

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

THE SELINSKY FORCE, LLC	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. Sheila G. Farmer, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 2012-CA-00160
ROSEMAN CONSTRUCTION LLC,	:	
ET AL	:	<u>OPINION</u>
Defendants-Appellants	:	

CHARACTER OF PROCEEDING: Civil appeal from the Stark County Court of Common Pleas, Case No. 2011CV00272

JUDGMENT: Remanded

DATE OF JUDGMENT ENTRY: March 28, 2013

APPEARANCES:

For Plaintiff-Appellee
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Gwin, P.J.

{¶1} Appellant RBS General Contracting, LLC appeals from the July 31, 2012 judgment entry issued by the Stark County Court of Common Pleas.

{¶2} On January 21, 2011, appellee Selinsky Force filed a complaint in the Stark County Common Pleas Court against Roseman Construction, LLC and Sean Roseman individually as Defendants with claims for successor/alter ego liability and fraud. Appellee filed an amended complaint on November 15, 2011, adding appellant RBS General Contracting, LLC and Melissa Roseman individually as Defendants.

{¶3} The magistrate held a bench trial on May 22, 2012. Appellee filed a notice of dismissal as to the claims against Sean Roseman and Melissa Roseman individually on May 23, 2012. After the bench trial concluded, the parties filed their proposed findings of fact and conclusions of law on June 12, 2012.

{¶4} The magistrate issued her findings of facts and conclusions of law on July 31, 2012. The judgment entry was signed by the magistrate and approved by the trial court judge. The magistrate found appellant liable to appellee as a successor corporation.

{¶5} Appellant filed objections to the magistrate's decision on August 14, 2012. On August 24, 2012, appellee filed an opposition to appellant's objections to the magistrate's decision. Prior to the trial court ruling on the objections, appellant filed a notice of appeal on August 30, 2012, appealing the July 31, 2012 judgment entry.

{¶6} Appellant raises the following assignment of error on appeal:

{¶7} "THE TRIAL COURT ERRED AS A MATTER OF LAW AND/OR AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE IN HOLDING THAT RBS

GENERAL CONTRACTING, LLC IS A CONTINUATION OF ROSEMAN BUILDING COMPANY, LLC AND AS SUCH IS BOUND BY THE JUDGMENT IN FAVOR OF SELINSKY FORCE, LLC AGAINST ROSEMAN BUILDING COMPANY, LLC.”

{¶18} Appellant states in its brief that they filed a notice of appeal on August 30, 2012 despite the fact that the trial court had not yet ruled on their objections to the magistrate’s decision because the time had run for them to file a notice of appeal. Accordingly, we will first address the procedural issues regarding the objections to the magistrate’s decision.

{¶19} Civil Rule 53 provides a party may file written objections to a magistrate’s decision within fourteen days of the decision being filed. Civ.R. 53(D)(3)(b). If a party objects to a finding of fact, the party must support the objection with a transcript of all the evidence submitted to the magistrate relevant to that fact, or an affidavit of that evidence if the transcript is not available. Civ.R. 53(D)(3)(b)(iii). “If one or more objections to a magistrate’s decision are timely filed, the court shall rule on those objections.” Civ.R. 53(D)(4)(d).

{¶10} Appellate Rule 4(B)(2) was amended in July of 2011 to resolve issues regarding the proper procedure on appeal if a party files a notice of appeal before all proper and timely filed post-trial filings are resolved. 2011 Staff Notes to App.R. 4. The amended rule provides that when a notice of appeal is filed before all proper and timely filed post-trial filings are resolved, the case should be remanded to the trial court to rule on the post-trial filings or motion. *Id.*

{¶11} Specifically, Appellate Rule 4(B)(2) states:

In a civil case * * * if a party files any of the following, if timely and appropriate: * * * (c) objections to a magistrate's decision under Civ.R. 53 (D)(3)(b) or Juv.R. 40(D)(3)(b) * * * then the time for filing a notice of appeal from the judgment or final order in question begins to run as to all parties when the trial court enters an order resolving the last of these post-judgment filings.

{¶12} Appellate Rule 4(B) continues,

If a party files a notice of appeal from an otherwise final judgment but before the trial court has resolved one or more of the filings listed in this division, then the court of appeals, upon suggestion of any of the parties, shall remand the matter to the trial court to resolve the post-judgment filings in question and shall stay the appellate proceedings until the trial court has done so.

{¶13} In this case, appellant filed timely objections to the magistrate's decision on August 14, 2012, and filed a transcript of the bench trial. Appellee filed an opposition to appellant's objections to the magistrate's decision on August 24, 2012. However, prior to the trial court's ruling on the objections, appellant filed a notice of appeal on August 30, 2012, preventing the trial court from issuing a ruling on the objections to the magistrate's decision.

{¶14} Accordingly, pursuant to Appellate Rule 4(B)(2), we remand the case to the trial court for the trial court's consideration of and ruling on the objections to the magistrate's decision.

By Gwin, P.J.,

Farmer, J., and

Delaney, J., concur

HON. W. SCOTT GWIN

HON. SHEILA G. FARMER

HON. PATRICIA A. DELANEY

