[J-84-2005]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

CAPPY, C.J., CASTILLE, SAYLOR, EAKIN, BAER, BALDWIN, JJ.

FRANK J. LAIRD, TRUSTEE UNDER THE TRUST AGREEMENT OF FEBRUARY 24, 1988 AND VERNON C. KEESEY, JR., INDIVIDUALLY AND ON BEHALF OF A CLASS OF THE MINORITY SHAREHOLDERS OF THE CLEARFIELD & MAHONING RAILROAD COMPANY, A PENNSYLVANIA CORPORATION AND DERIVATIVELY, ON BEHALF OF THE CLEARFIELD & MAHONING RAILROAD COMPANY	:	No. 15 WAP 2005 Appeal from the Order of the Superior Court entered February 20, 2004 at No. 2057 WDA 2002, affirming the Judgment of the Court of Common Pleas of Clearfield County entered October 8, 2002 at No. 98-51-CD.
	:	SUBMITTED: August 11, 2005
Appellants	:	
v.	:	
THE CLEARFIELD & MAHONING RAILWAY COMPANY, A PENNSYLVANIA CORPORATION, BUFFALO, ROCHESTER & PITTSBURGH RAILWAY COMPANY, A PENNSYLVANIA CORPORATION, BUFFALO & PITTSBURGH RAILROAD, INC., A PENNSYLVANIA CORPORATION, CSX TRANSPORTATION, INC., A VIRGINIA CORPORATION, R.J. CORMAN RAILWAY COMPANY/PENNSYLVANIA LINES, INC., A PENNSYLVANIA CORPORATION, RICHARD J. CORMAN, AND CONSOLIDATED RAIL CORPORATION, AND DAVID R. IRVIN,	:	
Appellees	:	

OPINION

MR. JUSTICE EAKIN **DECIDED: FEBRUARY 21, 2007**

Appellants, the minority shareholders of the Clearfield & Mahoning Railroad (C&M), filed a complaint against C&M and its successors (appellees) advancing derivative claims for breach of contract, breach of fiduciary duties, tortious interference with contractual relations, and conspiracy to defraud. Appellee Buffalo, Rochester, & Pittsburgh Railway Company (BR&P) created and incorporated C&M in 1892. BR&P gave C&M ownership of 27.4 miles of railroad trackage, which C&M then leased back to BR&P under a lease agreement executed in 1893. The lease agreement also provided for the disbursement of semi-annual dividends of $1.50 per share of C&M stock. These dividend disbursements were made continuously until 1996, when appellee Richard Corman, owner of R.J. Corman Railway Company/Pennsylvania Lines, Inc. (CRC/PL), purchased the controlling stock of C&M from appellee Consolidated Rail Corporation (Conrail), the successor to BR&P. Conrail also assigned Corman the rights and duties under the 1893 lease.

At a Board of Directors meeting in 1997, Corman announced CRC/PL planned to terminate the 1893 lease and negotiate a new trackage agreement that would reflect the current industry rates. The minority shareholders were advised their dividends would not be paid, beginning January 1, 1997, until the company's financial situation stabilized under the new trackage agreement. Appellants thus initiated this action by filing a complaint as a class action by the minority shareholders. The trial court issued several pre-trial rulings whereby it either directly or effectively dismissed certain defendants as well as all claims save the breach of contract claim.

On the day trial was scheduled to begin, appellees offered to stipulate to the amount owed on the remaining breach of contract claim. The parties discussed the language and effect of the stipulation on the record, and--without admitting liability for a

breach--the parties agreed appellants were entitled to $17,552.01. The trial court entered the stipulated order, thus obviating the need for a trial. Appellants sought appellate review of the trial court's pre-trial rulings that dismissed certain claims and defendants. The Superior Court held the parties' stipulated agreement amounted to a consent decree, which generally precludes appellate review,[1] and that by entering into the agreement, appellants effectively waived their rights to challenge any pre-trial rulings. Laird v. Clearfield & Mahoning Railway Company, 846 A.2d 118, 122-23 (Pa. Super. 2004) (citing Lower Frederick Township v. Clemmer, 543 A.2d 502, 510 (Pa. 1988) (consent decree not legal determination by court of matters in controversy, merely contract between parties binding them to terms thereof)).

We granted review, limited to the issue of whether the Superior Court properly determined the stipulated order entered in lieu of trial was a consent decree, which had the effect of foreclosing appellants' right to seek review of the pre-trial rulings that eliminated various claims and defendants. As the parties do not dispute the relevant facts, this issue presents a question of law; our standard of review is thus de novo, and our scope of review is plenary. See Commonwealth v. Weston, 749 A.2d 458, 460 n.8 (Pa. 2000).

Paragraph Six of the stipulated order states, "[the parties] stipulate that the contract … was breached, preserving to themselves the right to raise this issue again should, following appellate review, further trial be necessary." Laird, at 122 (emphasis added). The Superior Court interpreted this to mean "[t]he only reservation concerns Appellees' right to further examination of the breach of contract claim …." Id., at 123

[1] Bethlehem Steel Corporation v. Tri State Industries, Inc., 434 A.2d 1236, 1239-40 (Pa. Super. 1981).

(emphasis added). The Superior Court concluded the order "does not contain language indicating agreed-upon anticipation of further judicial examination of those claims on which the trial court has ruled." Id., at 122. We disagree.

Based upon our review of the order in question and the context in which it was entered, we find the parties contemplated that appellants would challenge the trial court's pre-trial rulings on appeal. The transcript from the parties' in-court discussion of the language and effect of the stipulation with the judge supports this conclusion.

In the course of these discussions, appellants expressed their concern that agreeing to the terms of the stipulation would result in a waiver of their appeal rights; the trial court responded that, "if you agree with the stipulations … the Court can fashion an order that would preserve any and all rights you have for appellate review on any prior proceeding in this case." N.T. Hearing, 6/24/02, at 19. The court further stated, "[I]f you're successful on appeal I think your remedy is going to be a new trial …." Id., at 21. In addition, in response to appellees' counsel's speculation that the parties' willingness to stipulate made the present controversy moot, the court replied, "[T]his issue should not prevent a resolution of this matter today in getting this whole thing into a posture for appeal to an appellate court…. [I]f [appellants] are successful on appeal and the matter is remanded for a trial before a court, then you are not precluded from … raising the issue of whether … a breach of contract occurred." Id., at 23.

Based upon the above facts, we disagree with the Superior Court's determination that the language in Paragraph Six was meant to reserve only appellees' right to seek appellate review of the breach of contract claim. Rather, we find the language in Paragraph Six of the order was written in anticipation appellants would appeal from the pre-trial rulings and, should they succeed on appeal and be awarded a trial, appellees

would not be bound by their stipulation in Pargagraph Six, and would thus be able to defend against a claim for breach of contract at any such trial.

The Superior Court buttressed its decision by noting, "[a]ppellants have consistently sought two forms of relief," namely, payment of the dividend and reinstatement of the 1893 lease. Laird, at 123. The court found neither of appellants' claims for relief are viable since the payment of the dividend is assured by the stipulation, and the reinstatement of the lease is no longer an option due to the quashal of a separate action as moot. Id. Therefore, even if appellants were able to go to trial on a claim not disposed of by the stipulated order, they have exhausted their remedies and nothing further remains to be awarded. However, appellants sought more than just the two forms of relief above; their complaint also sought damages for tortious interference with contract, conspiracy to defraud, and breach of fiduciary duties. Appellants are not precluded from pursuing damages for these claims.

Without deciding whether the Superior Court correctly determined the stipulated order constitutes a consent decree, we find that where, as here, (1) the trial court's order is entered in lieu of trial pursuant to a stipulated agreement which contemplates appellate review,[2] and (2) the issue being appealed is not disposed of in the stipulated

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[2] See, e.g., Keystone Building Corporation v. Lincoln Savings and Loan Association, 360 A.2d 191, 195 (Pa. 1976) (conduct of parties and decree's language indicated decree not intended as adjudication of issues not addressed therein); Coleman v. Coleman, 522 A.2d 1115, 1120 (Pa. Super. 1987) ("a stipulation entered into by the parties with the intention of limiting the scope of the proceedings may effectively leave open other issues not addressed for future determination.").

order,[3] appellate review is not precluded.

The dissent advocates the approach taken by our sister states and cites case law that categorically precludes any appeal from a consent decree. We respectfully disagree with the dissent's reasoning as it is based upon the assumption that the stipulated order in this case is a consent decree. Neither the trial court or the parties referred to the stipulated order as either a consent decree or a consent order. The Superior Court acted sua sponte when it deemed the stipulated order to be a consent order. In light of the circumstances giving rise to the order in question, however, we believe it would be imprudent to make the same assumption. Accordingly, it would be improper to adopt a bright-line rule unconditionally precluding an appeal from a consent decree in this case since it is unclear whether the order in question falls into that category. Our decision is not a rejection of the rule promoted by the dissent, we simply do not find the holdings from the cases it cites inevitably apply where, as here, the parties who negotiated the order from which appeal is sought did not consider it a consent decree and did not intend for it to be treated as such. The dissent asserts Keystone is not controlling here since that case addressed the preclusive effect of a consent decree in a second action, rather than its effect on a party's right to challenge pre-trial rulings on direct appeal. Although we acknowledge the holding in that case is not controlling here, we find the reasoning expressed in that decision—i.e., that it is appropriate to examine the parties' intentions and the circumstances giving rise to the order—is equally relevant here.

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[3] See Fogel Refrigerator Company v. Oteri, 156 A.2d 815, 817-18 (Pa. 1959) (stipulation by parties limiting petition to open judgment to issue of forgery made judgment res judicata only to defense of forgery); GPU Industrial Intervenors v. Pennsylvania Public Utility Commission, 628 A2d 1187, 1193 (Pa. Cmwlth. 1993) (where elements of res judicata not met, preclusion of matters not fully litigated discourages compromise or narrowing of issues).

Under the facts presented, we find the Superior Court erred in determining the stipulated order effectuated a waiver of appellants' rights to appeal from the trial court's pre-trial rulings. We therefore reverse the order of the Superior Court and remand for a decision on the merits of appellants' claims of trial court error. Jurisdiction relinquished.

Messrs. Justice Saylor and Baer and Madame Justice Baldwin join the opinion.

Mr. Chief Justice Cappy files a dissenting opinion in which Mr. Justice Castille joins.