

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

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

Comes Now Defendant Glenn W. Cade, Jr. (herein "Cade"), by and through his attorney Fredric J. Einhorn, Esquire, and replies to Plaintiff Quan-En Yang's (herein "Yang") RESPONSE TO DEFENDANT GLENN W. CADE, JR.'S MOTION FOR ENTRY OF FINAL JUDGMENT PURSUANT TO MARYLAND RULE 2-602(b) (herein "Yang's Response") which the undersigned received on Monday June 27, 2016.

A trial court's discretionary 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

The trial court court sits "at the best vantage point from which to determine whether a particular claim warrants an exception to the general rule requiring the entry of a final judgment disposing of all claims against all parties before an

appeal may be taken." Miller Metal Fabrication, Inc. v. Wall, 999 A.2d 1006, at 1013 (2009).

Hardship / Unfairness

In footnote 1 on page 2 of Yang's Response, Yang states as follows:

"Although Dr. Yang opposes Mr. Cade's Motion, he is not entirely unsympathetic towards Mr. Cade's request. Of course Mr. Cade would want a final end to his participation in this lawsuit. Nonetheless, Dr. Yang does not believe that such a request can be granted under the Rules."

Here, there is unfairness and financial hardship to Cade justifying the Court's discretionary departure from the usual rule establishing the time for an appeal: this Court has ruled in favor of Cade on his motion for summary judgment against Yang; yet, despite the judgment in his favor, when in connection with financial affairs Cade is requested to provide information on pending law suits, this case falls within the ambit of that request even though Cade has prevailed in this case. This is both unfair and a significant financial hardship to Cade which supports a finding that there is "no just reason for delay" in the entry of a final judgment.

Yang asserts three grounds on which to deny DEFENDANT GLENN W. CADE, JR.'S MOTION FOR ENTRY OF FINAL JUDGMENT PURSUANT TO MARYLAND RULE 2-602(b) (herein "Cade's Motion"), each of which are addressed below.

A.
Yang Did Not Oppose Cade's Motion And Is Not A Substantively
"Aggrieved" Party

1. On page 4 of Yang's Response, Yang states that Cade as the prevailing party on summary judgment cannot appeal this judgment in his favor. Yang then states:

"Dr. Yang, who is the only party aggrieved by the summary judgment order, is neither seeking certification under Rule 2-602(b), nor interested in appealing the Court's decision at this time." [Emphasis Added]

2. Yang did not file a written opposition to Cade's motion for summary judgment and as the Court will recall, at the hearing on May 3, 2016 on that motion, counsel for Yang told the Court that Yang does not oppose the motion for summary judgment.

3. Contrary to Yang's characterization as being "the only party aggrieved by the summary judgment order" and although the summary judgment order was in favor of Cade and adverse to Yang, Yang is not substantively "aggrieved" by the Court's decision to grant summary judgment to Cade because: Yang did not oppose or contest the motion that lead to the Court's decision in favor of Cade and adverse to Yang and, thus, Yang has no standing to, or basis on which, to appeal this Court's decision on Cade's motion which Yang did not oppose or contest.

4. In the circumstances here, Yang's contention that certifying the Court's order as a final judgment will run afoul of the concerns attendant to "piecemeal appeals" rings hollow:

A. Yang has told this Court he has no interest in

appealing the Court's decision at this time; therefore, if the Court enters a final judgment as requested by Cade and Yang - as he has told this Court - does not appeal from that final judgment, then there is no potential for "piecemeal appeals", delay or expense, because this Court and the remaining parties may continue uninterrupted to address the remaining claims.

B. As explained above, Yang was not substantively "aggrieved" by the Court's decision to grant summary judgment to Cade and against Yang.

C. Certifying as a final judgment the Court's order granting Cade's unopposed and uncontested motion for summary judgment on the discrete and severed claims of Yang against Cade simply cannot lead to confusion between those discrete and severed claims vis' a vis' the remaining claims between the remaining parties.

B.
Smith v. Lead Industries Assoc., Inc. Supports Cade's Motion

5. The 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, stated:

ORDER GRANTING
CONSENT MOTION TO SEVER AND FOR SEPARATE TRIAL

In consideration of the CONSENT MOTION TO SEVER AND FOR SEPARATE TRIAL filed by Defendant Glenn W. Cade, Jr., the consent of the Plaintiffs thereto, and it appearing to the Court that good cause has been demonstrated for the requested relief, it is this ___ day of January, 2016, by THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND,

ORDERED, that the said CONSENT MOTION TO SEVER AND FOR SEPARATE TRIAL be and the same is hereby

GRANTED.

6. Set forth below is the text of Section 3.B. of the CONSENT MOTION TO SEVER AND FOR SEPARATE TRIAL:

B. Plaintiff Yang Consents To Severance. Yang through his counsel been provided a copy of this CONSENT MOTION TO SEVER AND FOR SEPARATE TRIAL and Yang has had an opportunity to consider the implications of the Court entering an order granting the said motion. After weighing the pros and cons, Plaintiffs' counsel have authorized the undersigned to advise the Court that Plaintiffs agree that severance of the Yang's claims against Defendant Cade is appropriate and will serve the best interests of the parties and the Court.

The Court's ORDER GRANTING CONSENT MOTION TO SEVER AND FOR SEPARATE effected a severing of all of Yang's claims against Cade and provided for a separate trial of those severed claims. As was noted in Cade's Motion, Smith v. Lead Industries Association, Inc., supra, is instructive because the Court of Appeals addressed the intersection of Rule 2-602 and of directing a final judgment where there is a severed claim against a severed defendant.

"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 23, 871 A.2d 545, at 551.

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 severed defendant.

7. No impediment exists to this Court exercise of its power under Rule 2-602(b) to direct entry of a final judgment on the 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, which resolved in favor of Cade - - the severed defendant - - all of Yang's claims against Cade.

C.

There Is No Just Reason To Delay Entry Of A Final Judgment

8. There is no just reason for delay because:

A. As noted above, there is unfairness and financial hardship to Cade justifying discretionary departure from the usual rule establishing the time for appeal because: this Court ruled in favor of Cade on his motion for summary judgment against Yang; yet, despite the judgment in his favor, in connection with financial affairs when Cade when is requested to provide information on pending law suits this case falls within that request even though Cade has prevailed. This is an extremely significant financial hardship for Cade and supports a finding that there is "no just reason for delay" in the entry of a final judgment.

B. In the circumstances here and under Smith v. Lead Industries Association, Inc., supra, entry of a final judgment under Rule 2-602(b) is permitted.

C. Here, Cade's liability to Yang has been "actually litigated". Yang refers the Court to Kreyhsig v. Montes, 225 Md.App. 418 (2015), in which a parent's petition to change the name of minor child was dismissed as barred by res judicata on a final judgment in a custody case in which the name change was not "actually litigated". Kreyhsig v. Montes is not helpful to Yang.

D. As stated in Yang's Response:

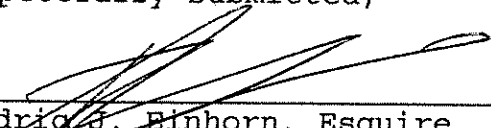
"Dr. Yang, who is the only party aggrieved by the summary judgment order, is neither seeking certification under Rule 2-602(b), nor interested in appealing the Court's decision at this time."

Yang's statement that he is not "interested in appealing the Court's decision at this time" does not translate into there being "just reason for delay" of the entry of a final judgment; likewise, it does not prevent in the circumstances of this case a finding that there is no just reason for the delay of the entry of a final judgment.

CONCLUSION

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

Respectfully Submitted,




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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30 day of JUNE, 2016,
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.
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