2017 IL App (5th) 160315-U

NO. 5-16-0315

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

GLOBAL TRAFFIC TECHNOLOGIES, LLC,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Jefferson County.
	)	
v.	)	No. 14-L-52
	)	
RODNEY KRIS MORGAN and	)	
KM ENTERPRISES, INC.,	)	
	)	
Defendants-Appellants	)	Honorable
	)	David K. Franklin and
(Community First Bank of the Heartland,	)	Melissa A. Morgan,
Respondent).	)	Judges, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Chapman and Cates concurred in the judgment.

ORDER

¶ 1 *Held*: In light of the fact that the citation proceedings on which this appeal is based have been terminated, we dismiss the appeal as moot.

¶ 2 Defendants, Rodney Kris Morgan (Morgan) and KM Enterprises, Inc. (KME), appeal from an order of the circuit court of Jefferson County, ordering third party defendant, Community First Bank of the Heartland (CFB), to produce documents to discover defendants' assets pursuant to citations plaintiff, Global Traffic Technologies, LLC, served on CFB. CFB takes no part in this appeal. Since this appeal was filed, the

trial court entered a stipulated order terminating all citation proceedings. The issues raised in this appeal are: (1) in light of parties' stipulation to terminate the citations proceedings, are the issues presented moot; (2) was an improper injunction imposed via misconstruction of applicable supplementary proceeding and judgment enforcement statutes, thereby giving this court jurisdiction; and (3) were applicable supplemental proceeding and judgment enforcement statutes misconstrued so as to deny defendants' right to substantive and procedural due process. We dismiss the appeal as moot.

¶ 3 BACKGROUND

¶ 4 In September 2010, plaintiff filed the underlying patent infringement suit in the United States District Court for the District of Minnesota. In addition to defendants herein, plaintiff also sued other parties, including STC, Inc.; however, this appeal relates only to plaintiff's attempts to enforce its judgment against KME. After lengthy litigation, including a jury trial, plaintiff now holds a final judgment against defendants in the amount of $5,052,118, plus interest. On July 16, 2014, plaintiff registered its judgment in Jefferson County pursuant to the Uniform Enforcement of Foreign Judgments Act (735 ILCS 5/12-650 *et seq*. (West 2012)).

¶ 5 On September 5, 2014, plaintiff filed citations to discover assets of defendants. Plaintiff filed citations to discover the assets to not only KME and Morgan, but also to CFB in order to discover the assets of KME and Morgan. Plaintiff served CFB citations on September 5, 2014. The KME and Morgan citations were served on September 10, 2014. A hearing date was set for October 21, 2014, with that date appearing on the face of the citations. We note that while the instant litigation proceeded, there has also been

simultaneous federal litigation to enforce the judgment. For purposes of this appeal, however, we will focus on the case before us. We discuss the federal litigation only when necessary to aid in an understanding of this case.

¶ 6 On September 9, 2014, KME filed an emergency *ex parte* motion to stay citations. KME argued, *inter alia*, that the citations should be stayed "pending service of process on the purported defendants." As set forth above, defendants were served with the citations the following day. Nevertheless, the judge originally assigned to this matter, Judge Melissa Morgan, summarily granted KME's motion for stay. Plaintiff's subsequent motion to lift the stay was denied on September 25, 2014.

¶ 7 CFB filed a motion for substitution of judge as a right which was scheduled for a hearing on November 6, 2014. Plaintiff moved to continue the scheduled citation hearing set for October 21, 2014, until after CFB's motion for substitution of judge was heard. On October 16, 2014, the trial court entered an order vacating the scheduled setting date of October 21, 2014, on the basis of the "Stay of Citations currently in place."

¶ 8 On November 6, 2014, the trial court granted CFB's motion for substitution of judge. Judge David Frankland was later assigned to this case. While CFB did not produce any discovery, plaintiff learned there was at least $134,602.40 in a CFB account, which plaintiff believed was a KME account. KME, however, alleged the money in that account was neither KME's nor Morgan's. KME asserted the money in that account was "earmarked for delivery to STC." However, because STC was in bankruptcy, any claims against it were automatically stayed pursuant to section 362(a) of the Bankruptcy Code

(11 U.S.C. § 362(a)). On November 13, 2014, STC filed a complaint in bankruptcy court in which it sought the funds held in the CFB account.

¶ 9 On March 16, 2016, the bankruptcy court entered a stipulation and consent judgment that only half of the funds in the CFB account were STC's property. As a result of that judgment, the other half of the funds in the CFB account were no longer subject to the bankruptcy automatic stay. On March 17, 2016, KME filed a motion for turnover of the funds in the CFB account.

¶ 10 On May 12, 2016, the trial court denied KME's turnover motion, finding plaintiff's citations did not expire and were still in effect. At that hearing, KME also asked the court to determine whether the funds in the CFB account were exempt. The trial court stopped KME's attorney at that point, specifically asking whether that was putting "the cart before the horse" since KME had yet to appear in the citation proceeding. At the end of that hearing, Judge Frankland lifted the stay entered by Judge Morgan in September 2014, directed CFB to file a response to the citations, and scheduled a conference call for June 9, 2016, to discuss a subsequent hearing.

¶ 11 On May 31, 2016, CFB produced bank statements for two accounts owned by KME dating back to August 29, 2014. On June 10, 2016, plaintiff filed a motion for production of documents, seeking to obtain CFB documents from October 2013 to July 2014. Plaintiff, citing *Resolution Trust Corp. v. Ruggiero*, 994 F.2d 1221, 1223 (7th Cir. 1993), explained that the 10 months of bank statements it was seeking were "highly relevant to determining 'the existence and whereabouts' of KME's and Morgan's assets, because those are the only bank statements that reflect account activity before the asset

freeze went into effect." After a hearing on June 23, 2016, the trial court orally granted plaintiff's motion and ordered CFB to produce "documents for the 12 months prior to the date initially stated in the Citation [October 21, 2014] and to designate those documents 'attorney's eyes only'."

¶ 12 On June 30, 2016, the trial court entered a written order, specifically stating as follows:

> "The court finds after considering the motion, citations, arguments and responses that CFB is required to produce documents pursuant to the citation dating back to October 21, 2013[,] through October 21, 2014. The court orders that such records produced pursuant to the citation for the time period above stated shall be produced directly to counsel of record for [plaintiff], KME and Morgan."

On July 20, 2016, KME filed a notice of interlocutory appeal pursuant to Illinois Supreme Court Rule 307 (eff. Jan. 1, 2016) in which it appealed from the trial court's order "entered on June 30, 2016[,] in favor of [p]laintiff."

¶ 13 On July 26, 2016, after the appeal was filed, plaintiff filed a motion to terminate citation proceedings. The motion specifically states, *inter alia*:

> "In light of KME's and Morgan's representations, the discovery obtained to date from CFB, and the time and expense associated with continuing to pursue these citations at this time, including the costs associated with KME's unnecessary motion practice and recent baseless interlocutory appeal of this Court's June 23, 2016[,] and June 30, 2016[,] discovery orders, [plaintiff] voluntarily moves for termination of these citation proceedings pursuant to Illinois Supreme Court Rule

277(f) and respectfully requests that the Court discharge the citations served on KME, Morgan, and CFB."

KME stipulated to the termination. On July 28, 2016, the trial court entered an order discharging the citations.

¶ 14 ANALYSIS

¶ 15 It is well settled that we are not to review cases merely to establish a precedent or guide future litigation. *Madison Park Bank v. Zagel*, 91 Ill. 2d 231, 235, 437 N.E.2d 638, 640 (1982). When a decision on the merits would not result in appropriate relief, such a decision is merely an advisory opinion. *Berlin v. Sarah Bush Lincoln Health Center*, 179 Ill. 2d 1, 8, 688 N.E.2d 106, 109 (1997). Here, after defendants filed their appeal, the parties stipulated to the termination of citation proceedings, and the trial court entered an order discharging all citations. Because events have occurred that make it impossible for us to grant effectual relief, this appeal is rendered moot.

¶ 16 Defendants, nevertheless, contend two exceptions to the mootness doctrine apply here: (1) "capable of repetition yet evading review" and (2) public interest. For the capable of repetition yet evading review exception to apply, there must be a reasonable expectation that the same complaining party would be subject to the same action and the duration of the action challenged must be too short to be fully litigated prior to its cessation. *In re Alfred H.H.*, 233 Ill. 2d 345, 358, 910 N.E.2d 74, 82 (2009). This exception is to be narrowly construed. *Id.*

¶ 17 Defendants have failed to convince us that just because statutes exist allowing plaintiff to enforce its judgment if it is not paid as promised, this creates a "reasonable

expectation" that plaintiff will bring additional proceedings in the future. In agreeing to dismiss the citation proceedings, plaintiff specifically relied on defendants' representations that all assets had been disclosed and that they planned to pay the judgment in the near future. If defendants' representations are true, there is no reasonable expectation they will be subject to further citation proceedings. We also point out the parties had sufficient time to litigate this issue, but chose to voluntarily dismiss it. Thus, the capable of repetition yet evading review exception is inapplicable here.

¶ 18 As to the public interest exception, it is only applicable if there is a clear showing that (1) the question is of a substantial public nature, (2) an authoritative determination is needed for future guidance of public officers, and (3) the circumstances are likely to recur. *In re Marriage of Peters-Farrell*, 216 Ill. 2d 287, 292, 835 N.E.2d 797, 800 (2005). A clear showing of each factor is required to bring a case within the terms of the public interest exception. *Id.* This exception is also narrowly construed. *Id.* The public interest exception is invoked only on "rare occasions" when there is an extraordinary degree of public interest and concern. *People ex rel. Partee v. Murphy*, 133 Ill. 2d 402, 410, 550 N.E.2d 998, 1002 (1990). Suffice it to say, the instant case does not present one of those rare occasions.

¶ 19 In further support of our determination, we point out that the June 30, 2016, order from which defendants appeal is an interlocutory discovery order that simply ordered a third party defendant to produce documents responsive to plaintiff's citations to discover assets. Discovery orders are not within the class of appealable interlocutory orders outlined under Supreme Court Rule 307. Ill. S. Ct. R. 307 (eff. Jan. 1, 2016); see *Lewis*

v. Family Planning Management, Inc., 306 Ill. App. 3d 918, 921, 715 N.E.2d 743, 746 (1999). Finally, we find defendants' attempt to equate the discovery order from which it appeals with an injunction lacks merit.

¶ 20 CONCLUSION

¶ 21 In sum, the issues raised in this unnecessarily complicated appeal are moot. We see no need to address any issues raised herein further. For the foregoing reasons, we dismiss the appeal.

¶ 22 Appeal dismissed as moot.