

[Cite as *Semenchuck v. MHSP, Inc.*, 2005-Ohio-111.]

[Corrected opinion; please see original at 2005-Ohio-32.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA  
GERALD E. FUERST, CLERK OF COURTS

ELIZABETH SEMENCHUCK,	:		
	:	COA NO.	LOWER COURT NO.
Appellant	:	84614	CP CV-515730
	:		
-vs-	:	COMMON PLEAS COURT	
	:		
MHSP, INC.,	:		
	:		
Appellee	:	MOTION NO.	367642

Date JANUARY 11, 2005

JOURNAL ENTRY

THE PRIOR JOURNAL ENTRY AND OPINION OF THIS COURT RELEASED ON JANUARY 6, 2005 IS HEREBY REVISED AND AMENDED NUNC PRO TUNC. SAID JOURNAL ENTRY AND OPINION CONTAINED AN ERROR IN THE LAST PARAGRAPH, THIRD SENTENCE, ON PAGE TWO, WHICH READS:

We have previously held that "a dismissal without prejudice is not a final determination of the rights of the parties and does constitute a judgment or final order when refiling or amending of the complaint is possible."

THIS SENTENCE IS CORRECTED TO READ:

We have previously held that "a dismissal without prejudice is not a final determination of the rights of the parties and does not constitute a judgment or final order when refiling or amending of the complaint is possible."

AS SO AMENDED, THE JOURNAL ENTRY AND OPINION SHALL STAND IN FULL FORCE AND EFFECT AS TO ALL ITS PARTICULARS. THE CORRECTED ENTRY IS ATTACHED.

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JUDGE JAMES D. SWEENEY\*

PRESIDING JUDGE SEAN C. GALLAGHER, CONCURS.

JUDGE ANTHONY O. CALABRESE, JR., CONCURS.

(\*SITTING BY ASSIGNMENT: Judge James D. Sweeney, Retired, of the Eighth District Court of Appeals.)

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 84614

ELIZABETH SEMENCHUCK,	:	ACCELERATED
	:	
Plaintiff-Appellant	:	
	:	JOURNAL ENTRY
vs.	:	AND
	:	OPINION
MHSP, INC.,	:	
	:	
Defendant-Appellee	:	

DATE OF ANNOUNCEMENT	:	
OF DECISION	:	JANUARY 6, 2005

CHARACTER OF PROCEEDING:	:	Civil appeal from
	:	Common Pleas Court
	:	Case No. 515730

JUDGMENT	:	DISMISSED.
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DATE OF JOURNALIZATION	:	
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APPEARANCES:

For plaintiff-appellant: Paul Mancino, Jr., Esq.  
75 Public Square, Suite 1016  
Cleveland, Ohio 44113-2098

For defendant-appellee: Nancy C. Schuster, Esq.  
Kami D. Rowles, Esq.  
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2913 Clinton Avenue  
Cleveland, Ohio 44113-2940

JAMES D. SWEENEY, J.\*:

{¶ 1} This cause came to be heard upon the accelerated calendar pursuant to App.R. 11 and Loc.R. 11.1, the record from the Cuyahoga County Court of Common Pleas, the briefs and oral argument of counsel.

{¶ 2} Appellant Elizabeth Semenchuck brought this action on November 28, 2003 in Cuyahoga County Common Pleas Court alleging breach of contract for failure to pay wages against appellee MHSP, Inc. Appellee filed a motion to dismiss due to lack of subject matter jurisdiction, relying on paragraph 13 of the contract, which states in part, "[a]ny dispute that arises between the parties hereto pursuant to this Agreement shall be litigated in the Supreme Court of the State of New York \*\*\*." The court granted appellee's motion to dismiss and appellant appealed, claiming the trial court erred in ruling that it had no jurisdiction and that appellant was denied due process of law.

{¶ 3} We decline to address appellant's assignments of error, as the order from which she appeals is not a final, appealable

order. The trial court's dismissal entry stated "[t]his court lacks jurisdiction and thus this case is dismissed without prejudice." We have previously held that "a dismissal without prejudice is not a final determination of the rights of the parties and does not constitute a judgment or final order when refileing or amending of the complaint is possible." *Smart Pages v. Ohio Mortgage*, Cuyahoga App. No. 83004, 2003-Ohio-7074, at ¶5 (citations omitted). Furthermore, although we express no opinion on the merits of the underlying case, we would direct the parties to *Four Seasons Enterprises v. Tommel Financial Services, Inc.* (Nov. 9, 2000), Cuyahoga App. No. 77248, where we held the appropriate response of a trial court to a valid forum selection clause is to stay the case for sixty days pursuant to Civ.R. 3(D).

Case dismissed.

This appeal is dismissed.

It is, therefore, ordered that appellee recover from appellant its costs herein taxed.

It is ordered that a special mandate be sent to Common Pleas Court directing said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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JAMES D. SWEENEY\*

JUDGE

SEAN C. GALLAGHER, P.J., and

ANTHONY O. CALABRESE, JR., J., CONCUR.

(\*SITTING BY ASSIGNMENT: Judge James D. Sweeney, Retired, of the Eighth District Court of Appeals.)

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).