thereby failed to prosecute his claim. On

June 1, 2007, after a hearing on both motions, the Court reserved decision. This is the Court's final decision.

PROCEDURAL POSTURE

On June 4, 2004, Plaintiff Robinson filed a Complaint against Defendant Hartland, alleging personal injury from an automobile accident allegedly occurring on or about June 6, 2002. On July 6, 2004 the case was referred to arbitration. On July 30, 2004 Hartland filed an answer. Arbitration was held on April 13, 2005 and on April 15, 2005 the Arbitrator's Order was filed with this Court awarding judgment for Plaintiff and against Defendant in the amount of \$1,000.00 plus costs. A demand for trial de novo was not filed within twenty days after the Order was filed. On June 10, 2005 on defendant's motion, this Court issued an Order entering the Arbitrator's Order against Defendant. The Court further ordered that, "upon presentation by or on behalf of Defendant of payment of the amount of the judgment, said judgment shall immediately be marked satisfied."

ANALYSIS

Robinson does not dispute Defendant has repeatedly proffered checks for \$1,000.00 in satisfaction of the judgment, and that he has refused to accept these checks or execute a release. However, he argues such action does not rise to failure to prosecute. Both Robinson and Hartland fail to address the proper issue in these proceedings.

Court of Common Pleas civil rules which govern "Alternative dispute resolution, provides as follows:

16.1(11)(C):

"The arbitration order shall be entered as an order of judgment by any judge of the Court, upon motion of a party, after the time for requesting a trial *de novo* has expired. A judgment so entered shall have the same

force and effect as a judgment of the Court in a civil action but shall not be subject to appeal.”

16.1(11)(D):

Within twenty (20) days after the entry of the arbitration order by the Civil Clerk, any party may serve and file a written demand for a trial *de novo*. A demand for a trial *de novo* is the sole remedy of any party in any action subject to arbitration under this Rule.

Therefore, when the arbitrator entered his order on April 15, 2005, Robinson under Subsection (D) had twenty (20) days to serve and file a written demand for a trial *de novo*. His failure to demand a trial *de novo* renders the arbitration award subject to *Civil Rule 16.1(11)(C)*. The Defendant pursuant to this section filed a motion on May 26, 2005 to enter judgment on the arbitrator’s order. The Court on June 10, 2005 heard the motion and entered an order of judgment.

When the Court entered judgment pursuant to this rule, it became a final. This is more evident because there has been no application for a trial *de novo*. *PNC Bank, Delaware v. Hudson*, Del. Supr., 687 A.2d 915 (1997). After the Court’s order, the only obligation of Hartland was to pay the judgment as entered. There is no requirement that Robinson consent to the payment or provide any other document because the Court order finally concludes the matter. Once Defendant tendered payment to Plaintiff’s counsel in satisfaction of the Order, Defendant’s obligation is discharged and Plaintiff’s counsel has an obligation to accept payment on his client’s behalf and to have his client sign the release.

ORDER

For the aforementioned reasons, Defendant’s Motion to Dismiss is hereby DENIED because there is no pending proceeding. Defendant is hereby ordered to pay

the judgment with notice to the Court. Upon notice and evidence of payment, the entire proceeding is closed.

IT IS SO ORDERED this 26th day of June, 2007

Alex J. Smalls
CHIEF JUDGE

Robinson-OP Jun 07