



FILED
LORAIN COUNTY

2017 DEC 29 PM 2:05

LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
JOURNAL ENTRY
Hon. D. Chris Cook, Judge

Date Dec. 29, 2017

Case No. 10CV170198

FORD MOTOR CREDIT CO., LLC
Plaintiff

Brett Bacon
Plaintiff's Attorney

VS

JEFFREY P. MINNICH, et al.
sDefendant

R. Frederick – B. Poklar – L. Bach – M. Arens
Defendant's Attorney

This matter is before the Court on Defendant/Counterclaim Plaintiff, Jeffrey Minnich,'s ("Minnich") Motion to Reinstate Case and Motion For Reconsideration, both filed October 11, 2017.

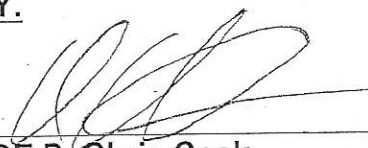
On November 3, 2017; Plaintiff/Counter-Claim Defendant, Ford Motor Credit Company, LLC ("Ford"), filed its Combined Brief in Opposition to Minnich's Motion to Reinstate Case and Motion For Reconsideration; and, on November 6, 2017, Third-Party Defendant, Mike Bass Ford, Inc. ("Bass"), filed its Brief in Opposition to Minnich's Motion For Reconsideration and Minnich's Motion to Reinstate.

Minnich's Motion to Reinstate Case is well-taken and hereby **GRANTED**. Minnich's Motion For Reconsideration is ordered held in abeyance pending further order.

See Judgment Entry.

THE COURT FINDS NO JUST CAUSE FOR DELAY.

IT IS SO ORDERED.



JUDGE D. Chris Cook

cc: Bacon, Esq. Journal Page _____
Frederick, Esq.
Poklar, Esq.
Bach, Esq.
Arens, Esq.

Pursuant to Civ. R. 54(B), this court enters final judgment as to the issue decided herein, which is less than all the claims in the case and makes the express determination that there is no just reason for delay.



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JUDGMENT ENTRY

Hon. D. Chris Cook, Judge

Date Dec. 29, 2017

Case No. 10CV170198

FORD MOTOR CREDIT CO., LLC

Plaintiff

Brett Bacon

Plaintiff's Attorney

VS

JEFFREY P. MINNICH, et al.

Defendant

B. Bacon – R. Frederick – B. Poklar – M. Arens

Defendant's Attorney

INTRODUCTION

This matter is before the Court on Defendant/Counterclaim Plaintiff, Jeffrey Minnich,'s ("Minnich") Motion to Reinstate Case and Motion For Reconsideration, both filed October 11, 2017.

On November 3, 2017, Plaintiff/Counter-Claim Defendant, Ford Motor Credit Company, LLC ("Ford"), filed its Combined Brief in Opposition to Minnich's Motion to Reinstate Case and Motion For Reconsideration; and, on November 6, 2017, Third-Party Defendant, Mike Bass Ford, Inc. ("Bass"), filed its Brief in Opposition to Minnich's Motion For Reconsideration and Minnich's Motion to Reinstate

PROCEDURAL HISTORY

The procedural history of this case is almost impossible to ascertain. Suffice to say that the original complaint, a collection action filed by Ford against Minnich for an alleged deficiency on a reposed vehicle, occurred on December 3, 2010, more than seven years ago.

Minnich then filed an answer, counter-claim, and third-party complaints. Despite a court order, there was never any real discovery conducted; motions to dismiss and amend were filed; Ford dismissed the original complaint, first without prejudice, then with prejudice; the trial court "closed" the case; appeals were filed with the Ninth District Court of Appeals; and, the appeals were dismissed on May 23, 2012 for lack of a final appealable order.

The case then sat . . . and sat . . . and sat . . . until Minnich's filings this October.



MINNICH'S MOTION TO REINSTATE CASE

As noted, *supra*, on October 11, 2017, more than five years after the Ninth District Court of Appeals dismissed the appeals for lack of a final appealable order, Minnich filed to reinstate the case onto the Court's active docket.

Ford and Bass (understandably) oppose this request.

The gravamen of Minnich's Motion is, quite simply, that the case is not really over. He argues that since the Court of Appeals dismissed the case for "lack of a final appealable order," all of the issues cannot, as a matter of law, be resolved.

This argument, on its face, makes sense. Even so, why the delay?

The real question for this Court is what, *if anything*, should have happened with this case once the appeals were dismissed in May of 2012?

Were further briefings or hearings required in the trial court? Were there unresolved motions that needed to be ruled upon? Was the subsequent dismissal of Ford's original complaint with prejudice proper? Minnich urges that all of these matters should have been addressed.

Conversely, Ford and Bass argue that all matters have been resolved; that the case is properly concluded; and, that even if there are outstanding issues that could or should have been adjudicated, Minnich's delay in seeking reinstatement is fatal to his claims.

It appears to this Court, without ruling on the propriety of the merits of Minnich's Motion For Reconsideration, that there are a number of significant issues that remain unresolved. It further appears that had the Court, or any party initiated some activity on this matter, it would have moved forward towards dispositive briefing, settlement, dismissal, or trial.

Logically, the next question is "who is to blame for the delay?"

Ford and Bass argue rather convincingly that the delay should be attributable solely to Minnich. Their argument is, essentially, that if Minnich believed there were unresolved issues or desired to prosecute his counter-claims and third-party complaints, he should have done so in a timely manner.

According to Ford and Bass, Minnich's failure to seek reinstatement sooner or prosecute his claims earlier are ~~fatal~~ under a number of legal theories including failure to prosecute and laches.



This Court sees the issue in a different light, though admittedly, the call is very close.

Unlike Ford and Bass, the Court does not pin the improper delay and failure to adjudicate the case solely on Minnich but on another entity – the Court.

The Ohio Rules of Superintendence For The Courts of Ohio are instructive. ORS R. 40(A)(1) states, in pertinent part, “Each trial judge **shall review, or cause to be reviewed**, all cases assigned to the judge. Cases that have been on the docket for six months without and proceedings taken in the case . . . shall be dismissed, **after notice to counsel of record**, for want of prosecution . . .” (Emphasis added.)

The last activity on this case prior to Minnich’s Motions filed October 12, 2017 was a Court of Appeals Entry dismissing the two pending appeals on May 23, 2012.¹ Nothing more; no review by the Court; no notice to the parties. Accordingly – no dismissal.

The final inquiry then is this, “Do the equitable theories of failure to prosecute and laches trump the Ohio Supreme Court’s Rules of Superintendence?”

I say no.

First, the rule requires that the Court review its docket ostensibly on a timely and ongoing basis. Second, the rule mandates that prior to dismissing a case after six months of inactivity, the Court give notice to counsel of record. Neither of these occurred.

Obviously, a trial court has an affirmative obligation to be aware of its docket, to manage its docket, and to timely and efficiently adjudicate cases. In this matter, the Court should have immediately scheduled a status conference once the appeals were dismissed to ascertain what, if any, remaining issues required adjudication. The Court should have then ordered a briefing schedule, ruled on the motions, and either set the case for trial or issued final appealable orders. It did none of these things.

Moreover, the Court failed to notify the parties that it was considering dismissing the case, which clearly would have informed Minnich (and Ford & Bass) that the Court believed the case to be resolved. That action would have then triggered a failure to prosecute or laches argument the longer Minnich delayed after the notice was sent.

It is at arguably understandable that Minnich was waiting for the Court to eventually do something such as schedule a hearing, order a trial date, or send the

¹ There was also a “Fee Added” entry the same day, but that is of no accord.



40(A)(1) Notice. But the Court did nothing and, *finally*, Minnich took the initiative by filing his Motions.

The Court will reiterate that this is a very close call and but for ORS R. 40(A)(1), the Court would agree with Ford and Bass that the case is "over" and Minnich's efforts to reopen it are equitably time-barred.

Nevertheless, ORS R. 40(A)(1) is there for a reason. The Supreme Court has mandated that trial courts monitor and process their cases in a timely and efficient manner. The Supreme Court has also mandated that before a case can be dismissed for failure to prosecute, the trial court must send notice to counsel of the court's intention. That was not done here; no notice was sent to counsel; hence, the case was never dismissed but has simply remained dormant until the filing of Minnich's Motions.

For the forging reasons, Minnich's Motion to Reinstate Case is well-taken and hereby GRANTED.

MINNICH'S MOTION FOR RECONSIDERATION

In addition to filing to reinstate this case, Minnich has filed a Motion For Reconsideration of three previous trial court orders, dated 12/27/2011, 12/28/2011, and 1/3/2012.

Given the nature of this Court's ruling on the Motion to Reinstate Case, it is not currently necessary to rule on the Motion For Reconsideration. In addition, to do so might end up being for naught.

The parties will have the appropriate amount of time to consider the Court's ruling on the Motion to Reinstate and can proceed as they see fit. If the decision is appealed, given that it clearly is a final appealable order, we will receive guidance on how to proceed from above. If the decision is affirmed, this Court will rule on the Motion For Reconsideration; if the decision is overturned, the case will be over. And, if no appeal is taken, the Court will rule on the Motion For Reconsideration.

As such, Minnich's Motion For Reconsideration is hereby held in abeyance pending further order of this Court.



Pursuant to Civ. R. 54(B), this court enters final judgment as to the issue decided herein, which is less than all the claims in the case and makes the express determination that there is no just reason for delay.

CONCLUSION

For the forgoing reasons, Defendant/Counter-Claim Plaintiff, Jeffrey P. Minnich's, Motion to Reinstate Case is well-taken and hereby GRANTED.

Minnich's Motion For Reconsideration is hereby held in abeyance pending further order of this Court.

Telephonic status conference is hereby scheduled for Wednesday, February 28, 2018 @ 1:30 pm. The parties are to call into the Court at (440) 329-5417.

IT IS SO ORDERED.

THE COURT FINDS NO JUST CAUSE FOR DELAY.



JUDGE D. Chris Cook