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West Loudon v. Advanta

WEST LOUDON, INC., t/d/b/a/, et al., Plaintiffs, v. ADVANTA LEASING SERVICES,
a/k/a ADVANTA BANK CORP., et al., Defendants
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action - Law and Equity, No. A.D. 2001-2193, Equity Vol. 2002, Page 2945
Jury Trial Demanded - Class Action

Federal Bankruptcy Court; Remand Order; Jurisdiction

1. To properly remand a case from the United States Bankruptcy Court for the Middle District of Pennsylvania, a certified copy of the remand order must be sent by the federal clerk to the clerk of the state court.
2. A state court does not have jurisdiction when a remand order from federal court is filed with the Franklin County Prothonotary by Counsel for Plaintiffs because the remand order was not sent from the federal clerk.

Appearances:

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David Rownd, Esq., *Counsel for MarCap Vendor Finance*

OPINION

Walsh, J., May 30, 2002

Background

This matter is before the Court on multiple Defendants' Preliminary Objections to the Plaintiffs' First Amended Class Action Complaint ("Preliminary Objections") and the Plaintiffs' Motion to Amend Plaintiffs' First Amended Complaint

("Plaintiffs' Motion to Amend"). The Plaintiffs commenced this action on June 19, 2001. The Plaintiffs, both as representatives of a class and individually against the Defendants, filed two suits, one in equity and one in law, addressing leases for automatic teller machines ("ATMs") installed in the businesses of the Plaintiffs. Generally, the Plaintiffs allege that the Defendants, through their leasing agent Credit Card, improperly and fraudulently induced the Plaintiff class to enter into unfair and misleading ATM Leases. On June 6, 2001, Credit Card Center filed a petition for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §101, et seq., in the United States District Court for Eastern District of Pennsylvania. On December 18, 2001, Plaintiffs filed a First Amended Class Action Complaint in response to Defendants' Progress Leasing, Inc., and Unistar Leasing's Motion to Dismiss Plaintiffs' Complaint.

After Plaintiffs commenced action in this suit, Defendant Advanta Leasing Services ("Advanta") filed a Notice of Removal and Motion to Transfer Venue to the United States Bankruptcy Court for the Middle District of Pennsylvania ("Middle District Bankruptcy Court"). On August 9, 2001, Plaintiffs filed a Motion to Remand and Abstain with the Middle District Bankruptcy Court. After briefs were filed and argument heard, the Middle District Bankruptcy Court issued a remand order. Several of the Defendants have appealed the Middle District Bankruptcy Court's decision to remand the case and that appeal is currently pending. On April 4, 2002, Counsel for Plaintiffs filed a certified copy of the Remand Order in the office of the Franklin County Prothonotary.

Also on April 4, 2002, this Court heard argument from an eloquence of attorneys representing the Plaintiffs and Defendants both on the numerous Preliminary Objections they had filed and on Plaintiffs' Motion to Amend Plaintiffs' First Amended Class Action Complaint. After considering the pleadings, arguments and briefs of the parties and the law, the matter is now ripe for decision.

Discussion

We must first tackle the matter of this Court's jurisdiction. The Defendants in their Preliminary Objections and in their Answers to Plaintiffs' Motion to Amend argue that the Middle District Bankruptcy Court currently retains jurisdiction over this matter. As Defendant Information Leasing Corporation argues, when a case is removed to federal court, the state court loses jurisdiction and "the State court shall proceed no further unless and until the case is remanded." 28 U.S.C. §1446(d). Once the case is removed, any further action by the state court is null and void until the case is properly remanded from the federal court. *Fessler v. Hannagan*, 144 Pa. Commw. 274, 277-78, 601 A.2d 462, 464 (1991).

According to 28 U.S.C. §1447(c), to properly remand a case, "[a] certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case." (boldface supplied). We are constrained strictly to construe this statute which goes to the heart of this court's jurisdiction. See 1 Pa.C.S. § 1928 (b)(7). Case law is in accord that the remand order must be sent from clerk to clerk. The court in *Hunt v. Acromed Corp.* explained that a case was properly remanded from a Federal to State court when "a certified copy of the order of remand was sent by the clerk of the district court to the Philadelphia prothonotary." See *Hunt v. Acromed Corp.*, 961 F.2d 1079,1081 (3d Cir. 1992). Further, the statute is explicit that only when there has been compliance with it may the state court "proceed with such case." *Id.*

There is a sound reason that the mechanics of a purported remand be handled flawlessly. Any court must be able to determine, and be not relegated to speculation, as to when and whether it has jurisdiction.^[1]

On April 4, 2002, a certified copy of the remand order made it to the file of the Franklin County Prothonotary after having been delivered for filing by Counsel for the Plaintiffs. At no time was a certified copy of the remand order mailed by the federal court clerk to the state court prothonotary as specifically required by the federal statute. 28 U.S.C. §1447(c). Plaintiffs argue that this Court does have jurisdiction because the requirements for properly remanding the case from federal to state court are met. Plaintiffs commend to us case law that they suggest substantiates their argument. In *Fessler v. Hannagan*, 144 Pa. Cmwlth. 274, 277, 601 A.2d 462 (1991), however, the court does not specifically state that the clerk of the federal court must send the certified copy. Instead the court simply states that a State court cannot proceed until the case is remanded from Federal court. We find Plaintiffs' authority to be unpersuasive and not particularly on point. 28 U.S.C. §1446(d) generally establishes the policy of remanding. However, since 28 U.S.C. §1447(c) is more specific, §1447(c) is the statutory provision that binds us. In *Trans Penn Wax Corp. v. McCandless*, 50 F.3d 217 (3d Cir. 1994), the court also generalizes the service requirement. The court in *Trans Penn Wax* simply states that "[t]he general rule is that a district court loses jurisdiction over a case once it has completed the remand by sending a certified copy of the remand order to the state court." *Id.* at 225. While this case establishes the Remand Order must be sent, it does not specify how the Order should be sent. Nevertheless, in reaching its conclusion, the court cites *Hunt v. Acromed Corp.*, 961 F.2d 1079, 1081 (3d Cir. 1992) and 28 U.S.C. §1447(c). Both of these authorities, as discussed above, specifically note that service must be from the Federal court clerk to the State court clerk/prothonotary. Accordingly, Plaintiff's contention that their having delivered a certified copy of the remand order to the State court prothonotary for filing is a distinction without a difference, simply is not correct. The statute mandates that the remand order "be mailed by the clerk to the clerk of the State court." As noted earlier, we have no choice but to construe strictly that provision.

For all the reasons stated above, we conclude that we do not have jurisdiction because the clerk of the Federal court has never sent a certified copy of the remand order to this Court's Prothonotary. Since this Court currently does not have jurisdiction over this matter, we decline to address the Plaintiffs' Motion to Amend and the Defendants' Preliminary Objections.

ORDER OF COURT

May 30, 2002, upon consideration of the pleadings, objections, arguments and briefs of the parties, and the law, it is hereby ordered that this Court declines to address substantive or procedural questions so raised for want of jurisdiction.

– The general rule is that a district court loses jurisdiction over a case once it has completed the remand by sending a certified copy to the state court. See *Hunt v. Acromed Corp.*, 961 F.2d 1079, 1081 (3d Cir.1992). This view is premised on both the language of § 1447(d) and **the need to establish a determinable jurisdictional event after which the state court can exercise control over the case without the risk of further federal interference.** The district court is also barred from reconsidering its decision if the remand was under § 1447(d) and the case thereby falls under the bar of § 1447(d). See, e.g., *New Orleans Public Serv., Inc. v. Majoue*, 802 F.2d 166, 167 (5th Cir.1986) (per curiam); *Go Plaza*, 598 F.2d 634, 636 (1st Cir.1979) (per curiam). **But the physical mailing of the certified copy is the key jurisdictional event for the district court of jurisdiction,** because a remand order is not self-executing. *Hunt*, 961 F.2d at 1081 (citing *Busy v. Nevada Consol. Indus. Co.*, 318 U.S. 491, 494 (1942)) (boldface supplied).

Max Corp. v. Candless, 50 F.3d 217, 225 (3d Cir. 1995).