

[Cite as *Huntington Natl. Bank v. 5777 Grant, L.L.C.*, 2016-Ohio-7489.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104064

HUNTINGTON NATIONAL BANK

PLAINTIFF-APPELLEE

vs.

5777 GRANT, L.L.C., ET AL.

DEFENDANT-APPELLEE

[Appeal By Gritvise, Ltd., d.b.a. Koussa Construction Co.
Defendant-Appellant]

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-12-796997

BEFORE: Stewart, J., Keough, P.J., and E.T. Gallagher, J.
RELEASED AND JOURNALIZED: October 27, 2016

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MELODY J. STEWART, J.:

{¶1} Appellant Gritvise Ltd., d.b.a. Koussa Construction Co. (“Koussa”) requested that this appeal be placed on our accelerated calendar under App.R. 11.1 and Loc.R.11.1. By doing so, it has agreed that we may render a decision in “brief and conclusionary form” consistent with App.R. 11.1(E).

{¶2} The sole issue in this appeal is whether the trial court lacked jurisdiction to discharge the receiver of the proceeds of a receivership estate while an appeal on an underlying issue of lien priority in the same case was pending in the court of appeals.

{¶3} Koussa and plaintiff Huntington National Bank (“the bank”) both contested priority on liens securing debts owed to them by 5777 Grant, L.L.C. The debtor’s assets were placed under the control of a court-appointed receiver. The trial court held that the bank had priority and ordered the receiver “to pay the proceeds of the sale which he currently holds to Huntington National Bank in accordance with its priority * * *.” Koussa appealed the ruling to this court, but did not post a supersedeas bond to stay execution of the order. While the appeal was pending in 8th Dist. Cuyahoga No. 103557, the receiver asked to be discharged on the grounds that he had distributed the funds of the receivership estate. The court granted the motion and discharged the receiver, leading to the appeal in this case. Six months later, this court issued a decision affirming the trial court’s determination of lien priority.¹ *See Huntington Natl. Bank v. 5777 Grant, L.L.C.*, 8th Dist. Cuyahoga No. 103557, 2016-Ohio-3463.

¹ We recognize that our decision to affirm the bank’s priority in Appeal No. 103557 would

{¶4} When an appeal is taken from a lower court, that court is divested of jurisdiction, except to take action in aid of the appeal, until the case is remanded to it by the appellate court. *State ex rel. Special Prosecutors v. Judges, Court of Common Pleas*, 55 Ohio St.2d 94, 97, 378 N.E.2d 162 (1978). The order on which this appeal is based — the discharge of the receiver — did not interfere with our determination of whether the trial court erred in the way it resolved the priority dispute in Appeal No. 103557.

{¶5} What Koussa really wishes to argue is that the receiver’s distribution of the receivership estate assets was at odds with our jurisdiction to determine the priority dispute. That argument fails for several reasons. First, it is not properly a subject for appeal because the notice of appeal is limited to the order discharging the receiver. *See* App.R. 3(D). Second, the order directing the receiver to distribute the receivership estate assets to the bank was issued at the same time as the priority determination, so it was not an order that the trial court entered after the notice of appeal was filed. Third, Koussa did not post a supersedeas bond to stay the distribution order. His failure to do so meant that distribution of the receivership estate could go forward while the appeal was pending.

See State ex rel. Klein v. Chorpening, 6 Ohio St.3d 3, 4, 450 N.E.2d 1161 (1983) (“Until and unless a supersedeas bond is posted the trial court retains jurisdiction over its judgments as well as proceedings in aid of the same.”); *Horvath v. Packo*, 2013-Ohio-56,

arguably moot Koussa’s argument that the court erred by discharging the receiver. Koussa, however, has framed the trial court’s action as being jurisdictionally void because the appeal was still pending in this court when the trial judge entered the order discharging the receiver. If the order of discharge was void ab initio, the mootness doctrine would not apply. *Francis David Corp. v. Mac Auto Mart, Inc.*, 8th Dist. Cuyahoga No. 93532, 2010-Ohio-1064, ¶ 3.

985 N.E.2d 966, ¶ 21 (6th Dist.) (“We think it is beyond dispute that had Horvath appealed from the cognovit judgment, the receivership proceedings would not be stayed during the appeal unless a stay had been granted.”).

{¶6} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas 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.

MELODY J. STEWART, JUDGE

KATHLEEN ANN KEOUGH, P.J., and
EILEEN T. GALLAGHER, J., CONCUR