

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

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| Capitol Communications, Inc., dba Farrel Printing Corporation, | : | |
| | : | |
| Plaintiff-Appellee, | : | |
| | : | |
| v. | : | No. 10AP-08 |
| | : | (C.P.C. No. 07CVH-06-8556) |
| GBS Corp., | : | |
| | : | (REGULAR CALENDAR) |
| Defendant-Appellee, | : | |
| | : | |
| (Sterling Paper Co., | : | |
| | : | |
| Appellant). | : | |
| | : | |
| Sterling Paper Co., | : | |
| | : | |
| Plaintiff-Appellant, | : | No. 10AP-09 |
| | : | (C.P.C. No. 08CVH-12-17687) |
| v. | : | |
| | : | (REGULAR CALENDAR) |
| Capitol Communications, Inc. et al., | : | |
| | : | |
| Defendants-Appellees. | : | |

D E C I S I O N

Rendered on December 7, 2010

*Hahn Loeser & Parks LLP, and Marc J. Kessler, for appellee
Capitol Communications, Inc. dba Farrel Printing Corp.*

Isaac, Brant, Ledman & Teetor, LLP, J. Stephen Teetor and Christopher J. Wagner, for appellee Lawrence E. Farrel Trust.

Harris, McClellan, Binau & Cox, P.L.L., John H. Kozich, Dan J. Binau, Michael A. Coleman and Emily J. Jackson, for appellant Sterling Paper Co.

APPEALS from the Franklin County Court of Common Pleas.

BRYANT, J.

{¶1} Plaintiff-appellant, Sterling Paper Co. ("Sterling"), appeals from judgments of the Franklin County Court of Common Pleas (1) determining the security interest of appellee, the Lawrence E. Farrel Trust ("the trust") had priority over Sterling's creditor's bill in the funds escrowed in related litigation and (2) ordering the immediate release of the escrowed funds for distribution to the trust. Because Sterling's appeals are moot, we dismiss.

I. Facts and Procedural History

{¶2} On June 28, 2007, Capitol Communications, Inc. ("Capitol"), doing business as Farrel Printing Corporation ("FPC"), filed a complaint against GBS Corp. ("GBS") to collect unpaid invoices and to resolve a dispute over a 2005 transitioned accounts agreement. While Capitol's action against GBS was pending, Sterling, a paper supplier, filed a separate complaint on March 5, 2008 against Capitol and FPC, alleging an unpaid account, breach of contract, and unjust enrichment and seeking \$272,744.94 in damages. On November 19, 2008, the trial court journalized an agreed judgment entry in which Capitol and FPC consented to a \$272,744.94 judgment in favor of Sterling and Sterling agreed to forego any pre- or post-judgment interest from Capitol.

{¶3} Based on the November 19, 2008 judgment entry, Sterling filed a creditor's bill on December 12, 2008 against the parties to the Capitol action against GBS claiming an interest in whatever Capitol might recover in that case. All parties to both Capitol's action against GBS and Sterling's action against Capitol filed a joint motion to consolidate the two cases on January 13, 2009; the trial court granted the motion to consolidate on January 29, 2009. Two days earlier, on January 27, 2009, Capitol and GBS entered into a settlement agreement in the amount of \$600,000, resolving all claims in that lawsuit.

{¶4} On January 30, 2009, Lawrence E. Farrel, trustee of the trust, moved pursuant to Civ.R. 24(A) to intervene as a plaintiff in the consolidated actions. The motion to intervene asserted both that the trust had a secured interest in the entire amount of the proceeds from the settlement of Capitol's action against GBS and that the trust's interest had priority over Sterling's interest reflected in its creditor's bill. Capitol and GBS agreed to place the amount of Sterling's creditor's bill, \$272,744.94, in escrow until the dispute was resolved.

{¶5} On March 5, 2009, the trial court permitted the trust to intervene as plaintiff in the consolidated actions and accepted its complaint. Sterling timely filed an answer and counterclaim to the trust's complaint and included a jury demand. The trial court conducted a bench trial on April 3, 2009, and the parties submitted post-trial briefs.

{¶6} On November 24, 2009, the trial court entered a decision determining the trust's security interest held priority over the settlement funds and ordering the release of all escrowed funds to the trust for distribution. The trial court journalized its decision in a December 8, 2009 order and judgment.

II. Assignments of Error

{¶7} Sterling timely appeals, assigning the following errors:

ASSIGNMENT OF ERROR NO. 1

THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY TRYING THIS MATTER BEFORE THE BENCH WHEN A JURY TRIAL WAS DEMANDED AND NOT WAIVED PURSUANT TO THE OHIO CIVIL RULE OF PROCEDURE 39(A).

ASSIGNMENT OF ERROR NO. 2

THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY DETERMINING, AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, THAT PLAINTIFF/APPELLEE [TRUST] WAS ENTITLED, BY VIRTUE OF A SECURITY INTEREST, TO ALL SETTLEMENT PROCEEDS RESULTING FROM RESOLUTION OF LITIGATION WHICH INCLUDED COMMERCIAL TORT CLAIMS, EVEN THOUGH THE TRIAL COURT SPECIFICALLY DETERMINED THE SECURITY INTEREST OF PLAINTIFF/APPELLEE [TRUST] DID NOT ATTACH TO THE COMMERCIAL TORT CLAIMS, ALL TO THE PREJUDICE OF THE LIEN INTEREST OF APPELLANT BEING ENFORCED AGAINST THE SETTLEMENT PROCEEDS BY APPELLANT'S CREDITOR'S BILL.

ASSIGNMENT OF ERROR NO. 3

THE TRIAL COURT COMMIT [sic] REVERSIBLE ERROR BY FAILING TO DETERMINE, AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, THAT A SALE OF THE BUSINESS ASSETS FROM APPELLEE CAPITOL TO DEFENDANT/APPELLEE FARREL OCCURRED, THEREBY CREATING A WAIVER OF THE CLAIMED SECURITY INTEREST OF PLAINTIFF/APPELLEE [TRUST] IN THE ASSETS OR PROCEEDS RESULTING FROM A SALE THEREOF, TO THE DETRIMENT OF THE PRIORITY OF THE LIEN INTEREST OF APPELLANT IN THE ASSETS BEING ENFORCED AGAINST THE SETTLEMENT PROCEEDS BY APPELLANT'S CREDITOR'S BILL.

III. Motion to Dismiss

{¶8} After Sterling filed its notice of appeal, the trust moved this court, pursuant to App.R. 15 and Loc.R. 6, for an order dismissing Sterling's appeal as moot. Sterling filed a memorandum in opposition, and this court issued a journal entry stating the motion to dismiss would be submitted for determination with the merits of this appeal.

{¶9} The trust argues Sterling's appeal is moot because Sterling failed to obtain a stay of execution of the trial court's judgment and release of the escrowed funds to the trust. As a result, the trust contends, the requested relief cannot be granted. See *Blodgett v. Blodgett* (1990), 49 Ohio St.3d 243, 245 (stating "[i]t is a well-established principle of law that a satisfaction of judgment renders an appeal from that judgment moot"). See also *Redmon v. City Council of City of Columbus*, 10th Dist. No. 05AP-466, 2006-Ohio-2199; *Schuster v. Avon Lake*, 9th Dist. No. 03CA008271, 2003-Ohio-6587. The trust is correct that "[w]here the trial court rendering judgment has jurisdiction of the subject matter of the action and of the parties, and where fraud has not intervened, and the judgment is voluntarily paid and satisfied, payment puts an end to the controversy and takes away from the defendant the right to appeal or prosecute error or even to move for vacation of judgment." *Kevin O'Brien & Assoc. v. Baum*, 10th Dist. No. 03AP-1010, 2004-Ohio-2713, ¶7, citing *In re Appropriation for Highway Purposes: Rauch v. Noble* (1959), 169 Ohio St. 314, 316, quoting *Lynch v. Lakewood City School Dist. Bd. of Edn.* (1927), 116 Ohio St. 361, paragraph three of the syllabus.

{¶10} Although the mootness doctrine has exceptions, Sterling does not argue its case falls into one of the recognized exceptions. See, e.g., *Bankers Trust Co. of*

California, N.A. v. Tutin, 9th Dist. No. 24329, 2009-Ohio-1333, ¶9 (noting the two exceptions to the mootness doctrine are when "the issues are capable of repetition, yet evading review" or the case "involves a matter of public or great general interest"), citing *In re Appeal of Suspension of Huffer from Circleville High School* (1989), 47 Ohio St.3d 12, paragraph one of the syllabus. Rather, Sterling contends the mootness doctrine applies only when the appealing party satisfies the judgment. See *Lingo v. Ohio Cent. R.R. v. Norfolk S. Ry.*, 10th Dist. No. 05AP-206, 2006-Ohio-2268, ¶19 (stating "[i]f an appellant fails to obtain a stay of execution or judgment, or fails to obtain a supersedeas bond or its equivalent, and the nonappealing party obtains satisfaction of judgment *against the appealing party*, the appeal is rendered moot") (emphasis added), citing *Kevin O'Brien & Assoc.* at ¶8. Because Sterling did not release the escrowed funds to the trust, Sterling argues the satisfaction of the judgment was not voluntary.

{¶11} Contrary to Sterling's argument, case law indicates that determinations of voluntariness do not turn on who satisfies the judgment. Some Ohio courts thus have determined "a party is deemed to have acted voluntarily in satisfying a judgment when the party fails to seek a stay order prior to the judgment's being satisfied." *Marotta Bldg. Co. v. Lesinski*, 11th Dist. No. 2004-G-2562, 2005-Ohio-558, ¶19, citing *Hagood v. Gail* (1995), 105 Ohio App.3d 780, 790. See also *Harbourtown Properties, Inc. v. Citizens Fed. Bank* (Nov. 10, 1997), 10th Dist. No. 97APE03-328, citing *Kelm v. Hess* (1983), 8 Ohio App.3d 448. In *Marotta Bldg. Co.*, the appellate court concluded appellants' failure to obtain a stay of execution rendered their appeal moot, because the appellee successfully obtained a satisfaction of judgment from a collateral foreclosure action. Even though the

appellants in *Marotta Bldg. Co.* did not pay the appellee, the Eleventh District concluded the appellants acted voluntarily in satisfying the judgment due to their failure to obtain a stay of execution. *Id.* at ¶20.

{¶12} Similarly, *Villas at the Pointe of Settlers Walk Condominium Assn., Inc. v. Coffman Dev. Co., Inc.*, 12th Dist. No. CA2009-12-165, 2010-Ohio-2822, involved an appellant, a judgment lien holder, who appealed from a decision of the trial court determining the order of lien priority. The appellant never requested either a stay of the sale of the property to satisfy the debts or a stay of the trial court's judgment in favor of the other judgment creditor. During the pendency of the appeal, the property was sold and the funds were distributed to the other judgment creditor. The Twelfth District determined that "after the matter has been extinguished through satisfaction of the judgment, the individual subject matter of the case is no longer under the control of the court and the court cannot afford relief to the parties to the action." *Id.* at ¶11, quoting *Bankers Trust Co. of California* at ¶16; see also *Dietl v. Sipka*, 185 Ohio App.3d 218, 2009-Ohio-6225 (finding case moot where proceeds were distributed after foreclosure and forced sale); *Aurora Loan Servs. v. Kahook*, 9th Dist. No. 24415, 2009-Ohio-2997, ¶7 (dismissing appeal as moot where trial court dispersed funds to satisfy a previous judgment so that "no live controversy exist[ed]").

{¶13} In both *Marotta Bldg. Co.* and *Villas at the Pointe of Settlers Walk*, the appellant did not actually pay the appellee. Nonetheless, the judgments in both cases were voluntarily satisfied and the appeals rendered moot because the appellants in both cases failed to seek a stay of execution. Moreover, as here, both cases involved claims to

specific funds: the cited cases involved funds created as a result of the forced sale of foreclosed property, while Sterling and the trust litigated priority to specific funds in the escrow account. As was true in the foreclosure cases, this court is unable to "unpeel the apple" and afford any meaningful relief once the escrowed funds were disbursed in satisfaction of the trust's judgment. *Villas at the Pointe of Settlers Walk* at ¶18, quoting *Meadow Wind v. McInnes*, 5th Dist. No. 2002CA00319, 2003-Ohio-979, ¶7. See also *Slovak v. Univ. Off Campus Housing* (May 19, 2000), 4th Dist. No. 99 CA 50 (dismissing an appeal as moot because the clerk of courts, not one of the parties, satisfied the judgment by distributing escrowed funds in accordance with the trial court's judgment).

{¶14} Sterling points to case law suggesting satisfaction of a judgment does not always render the issues on appeal moot. See, e.g., *Favret Co. v. West* (1970), 21 Ohio App.2d 38; *Hurban v. Haas* (Dec. 29, 1999), 9th Dist. No. 2725-M; *Fed. Land Bank v. Wilcox* (1991), 74 Ohio App.3d 474; *Bob Krihwan Pontiac-GMC Truck, Inc. v. Gen. Motors Corp.* (2001), 145 Ohio App.3d 671. In all of the cases Sterling cites, however, the appellant sought or would have sought a stay but, for various reasons, was not granted one. Here, Sterling undisputedly did not seek a stay of execution to prevent the distribution of the escrowed funds to the trust. Sterling's reliance on these cases thus is misplaced. See *Villas at the Pointe of Settlers Walk* at ¶16 (distinguishing the appellant there from other appellants "who moved for a stay but were unable to" obtain one and noting appellant "did not request a stay and stood by idly as the property was sold and the proceeds distributed"). The dispute between Sterling and the trust involved priority to

the escrowed funds. Following the distribution of the escrowed funds, the very subject matter of the dispute no longer exists, rendering the matter moot.

IV. Disposition

{¶15} Because Sterling did not move to stay execution of the trial court's judgment, and the escrowed funds were distributed to the trust pursuant to the trial court's order, Sterling's appeals are moot. We grant the trust's motion to dismiss and dismiss these appeals.

*Motion to dismiss granted;
appeals dismissed.*

TYACK, P.J., and SADLER, J., concur.
