

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Carl Windnagle

Court of Appeals No. L-13-1171

Appellant

Trial Court No. CI0201101159

v.

CSI Tax Group, LLC

DECISION AND JUDGMENT

Appellee

Decided: June 20, 2014

* * * * *

Eugene F. Canestraro, for appellant.

* * * * *

JENSEN, J.

{¶ 1} This is an appeal from a judgment entry of the Lucas County Court of Common Pleas. For the reasons that follow, we remand the matter to the trial court for clarification.

{¶ 2} Appellant, Carl Windnagle, filed a complaint against appellee, CSI Tax Group, LLC, asserting various allegations relating to a written agreement to purchase

appellant's accounting and tax preparation practice. Appellee counterclaimed. The matter ultimately proceeded to a bench trial.

{¶ 3} On June 28, 2012, the trial court issued a decision, with findings of fact and conclusions of law, granting judgment in favor of appellant and against appellee “for an amount with set-off of \$57,719.03 plus costs and interest at the statutory rate and attorney's fees of \$28,234.00.” The set-off amount was described as damages for appellee's “renovation costs” in the amount of \$66,410.

{¶ 4} On July 2, 2013, appellant filed a motion to correct what he believed to be a “clerical mistake” in the calculation of the set-off amount. Appellant asserted,

[T]he Court's Judgment Entry mistakenly identifies “* * * the costs * * *” Defendant incurred for improvements/renovation costs to the building (leasehold) as \$66,400.00 rather than the correct sum of \$21,719.00 * * *. The Defendant presented testimonial evidence at trial, as well as offered Exhibits 20 and 26 * * * which claimed \$21,719.00 in damages for costs associated with improvements/renovation costs to the building. Not unexpectedly, Defendant claimed the same sum, \$21,719.00 within its post trial brief * * *. The likely source of the Court's clerical error was Defendant's generalized demand for total damages of \$66,400.00, which the Court's Judgment Entry properly rejects.

* * *

Wherefore Plaintiff prays the Court, pursuant to Ohio Civ. Rule 60(A), issues a Nunc Pro Tunc Order, for the June 28, 2013 Judgment Entry, correcting the clerical mistake – identifying the set-off as \$21,719.00 [instead of \$66,400.00] and re-issuing the corrected Judgment for Plaintiff for \$102,410.03, plus court costs and interest, and attorneys fees of \$28,234.00.

Five days later, without mentioning appellant’s motion, the trial court issued an amended decision, with findings of fact and conclusions of law, awarding judgment in favor of appellant and against appellee “in an amount totaling \$124,129.03 plus costs and interest at the statutory rate and attorneys’ fees of \$28,234.00.” The entry further provided,

[Appellant’s] judgment shall be set-off by the award of damages to defendant for its renovation costs in an amount totaling \$66,410.00. Thus, the final judgment awarded in favor of [appellant] is \$57,719.03 plus costs and interest at the statutory rate and attorneys’ fees of \$28,234.00.

{¶ 5} Appellant filed a timely appeal. He sets forth two unopposed assignments of error for our review:

1. The trial court committed a simple mathematical error in its Decision, Findings of Fact, Conclusions of Law and Judgment Entry of June 28, 2013 when it granted a setoff in the amount of \$66,410.00 rather than \$21,719.00 – which is the sum offered in evidence and requested by the Defendant-Appellee.

2. The trial court erred when it failed to correct its mathematical mistake when it issued its Amended Decision, Findings of Fact, Conclusions of Law and Judgment Entry of July 9, 2013 when it granted a setoff in the amount of \$66,410.00 rather than \$21,719.00 – which is the sum offered in evidence and requested by the Defendant-Appellee.

{¶ 6} In his brief, appellant asserts that the trial court erred by “miscalculating” the amount of damages due appellee for improvements appellee made to the leasehold property. Appellant asserts that amount the trial court awarded appellee for monies expended for renovation costs is inconsistent with the amount sought by appellee for such costs.

{¶ 7} A review of the limited record before us indicates that appellee did submit a list of “out-of-pocket” expenses for improvements to the leasehold property. However, the sum of those expenses totaled only \$21,719. This sum is inconsistent with the award for the leasehold improvements set forth in the trial court’s findings of fact and conclusions of law. We agree with appellant that the evidence submitted is inconsistent with the judgment entries prepared. However, we are unable to discern the trial court’s intent based upon the limited record before us. Thus, the matter must be remanded to the trial court for clarification.

{¶ 8} Based on the foregoing, appellant’s assignments of error are found well-taken. Judgment of the Lucas County Court of Common Pleas is reversed and the matter

is remanded to the trial court for clarification of the set-off amount awarded to appellee for “renovation costs.” Pursuant to App.R. 24, appellee is ordered to pay the costs of this appeal.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

Thomas J. Osowik, J.

James D. Jensen, J.

CONCUR.

JUDGE

JUDGE

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio’s Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court’s web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
