

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

DANNY PIZZICHILI)
Defendant-Below, Appellant)
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v.)
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JAMES R. EMMI) C. A. No.: 11A-07-012 CLS
Plaintiff-Below, Appellee)
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Submitted: July 29, 2011
Decided: September 8, 2011

Upon Appellant's Motion to Stay Order of Court of Common Pleas.
DENIED

ORDER

Danny Pizzichili, *Pro Se*
James R. Emmi, *Pro Se*

SCOTT, J.

Introduction

Before the Court is Appellant's Motion to Stay the judgment entered in the Court of Common Pleas pending the appeal filed in this Court. The Court has reviewed the Appellant's Motion. For the reasons that follow, Appellant's Motion to Stay is **DENIED**.

Facts

James Emmi, Plaintiff-Below, Appellee ("Emmi") filed suit against Danny Pizzichili, Defendant-Below, Appellant ("Pizzichili") for Common Law Fraud, arising from the sale of a 1999 Honda Civic on March 29, 2011. Emmi appealed the Justice of the Peace Court's decision to the Court of Common Pleas. On July 11, 2011 the Court of Common Pleas held a civil non-jury trial. After a careful review and examination of the trial record, the Court of Common Pleas held that Emmi proved, by a preponderance of the evidence, each element of Common Law Fraud. Therefore, Pizzichili was liable for actual damages or injuries for fraudulently selling the Honda to Emmi. The Court of Common Pleas awarded \$4,972.00 in damages to Emmi; in addition, it awarded pre-judgment and post-judgment interest at the legal rate pursuant to 6 *Del. C.* § 2301.

An appeal from the Court of Common Pleas decision was timely filed by the Appellant on August 2, 2011. The Appellant asks this Court to stay

the judgment of the Court of Common Pleas pending resolution of this appeal. The specific grounds for appeal are as follows: First, appellant claims that he was not given notice of expert witnesses until the day of the hearing, and thus could not rebut the expert testimony. Second, Appellant claims that there was no evidence that the check engine light was tampered with by Appellant or with Appellant's knowledge. Third, Emmi purchased the vehicle "as is." Finally, Appellant claims that if the dashboard cluster was sealed, the expert witness, Mr. Thomas, would have noticed the seal was broken.

Standard of Review

In an appeal from the Court of Common Pleas to this Court, "the standard of review is whether there is legal error and whether the factual findings made by the trial judge are sufficiently supported by the record and are the product of an orderly and deductive process."¹ Factual findings that are substantially supported by evidence must be accepted, even if this Court would have reached a different conclusion.² "In reaching its conclusions, the Superior Court may make findings of fact that contradict those of the trial judge only when the record below indicates that the trial judge's

¹ *Onkeo v. State*, 957 A.2d 2, at *1 (Del. 2008) (TABLE).

² *Id.*

findings are ‘clearly wrong’ and this Court ‘is convinced that a mistake has been made which, injustice, must be corrected.’”³

Discussion

Motions to stay are evaluated under Superior Court Civil Rule 62 and the four-pronged preliminary injunction test set forth in *Evans v. Buchanan*.⁴

Under *Buchanan*, the reviewing court must:

(1) make a preliminary assessment of likelihood of success on the merits of the appeal; (2) assess whether the petitioner will suffer irreparable injury if the stay is not granted; (3) assess whether any other interested party will suffer substantial harm if the stay is granted; and (4) determine whether the public interest will be harmed if the stay is granted.⁵

The Delaware Supreme Court determined that this Court must consider “all of the relevant factors together to determine where the appropriate balance should be struck.”⁶

First, this Court must determine the Appeal’s likelihood of success on the merits. This matter was initially filed in the Justice of the Peace Court on June 23, 2010; an answer was filed on June 29, 2010. A trial was held on August 2, 2010. Judgment was entered in favor of the Defendant, Pizzichili,

³ *Frori v. State*, 2004 WL 1284205, at *1 (Del. Super. May 26, 2004) (citing *Bracy v. State* 1994 WL 466224, at *2 (Del. Super. Jul. 25, 1994).

⁴ *See Kirpat, Inc. v. Del. Alcoholic Beverage Control Comm’n*, 741 A.2d 356, 357 (Del. Super. 1988) (using the *Evans v. Buchanan*, 435 F. Supp. 832, 841-42 (D. Del. 1977), test as the standard of review for motions to stay).

⁵ *Id.*

⁶ *Id.*

on August 3, 2010.⁷ Emmi appealed to the Court of Common Pleas where judgment was entered in favor of Emmi in the amount of \$4,972.00.

After careful consideration of the record, and the Court of Common Pleas opinion, the appellant is not likely to succeed on the merits of the appeal. The Appellant argues four grounds for relief in his appeal; each ground is meritless. The factual findings of the Court of Common Pleas are supported by the trial record and are the product of an orderly and logical deductive process. Thus, absent clear error, the findings of the Court of Common Pleas will not be disturbed. Under this reasoning, the Appellant does not satisfy the first element.

The second factor this Court must consider is whether the Appellant will suffer irreparable harm if the stay is denied. While the Appellant does not raise reasons for irreparable harm in his appeal, it can be inferred that the harm is the \$4,972.00 judgment for Plaintiff. In *Montaire Farms, Inc. v. Pitts*,⁸ this Court found that there are means in which an appellant can recover funds paid if they are successful on appeal; thereby, mere payment

⁷ The order from the Justice of the Peace Court does not contain reasoning for ruling in favor of the Defendant. The notice of the judgment from Justice of the Peace Court 13 merely states: “After hearing testimony from both parties; judgment is entered in favor of the defendant, Danny Pizzichili and against the plaintiff, James Emmi. Court costs are assessed to the plaintiff.”

⁸ 2001 WL 789650, at *1 (Del. Super. June 8, 2001).

of judgment does not constitute irreparable harm.⁹ Therefore, the Appellant will not suffer irreparable harm if the stay is denied.

Finally, this Court must examine whether other parties will be injured if the stay is granted.¹⁰ Appellant has raised no concerns with either of these factors and this Court is not aware of any obvious interested parties or public interests related to this matter. Therefore, Appellant fails to satisfy the third and fourth prongs of the *Buchanan* test.

After considering all four of the relevant factors together, this Court concludes, on the balance, the hardship factors strongly favor denying Appellant's Motion to Stay. Therefore, the Appellant's Motion to Stay is hereby, **DENIED**.

IT IS SO ORDERED.

/S/CALVIN L. SCOTT
Judge Calvin L. Scott, Jr.

⁹ See *Kirpat*, 741 A.2d at 358 (holding that a loss of business, i.e. seizure of its inventory, loss of its customer base, and loss of its employees, constitutes irreparable harm).

¹⁰ Element 3 examines whether any other interested party will suffer substantial harm if the stay is granted. Element 4 examines the harm to the public interest if the stay is granted.