

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

GAMLES CORP.,)
)
Plaintiff,)
)
v.)
)
DONALD J. GIBSON, SR.,) C.A. No. 93J-03-241 J
)
Defendant.)
)
)
)

ORDER

On this 31st day of March, 2009, it appears to the Court that:

1. This action arises as a result of a 1994 judgment entered against Defendant for default on a loan.¹ Following this judgment, Plaintiff secured a wage attachment on Defendant's employer in 1996. On February 7, 2006, Defendant filed a Motion to Remove Judgment on the grounds that the judgment against him had expired or, in the alternative that the judgment was paid in full.² Plaintiff argued in opposition that the judgment had not

¹ The 1994 judgment was obtained against the defendant, Donald J. Gibson, Sr., and his now deceased son Donald J. Gibson, Jr. Donald J. Gibson, Sr. is the only remaining defendant in this case.

² Def. Mot. to Satisfy Judgment, Docket Item ("D.I.") 4.

been paid in full and that the judgment had not expired. On January 29, 2007, this Court ruled in favor of Defendant finding that the judgment had expired and therefore Defendant was not liable for any remaining judgment payments.³ On August 7, 2007, the Delaware Supreme Court reversed this Court's decision based on its finding that the judgment had not expired.⁴ The case was remanded back to this Court to decide whether the balance of the judgment had been paid, and if not, what unpaid balance remained.⁵

2. On April 7, 2008, the Court directed the parties to submit their respective conclusions regarding whether there was any outstanding balance due on the judgment. Not surprisingly, the parties were unable to agree. Defendant submitted an affidavit on June 16, 2008 representing that he had paid all principal and accrued interest due.⁶ He attached an amortization schedule and copies of his payroll stubs, earning statements and reports and personal checks to support his position.⁷ On July 16, 2008, Plaintiff filed an affidavit and report prepared by Adele McIntosh, CPA.⁸ According to Ms. McIntosh's calculations, the total judgment balance remaining as of July 15,

³ Gamles Corp. v. Gibson, 2007 WL 3380115 (Del. Super., Jan. 29, 2007).

⁴ Gamles Corp. v. Gibson, 939 A.2d 1269 (Del. 2007).

⁵ *Id.*

⁶ Donald J. Gibson, Sr. Aff., June 16, 2008.

⁷ *Id.*

⁸ Adele McIntosh, CPA Aff., July 15, 2008.

2008 was \$33,791.52.⁹ Defendant refutes Ms. McIntosh's calculations.

Due to exigent circumstances, Defendant has been unable to hire an accountant on his behalf.

3. On December 18, 2008, Defendant submitted a letter to the Court requesting it to appoint an independent accountant.¹⁰ D.R.E. 706 grants this Court authority to appoint an expert and divide the expert's costs among the parties.¹¹ The issues of payment and balance due are critical to the resolution of this case.¹² The amount of money paid and potentially owed is an issue hotly contested by Defendant and Plaintiff and the Court finds that both parties' arguments are well supported. Due to the complexity involved in reconciling the differences in the parties' calculations, the Court finds good cause to appoint an independent accountant. The expertise of the independent accountant will provide the Court with a reliable perspective on the present status of the judgment. This will greatly assist the Court in making an accurate determination of the remaining judgment balance, if any remains.¹³

⁹ D.I. 17.

¹⁰ Docket Item 20.

¹¹ Del. Unif. R. Evid. 706.

¹² *Gamles Corp.*, 939 A.2d at 1275.

¹³ *See* 29Wright & Gold, *supra* note 6, § 6302 (1997) ("While Rule 706 fails to provide a standard by which the exercise of the court's discretion should be judged, the policy goal of accurate factfinding supplies sufficient guidance. Thus, Rule 706 powers are properly invoked where the issues are complex and the parties' experts have presented conflicting

4. Accordingly, the parties have fifteen days from the issuance of this Order to stipulate to the appointment of an independent accountant. If the parties are unable to agree within fifteen days, the parties will have an additional twenty days to submit three nominations to the Court and the Court will appoint an independent accountant. The cost of the independent accountant will be split evenly between the parties.

IT IS SO ORDERED.

Judge Calvin L. Scott, Jr.

testimony that is difficult to reconcile or have otherwise failed to provide a sufficient basis for deciding the issues.”).