2017 IL App (1st) 163091-U

No. 1-16-3091

Order filed December 15, 2017

Fifth Division



IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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| STAFFING NETWORK HOLDINGS, LLC, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellant, | ) | Cook County. |
| | ) | |
| v. | ) | No. 16 L 3255 |
| | ) | |
| TONER PLASTICS, INC., | ) | Honorable |
| | ) | John C. Griffin, |
| Defendant-Appellee. | ) | Judge, presiding. |
| | ) | |
| | ) | |

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Reyes and Justice Rochford concurred in the judgment.

**ORDER**

¶ 1 *Held*: Appellate court lacked jurisdiction where plaintiff failed to file a timely petition for leave to appeal under Illinois Supreme Court Rule 306(a)(2) (eff. Mar. 8, 2016).

¶ 2 Plaintiff Staffing Network Holdings, LLC, appeals a circuit court order finding that a forum selection clause contained in a Client Services Agreement plaintiff entered into with

defendant Toner Plastics, Inc., requiring them to litigate disputes in Illinois, was unreasonable, justifying dismissal of plaintiff's complaint. In its complaint, plaintiff sought reimbursement of sums it paid in connection with a workers' compensation claim of one of its employees who was injured while working at the defendant's manufacturing facility. For the reasons that follow, we conclude that we lack jurisdiction over this appeal, and we dismiss it.

¶ 3 BACKGROUND

¶ 4 Plaintiff is a "loaning employer" providing temporary and long-term employees to its corporate clients.[1] Its principal place of business is Illinois. Defendant is a Massachusetts corporation with its business operations located in that State. In July 2014, plaintiff and defendant entered into a Client Services Agreement (Agreement) under which plaintiff agreed to provide or loan defendant temporary workers for its manufacturing facility in Massachusetts.

¶ 5 The Agreement contained a forum-selection clause providing that "in the event of any dispute concerning any item of this Agreement, actions may only be brought in the court systems located in Chicago, Illinois." The clause further specified that the Agreement was governed by the laws of the State of Illinois.

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[1] Section 1(a) (4) of the Illinois Workers' Compensation Act (the Act) sets forth the definition of a "loaning employer." It provides in relevant part:

> "An employer whose business or enterprise or a substantial part thereof consists of hiring, procuring or furnishing employees to or for other employers operating under and subject to the provisions of this Act for the performance of the work of such other employers and who pays such employees their salary or wages notwithstanding that they are doing the work of such other employers shall be deemed a loaning employer within the meaning and provisions of this Section." 820 ILCS 305/1(a) (4) (West 2000).

The employer who receives an employee from a "loaning employer" is deemed the "borrowing employer" and the subject employee is the "loaned employee," within the meaning of the Act. See *Wasielewski v. Havi Corp.*, 188 Ill. App. 3d 340, 342 (1989), *overruled in part on other grounds Lanphier v. Gilster-Mary Lee Corp.*, 327 Ill. App. 3d 801, 804 (2000).

¶ 6 One of the employees plaintiff loaned defendant under the terms of the Agreement was Milton Flores. On February 3, 2015, Flores suffered a work-related injury while performing an activity allegedly prohibited under the terms of the Agreement restricting the amount of weight plaintiff's employees could be required to lift. Plaintiff, in its capacity as the loaning employer, paid benefits exceeding $45,000 and incurred attorneys' fees and other expenses arising from Flores' workers' compensation claim.

¶ 7 Plaintiff subsequently filed a two-count complaint against defendant in the circuit court of Cook County seeking reimbursement of the sums it paid in connection with Flores' workers' compensation claim. In count one, plaintiff alleged defendant breached the Agreement's employee weight-lifting restriction. In count two, plaintiff sought reimbursement of sums incurred as a result of the alleged breach.

¶ 8 Defendant filed a motion to dismiss the complaint on several grounds, including *forum non conveniens*, arguing that Massachusetts was a more convenient forum for the litigation. In response to the *forum non conveniens* motion, plaintiff argued, in part, that the forum selection clause should be enforced. Both parties presented arguments as to the private and public interest factors relevant to their respective *forum non conveniens* analysis.

¶ 9 On July 28, 2016, the circuit court entered an order with an accompanying memorandum dismissing the compliant. The memorandum began with the statement that the matter was before the court on defendant's motion to dismiss "under the equitable doctrine of *forum non conveniens*." The court initially determined that enforcement of the parties' forum-selection clause would be unreasonable under the circumstances of the case. The court then proceeded to weigh the applicable factors for a *forum non conveniens* motion. After conducting its analysis,

the court granted defendant's *forum non conveniens* motion, dismissing plaintiff's complaint. The court concluded that its decision to dismiss the complaint on this ground, mooted defendant's alternative arguments to dismiss.

¶ 10 Plaintiff filed a motion to reconsider the circuit court's order granting defendant's "motion to dismiss for *forum non conveniens*." The court denied plaintiff's motion to reconsider, stating that it been "presented with a number of compelling considerations, found the forum selection clause was unreasonable and applied the requisite private and public interest factors in determining a proper forum."

¶ 11 On November 21, 2016, plaintiff subsequently filed a notice of appeal from the circuit court's order denying its motion for reconsideration. In the jurisdictional statement of its appellant's brief, plaintiff asserts we have jurisdiction over its appeal pursuant to Illinois Supreme Court Rules 301 and 303, which governs appeals from final judgments entered by the circuit court in civil cases. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); Ill. S. Ct. R. 303 (eff. Jan. 1, 2015). We must disagree because plaintiff seeks review of an interlocutory order, not a final order.

¶ 12 ANALYSIS

¶ 13 An order granting a motion to dismiss on *forum non conveniens* grounds is an interlocutory order under Illinois Supreme Court Rule 306(a)(2) (eff. March 8, 2016); *Quaid v. Baxter Healthcare Corp.*, 392 Ill. App. 3d 757, 764 (2009). "Supreme Court Rule 306 is specific in its requirement that, in order to vest the appellate court with jurisdiction, the petition for leave to appeal must be filed within 30 days after entry of the trial court's order or within such

extension of time as may be granted by the reviewing court." *In re Leonard R.*, 351 Ill. App. 3d 172, 174 (2004). "The thirty-day time limit under Rule 306 is jurisdictional." *Id.*

¶ 14 In this case, plaintiff never filed a petition for leave to appeal the circuit court's order of July 28, 2016, granting defendant's *forum non conveniens* motion. Moreover, the time for filing a petition for leave to appeal under Rule 306(a)(2) was 30 days from entry of the order entered on July 28, 2016. Thirty days would have been August 27, 2016, which was a Saturday, so plaintiff had until August 29, 2016. Filing a motion for reconsideration does not toll the running of the 30-day deadline for filing a petition for leave to appeal from entry of an interlocutory order under Supreme Court Rule 306(a)(2). *In re Leonard R.*, 351 Ill. App. 3d at 174.

¶ 15 CONCLUSION

¶ 16 For the foregoing reasons, plaintiff's appeal is dismissed.

¶ 17 Appeal dismissed.