

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

Carl Windnagle

Court of Appeals No. L-14-1179

Appellant

Trial Court No. CI0201101159

v.

CSI Tax Group, LLC

DECISION AND JUDGMENT

Appellee

Decided: July 31, 2015

* * * * *

Eugene F. Canestraro, for appellant.

* * * * *

JENSEN, J.

{¶ 1} This is an accelerated appeal. Appellant Carl Windnagle appeals the July 24, 2014 judgment of the Lucas County Court of Common Pleas. For the reasons that follow, the judgment of the Lucas County Court of Common Pleas is affirmed.

{¶ 2} On December 4, 2009, Carl Windnagle entered into a purchase agreement with CSI Tax Group, LLC, for the sale of Windnagle's tax preparation and accounting business. Differences emerged. Windnagle filed a six-count complaint against CSI

alleging breach of contract, to compel accounting, conversion, unjust enrichment, termination of non-compete and non-solicitation agreements, and breach of lease. CSI filed a ten-count counterclaim alleging breach of contract, breach of implied duty of good faith and fair dealing, fraud, tortious interference with contractual relations, tortious interference with economic advantage, unfair competition, compel accounting, business defamation, conversion, and unjust enrichment.

{¶ 3} On June 28, 2013, after a trial to the bench, the Lucas County Court of Common Pleas issued a Decision, Findings of Fact and Conclusions of Law and Judgment Entry. In its decision, the trial court specifically held that CSI Tax Group, LLC, breached the written purchase agreement and awarded judgment in favor of Windnagle. Despite finding “no evidence that [Windnagle] breached the purchase agreement or any of its terms,” the trial court awarded CSI “damages for its renovation costs” in the amount of \$66,410. The “JUDGMENT ENTRY” section of the decision stated:

It is ORDERED that judgment be awarded in favor of plaintiff and against defendant in this matter 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.

{¶ 4} Shortly thereafter, Windnagle filed a motion requesting the trial court to correct what he believed to be a “clear clerical error” in the amount of damages awarded

to CSI for renovation costs. Windnagle asserted that the \$66,410 awarded was inconsistent with the \$21,719 requested by CSI for the improvements. He attached portions of the record in support of his claim.

{¶ 5} On July 9, 2013, without mention of Windnagle’s motion, the trial court issued an Amended Decision, Findings of Fact and Conclusions of Law and Judgment Entry. The amended decision was identical to the trial court’s original decision except that the “JUDGMENT ENTRY” section of the decision was re-worded as follows:

It is ORDERED that judgment be awarded in favor of plaintiff and against defendant in an amount totaling \$124,129.03 plus costs and interest at the statutory rate and attorney’s fees of \$28,234.00. Plaintiff’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 plaintiff is \$57,719.03 plus costs and interest at the statutory rate and attorneys’ fees of \$28,234.00

{¶ 6} Windnagle appealed the amended decision, setting forth two unopposed¹ assignments of error for our consideration:

1. The trial court committed a simple mathematical error in its Decision, Findings of Fact, Conclusions of Law and Judgment Entry of

¹ Shortly after filing a notice of cross-appeal, counsel for CSI filed a waiver of appearance and withdrawal of counsel asserting that CSI “has negligible assets and accordingly will not be contesting this matter.”

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 – which is the sum offered in evidence and requested by the Defendant-Appellee.

{¶ 7} In his brief, Windnagle asked this court to “correct and reduce the setoff awarded by the trial court, because of its clear clerical mistake.” He indicated that he chose “not to endure the substantial costs of providing the court with a full transcript of all witness testimony believing the partial record * * * conclusively support[ed] his belief that the trial court merely made a clerical error.” With a limited record before us, we found Windnagle’s assignments of error well-taken and remanded the matter to the trial court “for clarification of the set-off amount awarded to appellee for ‘renovation costs.’” *See Windnagle v. CSI Tax Group, LLC*, 6th Dist. Lucas No. L-13-1171, 2014-Ohio-2694 (“*Windnagle I*”).

{¶ 8} On remand, the trial court issued a Clarified Findings of Fact and Conclusions of Law and Judgment Entry (hereinafter the “clarified judgment entry”). Other than an introductory paragraph restating the limited purpose of the remand, the clarified judgment entry was nearly identical to its previous decision. However, instead

of correcting the amount of damages awarded to CSI for renovation costs, the trial court amended its findings of fact, conclusions of law, and judgment to include an award of damages for marketing expenses. The amount of damages awarded to CSI as a “set-off” remained the same.

{¶ 9} Windnagle now appeals from the trial court’s clarified judgment entry and assigns the following errors:

1. The trial court committed an error of law in awarding the Defendant a “set-off” for damages having first found the only party to have breached the parties single agreement was the defendant.

2. The trial court erred at law, when it awarded a set-off of (\$66,410) to a party (Defendant/appellant) who never asked for the same in its pleadings.

{¶ 10} “Finality of judgments is necessary to allow litigants to proceed with their lives without fear of being brought into court for another adjudication of the same cause of action.” *Nickell v. Gonzalez*, 34 Ohio App.3d 364, 367, 519 N.E.2d 414 (1st Dist.1986) “That is one reason why the doctrine of res judicata operates to prevent repeated attacks on a final judgment, and applies not only to what was determined in a prior suit, but also to every question which might properly have been litigated.” *Id.*

{¶ 11} The issues addressed in Windnagle’s assignments of error could have been raised in his first appeal. Our prior remand for the limited purpose of clarifying the set-off amount awarded to appellee for renovation costs does not permit Windnagle to

challenge the award of damages to CSI now. Thus, we must overrule Windnagle's assignments of error without further consideration. *See Charles A. Burton, Inc. v. Durkee*, 162 Ohio St. 433, 438, 123 N.E.2d 432 ("[A]ll questions which existed on the record, and could have been considered on the first petition in error, must ever afterward be treated as settled by the first adjudication of the reviewing court.").

{¶ 12} For the foregoing reasons, the Judgment of the Lucas County Court of Common Pleas is affirmed. Pursuant to App.R. 24, costs of this appeal are assessed to appellant.

Judgment affirmed.

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

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

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.
