

[Cite as *Capital One Bank v. Craig*, 2009-Ohio-5041.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

CAPITAL ONE BANK	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23079
vs.	:	T.C. CASE NO. 08CV1318
HAZEL L. CRAIG	:	(Civil Appeal from Common Pleas Court)
Defendant-Appellant	:	

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O P I N I O N

Rendered on the 25th day of September, 2009.

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GRADY, J.:

{¶ 1} Plaintiff, Capital One Bank ("Capital One"),
commenced an action against Defendant, Hazel L. Craig, on
February 7, 2008, as a claim on an account, alleging that
\$11,631.35 is due and owing by Craig to Capital One. (Dkt.
1).

{¶ 2} Craig filed an answer to the complaint on February 29, 2008, denying the allegations of Capital One's claim for relief and demanding a jury trial. (Dkt. 7). No counterclaim was attached to Craig's answer.

{¶ 3} Craig served interrogatories on Capital One on March 19, 2008. (Dkt. 9). Craig filed additional interrogatories, a request for admissions, and a request for production of documents on Capital One on April 9, 2008. (Dkt. 10).

{¶ 4} On July 3, 2008, Craig filed a motion pursuant to Civ.R. 37, asking the court to compel Capital One to respond to her requests. (Dkt. 14). The court granted the motion on August 19, 2008, stating: "Plaintiff is ORDERED to provide the documents and/or responses to counsel for Defendant within 14 days of the filing date of this Decision. The court will entertain a request for sanctions if Plaintiff fails to provide the ordered information by the date specified." (Dkt. 17).

{¶ 5} On September 9, 2008, twenty-one days after the court's order compelling its response to Craig's requests, Capital One filed a Civ.R. 41(A) notice voluntarily dismissing its claim for relief against Craig. (Dkt. 18). Craig filed objections to the notice of dismissal on September 16, 2008. (Dkt. 20). The court overruled Craig's motion as moot on October 20, 2008. (Dkt. 21). Craig filed a notice of appeal

from the court's order on November 14, 2008. (Dkt. 23).

{¶ 6} Craig assigns seven errors for our review. Taken together, they contend that the trial court erred when it (1) failed to impose sanctions on Capital One, having indicated that it would entertain a request for sanctions if Capital One failed to comply with the court's order compelling a response to Craig's requests for discovery and for admissions by the stated deadline date, and (2) failed to take account of the defenses to Capital One's claim for relief that Craig intended to prove when overruling Craig's objections to Capital One's notice of voluntary dismissal as moot.

{¶ 7} Civ.R. 41 states, in pertinent part:

{¶ 8} "(A) Voluntary dismissal: effect thereof.

{¶ 9} "(1) By plaintiff; by stipulation. Subject to the provisions of Civ. R. 23(E), Civ. R. 23.1, and Civ. R. 66, a plaintiff, without order of court, may dismiss all claims asserted by that plaintiff against a defendant by doing either of the following:

{¶ 10} "(a) filing a notice of dismissal at any time before the commencement of trial unless a counterclaim which cannot remain pending for independent adjudication by the court has been served by that defendant.

{¶ 11} "(b) filing a stipulation of dismissal signed by

all parties who have appeared in the action.

{¶ 12} “Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits of any claim that the plaintiff has once dismissed in any court.”

{¶ 13} Filing of a notice of dismissal automatically terminates the case without any intervention by the court. *Andrews v. Sajar Plastics, Inc.* (1994), 98 Ohio App.3d 61. When a case has been properly dismissed pursuant to the voluntary dismissal rule, the court patently and unambiguously lacks jurisdiction to proceed. *State ex rel. Mogavero v. Belskis*, Franklin App. No. 02AD-164, 2002-Ohio-6497. An exception exists to consider an issue collateral to claims for relief that were voluntarily dismissed, such as sanctions for frivolous conduct that were pending when the notice of voluntary dismissal was filed. *State ex rel. J. Richard Gaier Co., L.P.A. v. Kessler* (1994), 97 Ohio App.3d 782.

{¶ 14} The court indicated in its order of August 19, 2008, that the court would entertain a request for sanctions that Craig might file should Capital One fail to comply with the court’s order requiring Capital One to respond to Craig’s requests on or before the deadline date the order established, which was September 2, 2008. The sanctions the court suggested

it might impose was not a self-executing penalty, however. Craig was required to move for sanctions should Capital One fail to comply with the court's order to compel, but she didn't.

Because the notice of voluntary dismissal that Capital One thereafter filed extinguished Craig's right to the discovery she had requested, the notice necessarily nullified the relief the court's order of August 19, 2008 granted to Craig, compelling Capital One's compliance with Craig's request, as well as any basis on which the court could impose sanctions for Capital One's failure to comply.

{¶ 15} Craig filed objections to Capital One's notice of voluntary dismissal, complaining that the notice deprived her of the opportunity to present defenses to Capital One's claims for relief. The Civil Rules make no provisions for an objection on those grounds, the notice being conclusive of a plaintiff's right to relief in the action, though not on the merits of the dismissed claim when the dismissal is without prejudice. As a result, the notice deprives the court of jurisdiction to adjudicate the claim for relief, and the court is likewise deprived of jurisdiction to determine the merits of any defensive matter a defendant might wish to present in the action relative to that claim for relief. The court was correct in finding that the grounds on which Craig's objections were

predicated are therefore moot.

{¶ 16} Because Capital One's notice of voluntary dismissal was without prejudice, Civ.R. 41(A)(1)(b), Capital One preserved its right to again commence an action on the claim for relief it dismissed. In that event, Craig may again make the requests for discovery and admissions she made in the previous action, and may seek an order to compel responses by Capital One as well as sanctions should Capital One fail to comply. Craig may also present any defensive matters that she could have presented in the prior action. The fact that Capital One's notice of voluntary dismissal may have deprived Craig of some strategic advantage she achieved in the prior action does not demonstrate that she suffered any undue prejudice as a result of the notice of voluntary dismissal that Capital One filed.

{¶ 17} The assignments of error are overruled. The judgment of the trial court will be affirmed.

BROGAN, J., And DINKELACKER, J. concur.

(Hon. Patrick T. Dinkelacker, First District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.)

Copies mailed to:

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Hazel L. Craig
Hon. Timothy N. O'Connell