NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

CITY LINE INSURANCE, INC.

Appellant

v.

FIRST KEYSTONE RISK RETENTION GROUP, INC.

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 2310 EDA 2012

Appeal from the Orders Entered June 28, 2012 and July 10, 2012
In the Court of Common Pleas of Philadelphia County
Civil Division at No(s): No. 2021 August Term, 2010

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

MEMORANDUM BY STRASSBURGER, J.: **FILED MAY 23, 2013**

City Line Insurance, Inc. (City Line) appeals from the June 28, 2012 and July 10, 2012 interlocutory orders wherein the trial court resolved a discovery issue and reached conclusions about how to calculate Production Incentive Commission (PIC). City Line asserts that these are appealable interlocutory orders pursuant to Pa.R.A.P. 313 as collateral orders.[1] After review, we quash this appeal.

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* Retired Senior Judge assigned to the Superior Court.

[1] Under Pennsylvania law, our Court may reach the merits of an appeal taken from "(1) a final order or an order certified as a final order (Pa.R.A.P. 341); (2) an interlocutory order as of right (Pa.R.A.P. 311); (3) an interlocutory order by permission (Pa.R.A.P. 312, 1311, 42 Pa.C.S.A. § 702(b)); or (4) a collateral order (Pa.R.A.P. 313)." ***Stahl v. Redcay***, 897

(Footnote Continued Next Page)

City Line is a "licensed insurance producer in the State of New Jersey and is in the business of producing commercial auto insurance policies for commercial transportation vehicles." Trial Court Opinion, 9/13/2012, at 3. First Keystone Risk Retention Group, Inc. (First Keystone) "sells auto liability insurance to the commercial auto industry." ***Id***. In July 2006, the parties entered into a business relationship, which eventually deteriorated. On July 14, 2009, the parties entered into an Agreement and Mutual General Release (Agreement) in an attempt to resolve their disputed issues. Part of the Agreement governed whether City Line would be eligible for PIC. Subsequently, City Line believed that it was owed PIC which First Keystone did not pay. Thus, City Line commenced the instant breach of contract action against First Keystone in the Court of Common Pleas of Philadelphia County. The trial court summarized the relevant procedural history as follows.

> Discovery disputes started as early as February 29, 2012. The critical issue was whether [First Keystone] had to turn over to [City Line] a huge quantity of [First Keystone's] working accounts. At first, both parties agreed to engage a discovery master to aid in compliance. It was understood that any discovery master would <u>have</u> to be well-versed in this particular area of insurance law and practice regarding [PIC] between insurance companies and producers.

(Footnote Continued) ———————————

A.2d 478, 485 (Pa. Super. 2006) (citation omitted). In this case, there is no dispute that the only way this Court has jurisdiction over this matter is if the trial court order is a collateral order.

Shortly after this, [City Line] convinced [the trial court] that it could not afford a discovery master. It became clear to [the trial court] that the extent and scope of discovery would be determined, in part, by a determination of the formula for [PIC]. The parties submitted briefing on the formula that each believed appropriate.

[The trial court] concluded that the appropriate formula should apply Net Written Premium per period, and cumulative losses per book of business. This resulted in a decrease to the extent of the discovery requested by [City Line]. These conclusions were discussed by [the trial court] in two Orders which are currently at issue.

On June 28, 2012, [the trial court] issued the first of two Orders which are at issue in this appeal. The June 28 Order addresses, among other things, how to calculate [City Line's] [PIC].

On June 28, 2012, [the trial court] received a phone call from [First Keystone's] counsel, asking whether the June 28 Order, when specifying three time periods at issue, inadvertently omitted a fourth time period of 11/01/08 - 10/31/09. [The trial court] soon thereafter concluded that this additional particular time period should have also been included in the June 28 Order.

Two things occurred on July 9, 2012. [The trial court] issued an Order applying [its] prior findings to include the fourth time period at issue. However, [City Line] filed a Motion for Reconsideration on the same day. The Motion for Reconsideration addressed how [PIC] was computed. [The trial court] was unaware of the Motion on July 9 because it had not yet been assigned to [the trial court].

On July 17, 2012, [the trial court] denied [City Line's] Motion for Reconsideration of [the trial court's] June 28 Order.

On July 27, 2012, [City Line] filed a Notice of Appeal of [the trial court's] June 28 and July [10] Orders.

Trial Court Opinion, 9/13/2012, at 1-2 (footnotes omitted).[2]

On October 16, 2012, this Court issued an order for rule to show cause regarding this Court's jurisdiction over the appeal from these interlocutory orders. On October 26, 2012, City Line filed a response to this Court's order asserting that the underlying orders are collateral orders pursuant to Pa.R.A.P. 313. Having received a response, this Court discharged the rule, leaving this panel to consider City Line's contention that the orders are collateral orders.

"A collateral order is an order separable from and collateral to the main cause of action where the right involved is too important to be denied review and the question presented is such that if review is postponed until final judgment in the case, the claim will be irreparably lost." Pa.R.A.P. 313(b).

> This Court previously explained the collateral order doctrine as follows:
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> > The "collateral order doctrine" exists as an exception to the finality rule and permits immediate appeal as of right from an otherwise interlocutory order where an appellant demonstrates that the order appealed from meets the following elements: (1) it is separable from and

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[2] On July 27, 2012, City Line filed a petition with the trial court to amend the orders with language to certify that the order "involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter[.]" 42 Pa.C.S. § 702(b). On August 7, 2012, the trial court denied that request and City Line did not file a petition for review with this Court.

> collateral to the main cause of action; (2) the right involved is too important to be denied review; and (3) the question presented is such that if review is postponed until final judgment in the case, the claimed right will be irreparably lost.
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> ***In Re J.S.C.***, 851 A.2d 189, 191 (Pa. Super. 2004). Our Supreme Court has directed that Rule 313 be interpreted narrowly so as not to swallow the general rule that only final orders are appealable as of right. ***Geniviva v. Frisk***, 555 Pa. 589, 725 A.2d 1209, 1214 (1999). To invoke the collateral order doctrine, each of the three prongs identified in the rule's definition must be clearly satisfied. ***J.S. v. Whetzel***, 860 A.2d 1112, 1117 (Pa. Super. 2004).

In re W.H., 25 A.3d 330, 335 (Pa. Super. 2011), *appeal denied*, 25 A.3d 330 (Pa. 2011).

City Line offers the following arguments that it meets the elements of the three-prong test. First, City Line contends that this order is separable from the underlying cause of action because the "proper way to calculate PIC is separate and distinct from whether First Keystone breached the Agreement and can be determined without addressing the underlying cause of action." City Line's Response to this Court's October 16, 2012 Order to Show Cause, 10/26/2012, at 6. Next, City Line contends that the issue is too important to be denied review because "for people who depend on making a living based upon whether they have a low enough loss ratio, like many in the insurance industry, this ruling can have a significant effect." City ***Id***. at 8-9. Finally, City Line suggests that "if this issue is postponed until final judgment then City Line would lose its ability to prove what PIC it is entitled using earned premium, unless there was another trial" and City Line

would not be able to afford such an undertaking. ***Id***. at 9. For the following reasons, we conclude that City Line has not met even one part of the aforementioned test.

We address the issue of whether the claim is separable mindful of the following principles. The Supreme Court "has adopted a practical analysis recognizing that some potential interrelationship between merits issues and the question sought to be raised in the interlocutory appeal is tolerable." ***Pridgen v. Parker Hannifin Corp.***, 905 A.2d 422, 433 (Pa. 2006), *adhered to on reargument sub nom.* ***Pridgen v. Parker Hannifin, Corp.***, 916 A.2d 697 (Pa. 2007). "[T]o be separable and collateral, the nature of the issue reviewed must be such that it can be addressed without the need to analyze the central issue of the case. An order is not separable if the matter being reviewed has the potential to resolve an issue in the case." ***Jacksonian v. Temple Univ. Health Sys. Found.***, 862 A.2d 1275, 1279 (Pa. Super. 2004) (internal quotation and citation omitted).

In this case, there can be no doubt that the issue of how to calculate the PIC is completely central to the underlying cause of action; not separate and distinct as City Line contends. City Line's breach of contract action is premised on the fact that First Keystone should have paid PIC and it did not; thus, how to calculate that PIC is a key disputed issue in the litigation which would require the resolution of material facts. Thus, City Line has not met the first prong of the test.

As to the second prong, City Line has not asserted facts that would support a conclusion that the calculation of PIC is a right that is too important to be denied review. We have previously held that "it is not sufficient that the issue be important to the particular parties. Rather it must involve rights deeply rooted in public policy going beyond the particular litigation at hand." ***Ben v. Schwartz***, 729 A.2d 547, 552 (Pa. Super. 1999). "In analyzing the importance prong, we weigh the interests implicated in the case against the costs of piecemeal litigation." ***Gunn v. Auto. Ins. Co. of Hartford, Connecticut***, 971 A.2d 505, 509 (Pa. Super. 2009).

Instantly, City Line's assertion that this issue would be important to many who make their living in the insurance industry falls woefully short of such standard. There is no public policy or fundamental right implicated by how PIC is calculated in this case. As such, City Line's claim under this prong fails.

Finally, City Line's contention it might not be able to afford continuing litigation if this issue is not resolved in its favor does not meet the standard of irreparable loss. We have previously pointed out "that [e]very party resisting discovery rightly invokes a significant claim and every interlocutory order ... involves, to some degree, a potential loss. The common pleas court, having original jurisdiction, is charged with disposing of these conflicting interests." ***Gunn***, 971 A.2d at 512. This Court has previously found irreparable loss in the context of disclosure of confidential or privileged

information because "there is no effective means of reviewing after a final judgment an order requiring the production of putatively protected material." ***Crum v. Bridgestone/Firestone N. Am. Tire, LLC***, 907 A.2d 578, 584 (Pa. Super. 2006). We have also held that "[a]lthough appellants may suffer inconvenience by virtue of postponed review, inconvenience alone does not constitute irreparable loss of the proposed claim in this case." ***Pace v. Thomas Jefferson Univ. Hosp.***, 717 A.2d 539, 541 (Pa. Super. 1998).

Instantly, City Line's claims of irreparable loss are more akin to inconvenience and are speculative at best. Accordingly, we conclude that City Line has not met this prong either.

Because City Line has not satisfied even one element of the test for a collateral order, we quash the appeal.

Appeal quashed. Jurisdiction relinquished.

Judgment Entered.

Prothonotary

Date: 5/23/2013