

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 87144

DISCOVER BANK, ETC.

PLAINTIFF-APPELLANT

VS.

VIDYUT I. DESAI

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Rocky River Municipal Court
Case No. CV-04CVF0766

BEFORE: Rocco, J., Gallagher, P.J., and Milligan, J.

RELEASED: September 14, 2006

JOURNALIZED:

[Cite as *Discover Bank v. Desai*, 2006-Ohio-4762.]

ATTORNEYS FOR APPELLANT

Scott R. Miller
Mark N. Silberman
Thomas & Thomas
629 Euclid Avenue, Suite 740
Cleveland, Ohio 44114

ATTORNEY FOR APPELLEE

Vincent F. Gonzalez
2535 Scranton Road
Cleveland, Ohio 44113

[Cite as *Discover Bank v. Desai*, 2006-Ohio-4762.]

KENNETH A. ROCCO, J.:

{¶ 1} This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.App.R. 11.1, the record from the lower court, the briefs and the oral arguments of counsel. Plaintiff-appellant Discover Bank complains that the court erred and abused its discretion by denying appellant's motion for relief from judgment. We find no error in the court's ruling and affirm.

{¶ 2} The underlying action was settled and dismissed with prejudice at plaintiff's cost on August 18, 2004. On July 29, 2005, plaintiff moved the court to vacate the dismissal entry. The court denied this motion on August 16, 2005. On August 31, 2005, plaintiff filed a second motion for relief from judgment. A magistrate denied this motion in an order journalized September 9, 2005. Plaintiff's appeal from this order was dismissed for lack of a final appealable order, but was reinstated after the trial court denied plaintiff's motion to reconsider the magistrate's decision.

{¶ 3} The motion for relief from judgment which is the subject of the present appeal was based on the same grounds asserted in the July 29, 2005 motion to vacate which the court had previously denied. "Res judicata prevents the successive filings of Civ.R. 60(B) motions [for] relief from a valid, final judgment when based upon the same facts and same grounds or based upon facts that could have been raised in the prior motion.'" *Harris v. Anderson*, 109 Ohio St.3d 109, 2006-Ohio-1934, ¶8, quoting *Beck-Durell Creative Dept., Inc. v. Imaging Power, Inc.*, Franklin App. No. 02AP-281, 2002-Ohio-5908, ¶16. Therefore, the trial court did not err by denying plaintiff's motion for relief from judgment.

Affirmed.

It is ordered that appellee recover from appellant his costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to 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.

KENNETH A. ROCCO, JUDGE

SEAN C. GALLAGHER, P.J. and
JOHN R. MILLIGAN, J.* CONCUR

*SITTING BY ASSIGNMENT, JOHN R. MILLIGAN, RETIRED, OF THE FIFTH DISTRICT COURT OF APPEALS.