[Cite as *Francis David Corp. v. Mac Auto Mart, Inc.*, 2010-Ohio-1215.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93951

FRANCIS DAVID CORP., ETC.

PLAINTIFF-APPELLEE

vs.

MAC AUTO MART, INC., ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
DISMISSED

Civil Appeal from the
Garfield Heights Municipal Court
Case No. CVI 0800175

BEFORE: Cooney, J., Kilbane, P.J., and Blackmon, J.

RELEASED: March 25, 2010

JOURNALIZED:

ATTORNEY FOR APPELLANTS

James R. Douglass
James R. Douglass Co., LPA
20521 Chagrin Blvd., Suite 200
Shaker Heights, Ohio 44122

ATTORNEYS FOR APPELLEE

Egon P. Singerman
Park Center II, Suite 410
3681 Green Road
Cleveland, Ohio 44122

Michael R. Stavnicky
Singerman, Mills, Desberg & Kauntz
3401 Enterprise Parkway, Suite 200
Beachwood, Ohio 44122

COLLEEN CONWAY COONEY, J.:

{¶ 1} This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1.

{¶ 2} Defendants-appellants, MAC Auto Mart, Inc. ("MAC") and Rudy Yeganehlayegh ("Rudy") (collectively referred to as "defendants"), appeal from the municipal court's execution of judgment in favor of plaintiff-appellee, Francis David Corp. d.b.a. First Hudson Leasing ("Francis David"), in the amount of $2,800.96. For the following reasons, we dismiss the appeal as moot.

{¶ 3} In January 2008, Francis David filed suit against defendants in Garfield Heights Municipal Court, alleging that MAC entered into a 48-month lease agreement for credit card processing equipment and related services, and that it owed $2,800.96. The complaint alleged that Rudy guaranteed the lease agreements of MAC. Francis David sought judgment against both defendants for $2,800.96 plus interest, attorney fees, and costs. Defendants filed a motion to dismiss for lack of subject matter jurisdiction, which Francis David opposed. The matter proceeded to a bench trial, at which the following evidence was adduced.[1]

[1]Defendants did not appear for trial.

{¶ 4} Defendants, who are located in Michigan, entered into a 48-month commercial lease with Francis David for credit card and related services. In order to finalize the agreement, a Francis David employee in Independence, Ohio signed the lease and filled in the serial numbers of the leased equipment. Francis David's principal place of business is in Independence, Ohio.

{¶ 5} Rudy agreed to have the monthly payments debited from MAC's checking account. Francis David processed these payments in Independence. Defendants stopped paying under the lease. Additionally, in the agreement, the parties agreed to "jurisdiction of the federal and state courts located in Cuyahoga County, Ohio for the purposes of any suit, action or proceeding arising out of [defendants'] obligations under this Lease."

{¶ 6} In June 2008, the municipal court denied defendants' motion to dismiss and rendered judgment in favor of Francis David in the amount of $2,800.96, with interest at the rate of 8% per annum and costs incurred therein, which the defendants appealed.[2] Subsequent to obtaining judgment, Francis David filed multiple affidavits and notices of garnishment of property other than personal earnings in the Garfield Heights Municipal Court.

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[2]See *Francis David Corp. v. MAC Auto Mart, Inc.*, Cuyahoga App. No. 93532, 2010-Ohio-1064 (*"Francis David I"*).

{¶ 7} At issue in the instant case is the May 27, 2009 garnishment notice, which lists Telecom Credit Union ("Telecom") in Southfield, Michigan as the garnishee. In response to the notice, Telecom debited $3,135.92 from defendants' account on June 1, 2009. Defendants filed a request for a hearing on June 5, 2009, disputing Francis David's right to garnish the money. Defendants argued that the Garfield Heights Municipal Court lacked jurisdiction "to effect an attachment of assets in the State of Michigan." The matter proceeded to a hearing, at which the court denied defendants' objections and ordered the clerk to retain the monies paid until further notice from the court. Then on August 21, 2009, the court directed the clerk to pay out all monies to Francis David, stating that no stay had been issued, defendants had not posted a bond, and had not filed a notice of appeal from the order denying their objections to the garnishment.

{¶ 8} It is from this order that defendants appeal, raising one assignment of error, in which they argue that the Garfield Heights Municipal Court erred when it issued an order of garnishment against a banking institution located in Michigan. Defendants claim that the Garfield Heights Municipal Court did not have jurisdiction to issue an order of garnishment to Telecom because it is not located within the territory of the court and it is not

located in any county that is contiguous to the court. Defendants request that the garnished funds be returned to Telecom.

{¶ 9} Francis David argues that defendants' appeal is moot because the defendants have satisfied the underlying judgment by garnishment. We agree.

{¶ 10} "It is a well-established principle of law that a satisfaction of judgment renders an appeal from that judgment moot. "'Where the court rendering judgment has jurisdiction of the subject-matter of the action and of the parties, * * * and the judgment is voluntarily paid and satisfied, such payment puts an end to the controversy, and takes away from the defendant the right to appeal[.]'" (Citations omitted.) *Blodgett v. Blodgett* (1990), 49 Ohio St.3d 243, 245, 551 N.E.2d 1249, quoting *Rauch v. Noble* (1959), 169 Ohio St. 314, 316, 159 N.E.2d 451, quoting *Lynch v. Lakewood City School Dist. Bd. of Edn.* (1927), 116 Ohio St. 361, 156 N.E. 188, paragraph three of the syllabus.[3]

{¶ 11} In order to have avoided execution on the judgment, defendants should have followed the procedures for obtaining a stay of execution and for obtaining a supersedeas bond or its equivalent. *Brickman v. Frank G.*

[3]In *Francis David I*, this court found that the Garfield Heights Municipal Court had jurisdiction to issue the judgment in the underlying case.

Brickman Trust, Cuyahoga App. No. 81778, 2004-Ohio-2006, ¶8. "Voluntary satisfaction of judgment waives the right to appeal [.]" Id.

{¶ 12} Here, Francis David executed on the judgment by garnishment. Defendants appealed from the garnishment, but did not seek a stay of execution and did not obtain a bond.[4] Because defendants failed to avail themselves of a "viable legal remedy," we find that they voluntarily satisfied the underlying judgment, rendering their appeal moot. See *Hagood* at 785; *LaFarciola v. Elbert* (Dec. 8, 1999), Lorain App. No. 98CA007134.

{¶ 13} Accordingly, this appeal is dismissed.

It is ordered that appellee recover of appellants costs herein taxed.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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COLLEEN CONWAY COONEY, JUDGE

MARY EILEEN KILBANE, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR

[4]We note that a pending garnishment does not render payment involuntary because defendants were entitled to a stay of the municipal court's judgment as a matter of law, upon giving adequate bond. See *Hagood v. Gail* (1995), 105 Ohio App.3d 780, 788, 664 N.E.2d 1373, citing *State ex rel. Ocasek v. Riley* (1978), 54 Ohio St.2d 488, 490, 377 N.E.2d 792.