[Cite as *Wyman v. T.N.L. Invest. & Realty Co., Inc.*, 2010-Ohio-4015.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94378

FRED WYMAN, dba PROTECT-A-COTE

PLAINTIFF-APPELLANT

vs.

T.N.L. INVESTMENT & REALTY CO., INC., ET AL.

DEFENDANTS-APPELLEES

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-670581

BEFORE: Rocco, J., Gallagher, A.J., and Sweeney, J.

RELEASED AND JOURNALIZED: August 26, 2010

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KENNETH A. ROCCO, J.:

{¶ 1} Plaintiff-appellant, Fred Wyman, dba Protect-a-Cote, appeals from a common pleas court order denying his motion to enforce settlement and for attorneys' fees due to frivolous conduct. He asserts that the court erred by denying his motion.

{¶ 2} The record discloses the following facts relevant to this dispute. On June 22, 2009, the parties entered into a settlement, the terms of which they placed on the record in open court as follows:

> "MR. McGARRY [plaintiff-appellant's counsel]: * * * The settlement is Defendants are going to pay $5,000 to Wyman

today, and $3,750 by August 1, 2009. Once the second payment is made, we agree to final judgment in this case, as well as releasing judgment that was filed in the prior case within seven days.

"MR. PORTER [defendant-appellee's counsel]: Each party to bear their own costs and attorney fees.

"MR. McGARRY: Yes.

"THE COURT: Who is going to give me the entry?

"MR. McGARRY: I can your Honor.

"THE COURT: Okay. All right. So ordered."

{¶ 3} On July 8, 2009, the parties filed a "stipulation of dismissal with prejudice" signed by counsel for all parties that stated that, "[p]ursuant to Rule 41(A)(1) of the Ohio Rules of Civil Procedure, the parties hereby give notice that this action is settled and dismissed, with prejudice, the terms of which are set forth on the record before the Court on June 22, 2009, each party to bear his, her or its own costs and attorneys' fees. The court retains jurisdiction to enforce the settlement." One week later, on July 15, 2009, the court entered its own journal entry stating, "Case dismissed without prejudice. Civil Rule 41(A). Final. Each party to bear his, her or its own costs and attorneys' fees."

{¶ 4} On October 13, 2009, appellant filed a motion to enforce the parties' settlement agreement. He asked the court to enter a judgment on his behalf for $3,750 plus interest from August 1, 2009, the date the payment

was due. Furthermore, appellant requested attorneys' fees because of appellees' allegedly frivolous conduct. Appellees conceded that they had not made the second payment of $3,750 but had asked that plaintiff allow them to make the payments over time, and plaintiff had not responded. Appellees further conceded that appellant was entitled to judgment for the $3,750, although they objected to any award of attorneys' fees.

{¶ 5} On November 16, 2009, the court filed the following entry with respect to appellant's motion:

> "Plaintiff's, Fred Wyman DBA Protect-a-Cote, motion to enforce settlement agreement and for attorneys' fees due to frivolous conduct is hereby denied."

{¶ 6} Appellant now urges that the court erred by denying his motion to enforce the settlement. He does not challenge the court's denial of his motion for attorneys' fees.

{¶ 7} The basis for the court's ruling on appellant's motion is unclear. We find that the trial court had jurisdiction over the motion. The parties' stipulation of dismissal disposed of the case; no further entry by the trial judge was needed to make the stipulation effective. Civ.R. 41(A)(1)(b); see, e.g., *Selker & Furber v. Brightman* (2000), 138 Ohio App.3d 710, 714, 742 N.E.2d 203. That stipulation expressly stated that the case was settled and that the court retained jurisdiction to enforce the settlement. Consequently, the court's subsequent dismissal entry, which does not mention the

settlement or retain jurisdiction to enforce it, "was of no effect with regard to the plaintiffs' voluntary dismissal. It was merely an internal ministerial act of housekeeping by the trial court recognizing what had already occurred." *Selker & Furber*, supra.

{¶ 8} A trial court possesses the authority to enforce a settlement agreement voluntarily entered into by the parties to a lawsuit, unless the court unconditionally dismissed the action. *Majestic Steel Svc., Inc. v. DiSabato* (2001), Cuyahoga App. No. 79323. The action here was not unconditionally dismissed. We reject appellees' assertion that the court properly denied the motion to enforce the settlement because appellant requested an award of attorneys' fees to which he was not entitled. The court could not reject a valid motion simply because it was combined with an allegedly invalid one. As both parties agreed that the court should have entered judgment for $3,750, the portion of the settlement that had not been paid, the court was obligated to enforce the settlement by entering judgment for appellant for that amount.

{¶ 9} This cause is reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant recover from appellees costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

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

KENNETH A. ROCCO, JUDGE

SEAN C. GALLAGHER, A.J., and
JAMES J. SWEENEY, J., CONCUR