IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

Quan-En Yang

Plaintiff

V.

Civil Action No. 403885-V
Track VI
Judge Ronald B. Rubin
Specially Assigned

Glenn W. Cade, Jr.

Defendant

DEFENDANT GLENN W. CADE, JR.'S MOTION FOR ENTRY OF FINAL JUDGMENT PURSUANT TO MARYLAND RULE 2-602(b)
AND
REQUEST FOR HEARING

Comes Now Defendant Glenn W. Cade, Jr., by and through his attorney Fredric J. Einhorn, Esquire, and pursuant to Maryland Rule 2-602(b) requests that this Court direct the entry of a final judgment on its ORDER GRANTING DEFENDANT GLENN W. CADE, JR.'S MOTION FOR SUMMARY JUDGMENT dated May 3, 2016 and entered at Docket Entry 142 on May 5, 2016.

1. Relevant Backgroud.

A. By this Court's ORDER GRANTING CONSENT MOTION TO SEVER AND FOR SEPARATE TRIAL dated January 4, 2016 and entered at Docket Entry 116 on January 6, 2016, all of the claims of Plaintiff Quan-En Yang ("Yang") against Glenn W. Cade, Jr. ("Cade") were severed from the class action ("Yang's Severed Claims Against Cade").

B. On March 31, 2016, Mr. Cade filed a DEFENDANT GLENN W. CADE, JR.'S MOTION FOR SUMMARY JUDGMENT ("Cade's MFSJ") in Yang's Severed Claims Against Cade which sought summary judgment in favor of Cade and against Yang on all

counts of Yang's Severed Claims Against Cade.

C. On May 3, 2016, the Court held a hearing on Cade's MFSJ at which counsel for Yang informed the Court that Yang does not oppose Cade's MFSJ.

D. By ORDER GRANTING DEFENDANT GLENN W. CADE, JR.'S MOTION FOR SUMMARY JUDGMENT ("ORDER Granting Cade's MFSJ") dated May 3, 2016 and entered at Docket Entry 142 on May 5, 2016, the Court granted judgment in favor of Cade and against Yang on Yang's Severed Claims Against Cade on all counts of the Second Amended Complaint.

2. A trial court's authority to enter a final judgment is governed Maryland Rule 2-602(b)(1) which provides:

> (b) When allowed. If the court expressly determines in a written order that there is no just reason for delay, it may direct in the order the entry of a final judgment:
>
> (1) as to one or more but fewer than all of the claims or parties; or

A trial court may enter a final judgment under Rule 2-602(b) where it is entering that final judgment on a severed claim; further, here, there is no just reason for delaying the entry of a final judgment with respect to the ORDER Granting Cade's MFSJ entered on Yang's Severed Claims Against Cade.

A. The Court of Appeals has noted that the purpose of Maryland Rule 2-602(a) is to "prevent piecemeal appeals, which, beyond being inefficient, and costly, can create significant delays, hardship, and procedual problems". See: Kennedy. et al. v. Lasting Paints, Inc., et al., 404 Md. 427 at 437, 947

A.2d 503 at 509 (2007), citing Smith v. Lead Industries Association, Inc., 386 Md. 12 at 25, 871 A.2d 545 at 553 (2005). The noted purpose of Rule 2-602(a) would not be frustrated by the entry a final judgment with respect the ORDER Granting Cade's MFSJ because Yang did not oppose Cade's MFSJ on Yang's Severed Claim Against Cade; thus, Yang has and would have no basis on which to note an appeal from the ORDER Granting Cade's MFSJ or from the entry of a final judgment entered on the ORDER Granting Cade's MFSJ.

B. Smith v. Lead Industries Association, Inc., supra, is instructive as the Court of Appeals addressed the confluence of Rule 2-602 and the propriety of directing a final judgment where the is a severed claim against a severed defendant.

> Rule 2-602(a) provides generally that an order or other form of decision, however designated, that adjudicates fewer than all of the claims in an action, less than an entire claim, or the rights and liabilities of fewer than all the parties to the action (1) is not a final judgment, (2) does not terminate the action as to any of the claims or any of the parties, and (3) is subject to revision at any time before the entry of a judgment that adjudicates all the claims by and against all of the parties. Section (b) of the Rule permits the Circuit Court, if it expressly determines in a written order that there is no just reason for delay, to direct in an order the entry of a final judgment as to one or more but fewer that all of the claims or parties or for some but less that all of the amount requested in a claim seeking only money relief. The Circuit Court made no such determination and entered no such order. The appeal was therefore one that is not allowed by law and should have been dismissed.
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> Maryland Rule 8-602(e)(1) permits this Court or the Court of Special Appeals, if it concludes that an order from which the appeal was taken was

> not a final judgment when the notice of appeal was filed but that the lower court had discretion to direct the entry of a final judgment pursuant to Rule 2-602(b), to dismiss the appeal, to remand the cases for the lower court to decide whether to enter a final judgment under Rule 2-602(b), or to enter a final judgment on its own initiative. If it chooses the latter option, the Rule directs that it treat the notice of appeal as if filed on the date it enters the judgment and proceed with the appeal.
>
> In this case, as noted, the Court of Special Appeals chose the third option, believing that it would be inefficient and possibly "foolish" to do otherwise. We disagree. There are so many loose ends left in the Circuit Court that, to proceed with this appeal now would be to do what we, and the Court of Special Appeals, have consistently held ought not to be to be done. Neither efficiency nor the avoidance of "foolishness" is served.
>
> As we have indicated, the appellate court implicitly assumed that all claims by the Smith plaintiffs had been resolved against all of the defendants. That does not appear to be the case. Although LIA and perhaps the other parties thought otherwise, the record indicates that, when LIA filed for bankruptcy on April 4, 2002, Counts IV, V, VII, IX and X were still open against it, and, because of the bankruptcy stay, those claims, by the Smith Plaintiffs, have yet to be resolved. [Footnote Omitted.] See Starfish Condo. v. Yorkbridge Serv., 292 Md. 557, 565, 440 A.2d 373, 378 (1982). If that is so, as it appears to be, the trial court could not have entered a final judgment under Rule 2-602(b) unless it severed LIA as a defendant because, given the nature of the allegations against LIA, that would have amounted to splitting a single claim, which is not allowed.
>
> Smith v. Lead Industries Association, Inc., supra, 386 Md. 12, at 22, 871 A.2d 545, 550.

On January 6, 2016, the Court entered the ORDER GRANTING CONSENT MOTION TO SEVER AND FOR SEPARATE TRIAL thereby creating Yang's Severed Claims Against Cade, and on May 5, 2016, the

Court entered the ORDER Granting Cade's MFSJ on Yang's Severed Claims Against Cade. Here, therefore, there is no impediment to this Court exercising its power under Rule 2-602(b) to direct entry of a final judgment on the ORDER Granting Cade's MFSJ on Yang's Severed Claims Against Cade because - to paraphrase the Court of Appeals in Smith v. Lead Industries Association, Inc., supra - a trial court may enter a final judgment under Rule 2-602(b) where it is entering that final judgment on a severed claim against a servered defendant.

REQUEST FOR HEARING

Defendant Glenn W. Cade, Jr., by and through his attorney Fredric J. Einhorn, Esquire, requests a hearing on DEFENDANT GLENN W. CADE, JR.'S MOTION FOR ENTRY OF FINAL JUDGMENT PURSUANT TO MARYLAND RULE 2-602(b).

Respectfully Submitted,

Fredric J. Einhorn, Esquire
27 West Jefferson Street, Suite 204
Rockville, Maryland 20850
(301) 762-5400

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7 day of June, 2017, a true copy of the foregoing was send by electronic mail and first-class mail (postage prepaid) to:

Richard S. Gordon, Esquire
Gordon, Wolf & Carney, Chtd.
102 West Pennsyvania Avenue, Suite 402
Baltimore, Maryland 21204

Ronald S. Canter, Esquire
200A Monroe Street, Suiote 104
Rockville, Maryland 20850

Fredric J. Einhorn, Esquire

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

Quan-En Yang

Plaintiff

V.

Civil Action No. 403885-V
Track VI
Judge Ronald B. Rubin
Specially Assigned

Glenn W. Cade, Jr.

Defendant

ORDER GRANTING
DEFENDANT GLENN W. CADE, JR.'S MOTION FOR ENTRY OF FINAL JUDGMENT PURSUANT TO MARYLAND RULE 2-602(b)

In consideration of DEFENDANT GLENN W. CADE, JR.'S MOTION FOR ENTRY OF FINAL JUDGMENT PURSUANT TO MARYLAND RULE 2-602(b) filed by Defendant Glenn W. Cade, Jr., by and through his attorney Fredric J. Einhorn, Esquire, any opposition thereto filed by Plaintiff Quan-En Yang, and it appearing to the Court that good cause has been demonstated for the requested relief and that there is no just reason for delay of the entry of the requested final judgment, it is by THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND, on this _____, day of _____, 2016,

ORDERED, that DEFENDANT GLENN W. CADE, JR.'S MOTION FOR ENTRY OF FINAL JUDGMENT PURSUANT TO MARYLAND RULE 2-602(b) be and the same is hereby GRANTED, and it is further

ORDERED, that the Court hereby directs the entry of a final judgment on the ORDER GRANTING DEFENDANT GLENN W. CADE, JR.'S MOTION FOR SUMMARY JUDGMENT entered on May 5, 2016, at Docket Entry 142.

_____
Ronald B. Rubin, Judge