

Milton S. Augenblick, A.I.A., Respondent vs. Gerald J. Vigdor, Individually and Dominick J. Perini, Individually and as general partners and Penn Hall limited partnership, Petitioner, Franklin County Branch, Civil Action - Law No. A.D. 1997-127 [prior docket No. A.D. 1991-335]

Honorable Douglas W. Herman

Augenblick v. Vigdor et al. No. A.D. 1997-127

Liquidated damages; 42 Pa.C.S.A. section 8104; trial court jurisdiction to act under Pa.R.A.P. 1701; foreign judgments.

1. A creditor who receives the following from a debtor must mark a judgment satisfied in the office of the clerk of court where the judgment is outstanding: satisfaction of the debt, a written request to mark the judgment satisfied, and the filing fee. 42 Pa.C.S.A. section 8104(a).
2. If a creditor does not mark the judgment satisfied after 30 days of receiving these, he is liable for 1% of the original amount of the judgment for each day of delinquency beyond 30 days. 42 Pa.C.S.A. section 8104(b).
3. The purpose of 42 Pa.C.S.A. section 8104 is to encourage creditors to remove satisfied judgments from court dockets, to lift liens from debtors' property, and allow debtors to repair their credit records.
4. Where the debtor sends the creditor a check which includes a request that the judgment be marked satisfied and claims the check represents full and final satisfaction of the debt, but the creditor has written the debtor stating that he will not accept it as such because the creditor's petition for counsel fees and delay damages remains pending on appeal, and the debtor ignores the creditor's letter, the debtor is not entitled to liquidated damages.
5. Where the issues on appeal are not merely collateral or ancillary to the underlying litigation, but are intertwined with and inseparable from them, the judgment cannot be marked satisfied until the appellate court renders its decision. Pa.R.A.P. 1701.
6. Where the issue on appeal is whether the creditor is entitled to counsel fees and delay damages because the debtor had filed appeals from the trial court's confirmation of an arbitration award, and the creditor claims the debtor's appeals were frivolous and pursued solely as a dilatory tactic, the creditor's appeal is inseparable from the issues in the underlying litigation.
7. Under Maryland law governing the uniform enforcement of foreign judgments, a foreign judgment has the same effect and is subject to the same judgment satisfaction procedures as the court in which it is filed; "The court in which it is filed" is the court to which the judgment was transferred, not the court in which the judgment was originally filed. Maryland Code of Courts and Judicial Proceedings, Article 8, section 11-802(b).
8. Where Maryland has its own particular rules for the satisfaction of judgments, and those rules do not provide for the mechanical awarding of liquidated damages, 42 Pa.C.S.A. section 8104 will not be applied to a Maryland judgment.

John J. Sylvanus, Esquire, Counsel for Respondent

Ralph Gordon, Esquire, Counsel for Petitioners

OPINION AND ORDER OF COURT

Herman, J., December 31, 1997:

PROCEDURAL BACKGROUND

Before the court is a petition for liquidated damages filed by Dominick J. Perini. Milton S. Augenblick filed an answer to the petition. Counsel submitted briefs and argument was held on the petition.

On June 5, 1991 Augenblick petitioned the court for confirmation of a common law arbitration award against Perini. The award was confirmed by the Honorable William H. Kaye on August 17, 1994. Perini appealed and Superior Court affirmed the award on March 12, 1996. Perini filed an allowance of appeal to the Supreme Court which was denied on October 21, 1996.

In the interim Augenblick recorded the judgment in Maryland and attempted to collect on the judgment there under the Uniform Enforcement of Foreign Judgments Act. Perini obtained a stay on Augenblick's collection activities in Maryland by posting a supersedeas bond on July 24, 1996.

On November 1, 1996 Augenblick advised Perini by letter of the pay-off figure which consisted of \$79,700.03 for the judgment, plus \$382.00 for court costs for a total amount due of \$80,082.03. On November 12 Augenblick filed a petition for counsel fees and delay damages with Superior Court based on his contention that Perini's appeal was frivolous and was pursued solely to delay payment of the judgment and interest. Coincidentally, on that same day Perini sent Augenblick a check for \$80,179.82. On November 15, upon realizing Augenblick had filed a petition for counsel fees and delay damages, Perini demanded the return of the check. Augenblick complied.

On November 22 Augenblick made a compromise offer to settle all claims for \$90,000.00. Perini never responded to that offer but instead on November 25 again sent Augenblick the check for \$80,179.82, plus checks for \$124.46 and \$20.00 for court costs. Perini's accompanying letter stated that these checks

were tendered for the purpose of satisfying the judgment in full and requested Augenblick to mark the judgment satisfied.

By letter dated December 3, Augenblick responded that he could not accept the checks because his Superior Court petition was pending, and until its disposition, the trial court had no jurisdiction to act upon the docket. He advised Perini that he considered the checks only partial payment rather than full satisfaction of all pending claims. On December 4 counsel received notice that Superior Court had denied Augenblick's petition for counsel fees and delay damages. Augenblick negotiated Perini's check on December 16.

On January 13, 1997 Perini demanded in writing that Augenblick mark the judgment satisfied. Augenblick marked the Pennsylvania judgment satisfied three days later. He marked the judgment satisfied in Maryland on February 13, 1997.

DISCUSSION

Did Augenblick timely mark the Pennsylvania judgment satisfied under 42 Pa.C.S.A. section 8104?

Perini filed this petition for liquidated damages alleging Augenblick failed to comply with 42 Pa.C.S.A. section 8104 by not marking the judgment satisfied within thirty days of Perini tendering full payment and requesting marking of the docket.¹ Perini contends the damages period began to run on December 25,

¹Section 8104(a): *General rule.*- A judgment creditor who has received satisfaction of any judgment in any tribunal of this Commonwealth shall, at the written request of the judgment debtor, or of anyone interested therein, and tender of the fee for entry of satisfaction, enter satisfaction in the office of the clerk of the court where such judgment is outstanding, which satisfaction shall forever discharge the judgment.

Section 8104(b): *Liquidated damages.*- A judgment creditor who shall fail or refuse for more than 30 days after written notice in the manner prescribed by general rules to comply with a request pursuant to subsection (a) shall pay to the judgment debtor as liquidated damages 1% of the original amount of the judgment for each day of delinquency beyond such 30 days...

1996, thirty days after he sent the check and demand letter to Augenblick on November 25. Perini seeks damages of 1% of the amount of the judgment award for the twenty-two days the Pennsylvania judgment remained unsatisfied, i.e., the period between December 25, 1996 and January 16, 1997. Perini also seeks damages for the twenty-eight days between January 16 and February 13, 1997, the latter date being when Augenblick marked the Maryland judgment satisfied.

The purpose of 42 Pa.C.S.A. section 8104 is to encourage creditors to remove satisfied judgments from court dockets, to lift liens from debtors' property and allow debtors to repair their credit records. In order for the debtor to invoke this statutory remedy, the creditor must have received the following: payment of the full amount of the judgment, the necessary filing fee and a written request from the debtor to mark the judgment satisfied. *Hanover Plumbing Supply, Inc. v. Russell*, 452 Pa. Super. 32, 680 A.2d 1181 (1996).

Although Augenblick did indeed receive Perini's check on November 25, we agree with his position that the amount Perini delivered did not constitute payment in full of the entire monies potentially owed to Augenblick in full and final satisfaction of all pending claims. Augenblick's entitlement to counsel fees and delay damages for Perini's allegedly frivolous appeal was a pending issue at that time, and Perini never responded to the offer to settle the entire litigation for \$90,000.00. We agree that Perini's check was not, contrary to the accompanying letter, an unequivocal tender in full and final satisfaction of all outstanding claims between the parties.

Having received the November 22 letter in which Augenblick offered to accept \$90,000.00 as a compromise and settlement of all pending litigation, Perini knew when he responded on November 25 that Augenblick's petition in Superior Court for counsel fees and delay damages remained pending. Perini nevertheless did not respond to the compromise offer but instead demanded that Augenblick mark the judgment satisfied. We interpret Perini's non-responsiveness as an attempt to renegotiate the full and final satisfaction of the judgment for \$80,179.03 in exchange for Augenblick's withdrawal of his claim in Superior

Court for counsel fees and delay damages. Augenblick clearly viewed the November 25 letter in that manner as evidenced by his December 3 letter and Perini's ensuing lack of response until January 13, 1997 when he wrote to Augenblick demanding that the judgment be marked satisfied.

There is undoubtedly an element of gamesmanship on Perini's part in the first instance in deliberately not responding to Augenblick's compromise offer and then demanding that Augenblick mark the entire judgment completely satisfied. Although the check was indeed sent on November 25, Augenblick did not actually "receive" the monies owed to him until he negotiated the checks on December 16. Thereafter, the first operative request Perini made to have the judgment marked satisfied was his January 13, 1997 letter. Augenblick's marking of the judgment on January 16 falls well within the thirty-day period required by section 8104(b).

Under Pa.R.A.P. 1701, could Augenblick have marked the judgment satisfied on November 25, 1996 in response to Perini's request?

Augenblick maintains that Pennsylvania Rule of Appellate Procedure 1701 divests the trial court of jurisdiction to act on

matters which have been appealed.² His position is that the judgment could not be marked as satisfied on the trial court docket as requested by Perini in his November 25 letter until Superior Court disposed of Augenblick's claim for counsel fees and delay damages and the record was returned to the trial court. Citing several cases, Perini responds that Rule 1701 permits the trial court, despite the cases's appeal posture, to act on matters which are ancillary or collateral to the appeal litigation.³ Perini contends Augenblick could have marked the Pennsylvania judgment satisfied by December 25, thirty days after the November 25 tender of the judgment amount, filing fee and written request. Augenblick maintains that the matter then on appeal was not collateral or ancillary to the issues in the

²1701(a) **General Rule.** Except as otherwise prescribed by these rules, after an appeal is taken...the trial court...may no longer proceed further in the matter.

1701(b) **Authority of a Trial Court...After Appeal.** After an appeal is taken...the trial court...may: (1) Take such action as may be necessary to preserve the status quo, correct formal errors in papers relating to the matter, cause the record to be transcribed, approved, filed and transmitted, grant leave to appeal in forma pauperis, grant supersedeas, and take other action permitted or required by these rules or otherwise ancillary to the appeal... (2) Enforce any order entered in the matter, unless the effect of the order has been superseded as prescribed by this chapter; (3) Grant reconsideration of the order which is the subject of the appeal...

1701(c) **Limited to Matters in Dispute.** Where only a particular item, claim or assessment adjudged in the matter is involved in an appeal...the appeal...shall operate to prevent the trial court...from proceeding further with only such item, claim or assessment, unless otherwise ordered by the trial court...or by the appellate court or a judge thereof as necessary to preserve the rights of the appellant...

³*Gray v. State Farm Insurance Co.*, 328 Pa. Super. 532, 477 A.2d 868 (1984); *Borough of Conshohocken v. Conshohocken Authority*, ___ Pa. Commw. ___, 654 A.2d 661 (1995); *Fortune/Forsythe v. Fortune*, 352 Pa. Super. 547, 508 A.2d 1205 (1986); *Tanglwood Lakes v. Laskowski*, 420 Pa. Super. 175, 616 A.2d 37 (1992); *Fiore v. Oakwood Plaza Shopping Center*, 401 Pa. Super. 446, 585 A.2d 1012 (1991); *Cohen v. Jenkintown Cab Co.*, 300 Pa. Super. 528, 446 A.2d 1284 (1982).

underlying litigation but was intertwined with and inseparable from those issues, making any docket action on the trial court level impossible.

We do not take issue with the principles set forth in the cases Perini cites and recognize that Rule 1701 is not as rigid as Augenblick suggests. However, we cannot agree with Perini that Augenblick's claim for counsel fees and delay damages was merely ancillary or collateral to the underlying litigation. That underlying litigation concerned Perini's contention that Judge Kaye's confirmation of the arbitration award was incorrect. According to Augenblick, Perini's appeals from Judge Kaye's decision were frivolous, without legal foundation and pursued solely as a dilatory tactic. His claim was inextricably intertwined with the legitimacy or illegitimacy of Perini's two appeals. It is conceptually impossible to separate Augenblick's claim for counsel fees and delay damages from the substance of the underlying litigation. *Pennsylvania Appellate Practice 2d* (1997) section 1701:40. Augenblick is therefore correct that he could not have marked the judgment satisfied until Superior Court ruled on his petition.

Does 42 Pa.C.S.A. section 8104 apply to the judgment entered in Maryland?

Augenblick recorded the Pennsylvania judgment in the Circuit Court of Washington County, Maryland as a foreign judgment on December 2, 1994. Augenblick marked the Maryland judgment satisfied on February 13, 1997, twenty-eight days after he marked the Pennsylvania judgment satisfied on January 16, 1997. Perini alleges he is entitled to liquidated damages for those twenty-eight days pursuant to Article 8, section 11-801 *et seq* of the Maryland Code of Courts and Judicial Proceedings, which provides for the uniform enforcement of foreign judgments.

Section 11-802(b) provides: "A filed foreign judgment has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, staying, enforcing, or satisfying as a judgment of the court in which it is filed." Perini interprets the phrase "the court in which it is filed" as being the court in which the judgment was *originally* filed and from which it was transferred. We cannot accept his interpretation.

Maryland has adopted its own particular rules for the satisfaction of money judgments, and those rules do not provide for the mechanical awarding of liquidated damages.⁴ As Augenblick points out in his brief, "To compel the enforcement and satisfaction of a foreign judgment according the laws of the jurisdiction where the judgment was originally awarded and entered would require practitioners, court employees and the Court to have knowledge of the procedures, laws and penalties of every conceivable jurisdiction." Perini's interpretation defies common sense and he cites no authority for it. Section 8104 will not be applied to the Maryland judgment.

Perini's petition for liquidated damages will be denied. An appropriate Order of Court will be entered as part of this Opinion.

ORDER OF COURT

NOW this 31st day of December, 1997, the petition for liquidated damages filed by Dominick J. Perini is hereby DENIED.

⁴Maryland Rule No. 2-626:

(a) **Entry Upon Notice.** Upon being paid all amounts due on a money judgment, the judgment creditor shall furnish to the judgment debtor and file with the Clerk a written statement that the judgment has been satisfied. Upon the filing of the statement, the Clerk shall enter the judgment satisfied.

(b) **Entry Upon Motion.** If the judgment creditor fails to comply with section (a) of this rule, the judgment debtor may file a motion for an order declaring that the judgment has been satisfied...

(c) **Costs and Expenses.** If the court enters an order of satisfaction, it shall order the judgment creditor to pay the judgment debtor the costs and expenses incurred in obtaining the order, including reasonable attorney's fees, unless the court finds that the judgment creditor had a justifiable reason for not complying with the requirements set forth in section (a). If the motion for an order of satisfaction is denied, the court may award costs and expenses, including reasonable attorney's fees...