[Cite as *Empace Equip. Corp. v. Maximus Consulting, L.L.C.*, 2015-Ohio-1801.]

STATE OF OHIO))ss: COUNTY OF SUMMIT)	IN THE COURT OF APPEALS NINTH JUDICIAL DISTRICT
EMPACO EQUIPMENT CORP. Appellee v. MAXIMUS CONSULTING, LLC Appellant	C.A. No. 27468 APPEAL FROM JUDGMENT ENTERED IN THE AKRON MUNICIPAL COURT COUNTY OF SUMMIT, OHIO CASE No. 13 CVI 08642

DECISION AND JOURNAL ENTRY

Dated: May 13, 2015

CARR, Presiding Judge.

{¶1} Appellant, Maximus Consulting, LLC ("Maximus") appeals the judgment of the Akron Municipal Court that rendered judgment in favor of appellee, Empaco Equipment Corporation ("Empaco"). Because the appeal has been rendered moot, this Court dismisses the appeal.

I.

{¶2} Maximus contracted with Empaco, a supplier of petroleum equipment, for the installation of gas dispensers in May 2013. When installation began on June 3, 2013, Empaco employees noted a potential need for new hoses and nozzles for the dispensers. Maximus was informed of this additional service and allegedly consented to the installation of new hoses and nozzles through a phone call with company president, Ron Cseh. On June 4, 2013, Empaco installed the additional parts, increasing the total cost of services by approximately $2,100.

{¶3} Maximus refused to pay the additional fee, claiming that no authorization had been given for the installation of the hoses and nozzles. Empaco brought suit to recover the cost of the additional installation. The Akron Municipal Court ruled in favor of Empaco, awarding a judgment of $2,168.62, plus court costs and 3% interest. Maximus objected to the decision and was overruled. Judgment for Empaco was finalized on July 14, 2014.

{¶4} Maximus filed a notice of appeal. It challenged the propriety of the judgment against it, claiming that the trial court erred in applying a theory of promissory estoppel. Maximus argued that the use of promissory estoppel was in error, as Empaco's complaint did not include such a claim. In addition to filing its appeal, Maximus requested a stay of execution of judgment. The trial court granted that motion upon the approval of Maximus obtaining a supersedeas bond in the amount of $2,168.62. Maximus never acquired the bond and Empaco requested the stay be lifted. The trial court lifted the stay on October 15, 2014, and $2,203.62 was removed from Maximus' account and placed in the custody of the Clerk of Court. Maximus then moved to stay disbursement of the judgment, which was denied on the grounds that Empaco's execution of judgment did not relieve Maximus of the duty to initially obtain the supersedeas bond. On November 11, 2014, Empaco moved to dismiss the appeal as a voluntary satisfaction of the judgment had been made, making an appeal of the judgment moot.

II.

{¶5} In regards to when a matter becomes moot, the Ohio Supreme Court has stated:

> "The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of the plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal

> judgment, but will dismiss the appeal. And such a fact, when not appearing on the record, may be proved by extrinsic evidence."

Miner v. Witt, 82 Ohio St. 237, 238 (1910), quoting *Mills v. Green*, 159 U.S. 651, 653 (1895).

{¶6} It has long been established that a satisfaction of judgment is enough to render an appeal arising from the judgment moot. "Where the court rendering judgment has jurisdiction of the subject matter of the action and of the parties, and fraud has not intervened, 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 or prosecute error or even to move for vacation of judgment." *Rauch v. Noble*, 169 Ohio St. 314, 316 (1959), quoting *Lynch v. Bd. of Edn. of City School Dist. of City of Lakewood*, 116 Ohio St. 361 (1927), syllabus.

{¶7} Maximus asserts that the garnished funds are insufficient to satisfy the judgment, as the amount will not cover the judgment and court expenses of the prior proceeding. It contends that an incomplete or partial satisfaction of judgment does not effectively render an appeal moot. However, this argument is not applicable to the facts presented. Empaco filed a Satisfaction of Judgment statement dated December 2, 2014, which shows an agreement between both parties that the judgment has been satisfied completely. Maximus will not stand to lose further funds as a result of dismissal of this appeal because a full satisfaction of judgment has already been made.

{¶8} Furthermore, Maximus had every opportunity to obtain a supersedeas bond which would have prevented any amount of the judgment from being satisfied prior to appeal. This Court has found moot an appeal such as this, in which an appellant had the opportunity to obtain a stay of execution of judgment and failed to do so. *See Frank Novak & Sons, Inc. v. Avon Lake Bd. of Edn.*, 9th Dist. Lorain No. 01CA007835, 2001 WL 1545505 (Dec. 5, 2001). There is no evidence that Maximus was prevented from acquiring the supersedeas bond that would have

stayed execution of the judgment as a result of financial inability, duress, or denial from the court. Due to the failure to obtain a stay of execution, the judgment is considered to have been voluntarily satisfied.

III.

{¶9} Because this Court finds that the issues raised in this appeal are moot, the appeal is dismissed.

Appeal dismissed.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

DONNA J. CARR
FOR THE COURT

MOORE, J.
WHITMORE, J.
CONCUR.

APPEARANCES:

BRIAN L. BLY, Attorney at Law, for Appellant.

WILLIAM G. CHRIS, Attorney at Law, for Appellee.