

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

ACC FINANCIAL CORP.

Appellant

v.

LAW OFFICE OF HARRISON ROSS BYCK,
ESQ. P.C., HARRISON R. BYCK, DBG
COLLECTION INC., BRIAN D. TONNER

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2249 EDA 2012

Appeal from the Judgment Entered June 27, 2012
In the Court of Common Pleas of Philadelphia County
Civil Division at No(s): June Term, 2009 No. 3871

BEFORE: PANELLA, J, OLSON, J., and STRASSBURGER, J.*

MEMORANDUM BY STRASSBURGER, J.

FILED MAY 23, 2013

ACC Financial Corp. (ACC) appeals from the judgment it entered on June 27, 2012, as a result of the lawsuit it filed against Appellees, the Law Office of Harrison Ross Byck, Esq. P.C. (Law Office) and Harrison R. Byck (Byck); as well as, Brian D. Tonner (Tonner), and DBG Collection, Inc. (DBG). After review, we quash this appeal.

The trial court summarized the underlying facts as follows.

On March 21, 2007, [ACC] entered into a written agreement with [DBG], whereby DBG would pursue collection actions on behalf of ACC on a package of 4,080 consumer credit card accounts. Paragraph nine of the agreement reads, "Agency

* Retired Senior Judge assigned to the Superior Court.

shall make a diligent effort to collect the entire balance in a prompt and timely fashion. Effort means and includes skip tracing the debtor, filing lawsuit, pursuing lawsuit and where judgment has been entered, execution on that judgment." The agreement was signed by ACC president Allan K. Marshall and DBG vice president [Tonner]. [Byck] also signed on behalf of DBG.

DBG retained the [Law Office] to file collection actions on the accounts. While DBG and the Law Office shared common office space and phone numbers and even a common officer in Byck, the two at all times functioned as separate corporate entities. [ACC] soon became openly dissatisfied with the pace of the collections, accusing the defendants of failing to file suit against the creditors, unilaterally raising DBG's commission percentage, and failing to remit the proceeds of the collections for several months. Finding the professional relationship to be overly straining, DBG terminated the contract on October 19, 2007 and returned all of the outstanding accounts to ACC. [On June 26, 2009,] ACC then filed suit against all defendants, alleging negligence, breach of contract, "aiding and abetting" and breach of fiduciary duty. The thrust of ACC's claims is that the defendants failed to timely and properly file suit against the debtors and make collections as required by the "diligent effort" clause of the [A]greement.

Trial Court Opinion, 3/25/2011, at 2.

In the amended complaint filed by ACC on September 21, 2009, ACC set forth the following causes of action against the following entities: counts for breach of contract and conversion against DBG; counts for fraud, conversion, and aiding and abetting against Tonner; counts for negligence, breach of contract, and breach of fiduciary duty against the Law Office; and counts for negligence, breach of contract, breach of fiduciary duty, and aiding and abetting against Byck. ACC sought a total of \$3,409,994.00 in compensatory damages.

After all defendants filed preliminary objections and ACC withdrew its negligence claims, the following causes of action remained: one count of breach of contract against DBG; one count for conversion against Tonner; and counts for breach of contract and breach of fiduciary duty against the Law Office. All parties then filed cross-motions for summary judgment. On March 24, 2011, the trial court granted summary judgment in favor of Tonner and against ACC, thereby dismissing Tonner from the case. The trial court also granted summary judgment in favor of the Law Office and against ACC on the breach of contract and breach of fiduciary counts. Therefore, the only count remaining was ACC against DBG for breach of contract. The trial court also concluded that the remaining amount in controversy was now less than \$50,000 and remanded the case to compulsory arbitration.

On September 13, 2011, the arbitrators found in favor of ACC and against DBG in the amount of \$7,056.22. ACC filed a timely appeal to the trial court. The case was assigned to a trial judge, who, on June 8, 2012, entered an order settling the case. That order was docketed on June 11, 2012, and notice pursuant to Pa.R.C.P. 236 was sent on June 13, 2012. Subsequently, on June 27, 2012, ACC filed a document entitled "Plaintiff's Praecipe Mark Settled Discontinued Ended." On July 23, 2012, ACC filed a notice of appeal to this Court. Both ACC and the trial court complied with Pa.R.A.P. 1925.

On appeal, ACC raises four questions for our review, all of which relate to issues of Byck's alleged breach of contract, breach of fiduciary duty, and negligence with regard to his handling of the accounts. **See** ACC's Brief, at 6-7.

Before we reach ACC's questions on appeal, we must consider whether this appeal was timely filed as it implicates our jurisdiction over the matter. It is well-settled that "an untimely appeal divests this [C]ourt of jurisdiction." **Brown v. Brown**, 641 A.2d 610, 611 (Pa. Super. 1994). Appellees assert that the order placing the settlement between ACC, DBG and Tonner on the record, which was docketed June 11, 2012, was the final order. Appellees' Brief, at 11. Thus, the July 23, 2012 notice of appeal filed by ACC was untimely, as it was filed more than 30 days after the entry of the order pursuant to Pa.R.A.P. 903.¹ We agree.

A final order is an order that "disposes of all claims and of all parties[.]" Pa.R.A.P. 341(b)(1). "A trial court order declaring a case settled as to all remaining parties renders prior grants of summary judgment final for Rule 341 purposes, even if the prior orders entered disposed of fewer than all claims against all parties." **Weible v. Allied Signal, Inc.**, 963 A.2d

¹ We point out that the trial court did not offer an opinion on the timeliness of the appeal, as it filed a statement in lieu of opinion relying on its opinion filed on April 24, 2011 in response to the motions for summary judgment. Furthermore, this issue was raised for the first time in Appellees' brief, and ACC did not file a Reply Brief addressing this issue.

521, 525 (Pa. Super. 2008); **see also, Gutteridge v. A.P. Green Services, Inc.**, 804 A.2d 643 (Pa. Super. 2002); **Harahan v. AC & S, Inc.**, 816 A.2d 296, 297 (Pa. Super. 2003). The order authored on June 8, 2012 by the trial court states "Case Settled." That order was docketed on June 11, 2012; and, importantly, notices pursuant to Pa.R.C.P. 236 were sent on June 13, 2012. Therefore, any appeal from the prior grants of summary judgment had to be filed within 30 days of that order, or July 15, 2012. Because this appeal was not filed until July 23, 2012, we conclude that that this appeal is untimely; thus, we quash it.

Appeal quashed.

Judgment Entered.

A handwritten signature in cursive script, appearing to read "Karen Gambetta", written over a horizontal line.

Prothonotary

Date: 5/23/2013