

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

GERVEL A. WATTS, )  
)  
Plaintiff, )  
)  
v. ) C.A. No. 2003-03-003  
)  
MARC C. MATHIS, )  
)  
Defendant. )

Submitted: July 12, 2004  
Decided: July 22, 2004

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**DECISION ON PLAINTIFF'S  
MOTION FOR REARGUMENT**

Plaintiff moves pursuant to Court of Common Pleas Civil Rule 59(e) for reargument of the Court's decision entered on June 18, 2004 denying plaintiff's motion to compel defendant's appearance at deposition in aid of execution. These proceedings were commenced on March 3, 2003 when plaintiff filed its initial complaint and praecipe. An answer was filed on March 26, 2003, which set forth certain affirmative defenses and cross claims. On October 10,

2003, attorney for plaintiff filed a motion to compel answer to discovery. This Court entered an order on October 31, 2004 requiring defendant to serve complete answers to plaintiff's interrogatories on or before November 14, 2003. On December 18, 2003, attorney for plaintiff filed a motion for a sanction under Court of Common Pleas Rule 37. On January 23, 2004, this Court after considering the motion for sanctions entered default judgment against the defendant in the amount of \$50,000, together with pre- and post-judgment interest at the legal rate. On March 18, 2004, this Court entered an order denying defendant's motion to vacate the judgment entered under Rule 37. On April 1, 2004, this Court received notice from the Office of the Prothonotary that the matter was appealed to the Superior Court.

On May 21, 2004, plaintiff filed a motion to compel defendant's attendance at deposition in aid of execution to be held at his office. The motion was opposed by the defendant. On June 18, 2004, this Court issued an order denying plaintiff's motion to compel defendant's attendance at deposition in aid of execution and order for attorney's fees and costs. The Court held at that time, that since this had been appealed to the Superior Court, this Court had no jurisdiction to hear the motion.

Plaintiff moves for reargument alleging the Court has jurisdiction to consider its motion because the defendant has not posted a supersedeas bond and, under the provisions of 10 Del. C. § 1325(c), this Court has jurisdiction to hear all matters for post-judgment proceedings. Further, plaintiff argues that the general

rule in Delaware is that a perfected appeal divests the trial court of jurisdiction over the cause of action, except in those instances involving collateral or independent matters. Therefore, plaintiff reasons that a motion to compel the defendant to appear at deposition in aid of execution is a collateral or independent matter, which is properly within the jurisdiction of this Court since the defendant had failed to post a supersedeas bond.

Defendant argues that the central issue on appeal is the judgment entered by this Court. Therefore, since the validity of the default judgment is the central issue to be decided by the Superior Court, it cannot be viewed as a collateral or an independent matter.

It is settled law in this jurisdiction that an appeal of a final order from the trial court divests such court of further jurisdiction over that action during the pendency of the appeal, except for collateral or independent matters. King v. Lank, Del. Super., 61 A.2d 402 (1948), Centaur Partners IV v. National Intergroup, Inc., et al., Del. Ch. 1990 WL 62884 (1990). The plaintiff argues that a motion to compel attendance at a deposition in aid of execution is a collateral matter which is in the jurisdiction of the Court. In these proceedings, defendant has appealed the entry of default judgment for failure to comply with discovery. I am unable to conclude a motion to compel appearance in aid of execution is a collateral or an independent matter in these proceedings. Moreover, if the Court were to exercise jurisdiction, plaintiff would then be litigating in two forums which is inefficient and could lead to inconsistent decisions regarding the legal

issues before the Court. Therefore, I am compelled to conclude that since the validity of the judgment is the issue before the Superior Court and not the result of a transfer judgment, any matters involving its enforcement or its compliance by the defendant are matters properly within the jurisdiction of the Superior. Accordingly, when the appeal was docketed, it divested this Court of jurisdiction to hear matters of the nature filed by plaintiff.

Plaintiff's motion for reargument is hereby Denied.

SO ORDERED this 22<sup>nd</sup> day of July, 2004

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Alex J. Smalls  
Chief Judge