

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CIVIL DIVISION

PAUL AND LINDA STOSS,	:	
INDIVIDUALLY AND AS H/W,	:	
Plaintiffs	:	
	:	
v.	:	No. 10-0559
	:	
SINGER FINANCIAL CORPORATION AND	:	
PAUL SINGER, INDIVIDUALLY,	:	
Defendants	:	
Matthew B. Weisberg, Esquire		Counsel for Plaintiffs
Scot M. Wisler, Esquire		Counsel for Defendants

MEMORANDUM OPINION

Nanovic, P.J. - April 26, 2012

Paul and Linda Stoss (the "Stosses") have appealed our order dated February 29, 2012, granting Defendants' preliminary objections to the Stosses' third amended complaint and dismissing that complaint with prejudice. This opinion is provided pursuant to Pennsylvania Rule of Appellate Procedure 1925(a)(1).

Upon receipt of the Stosses' notice of appeal taken on March 19, 2012, we immediately requested, by order dated March 20, 2012, a Concise Statement of the Matters Complained of on Appeal. This Statement was received by the court on Tuesday, April 10, 2012, and consists of seven separately-numbered, interrelated, and overlapping issues.

The order appealed from was accompanied by a

Memorandum Opinion dated the same date, February 29, 2012. That opinion, we believe, addresses all of the questions raised in the Stosses' Concise Statement. For this reason, we have attached a copy of the February 29, 2012 Memorandum Opinion to this opinion for the convenience of the Superior Court.

Nevertheless, we address briefly issues four and six raised in the Concise Statement. These issues suggest that the Stosses' late filing was ratified by our order of October 13, 2010, and protected under the "law of the case" doctrine. A recitation of the history of this case shows otherwise.

The October 13, 2010 order ruled on Defendants' preliminary objections to the Stosses' second amended complaint. Those objections challenged the propriety of the Stosses' transfer of their pending claims from the federal district court to this court based upon what was filed, not when it was filed. Specifically, the Stosses had yet to file a certified copy of the district court's February 24, 2010 order dismissing the Stosses' claims, or a copy of the first amended federal complaint which was the subject of that order. This filing deficiency and the difficulties it created in this court's understanding of what claims the Stosses were seeking to transfer was made clear in footnote 1 of the October 13, 2010 order.

The October 13, 2010 order struck the Stosses' second

amended complaint and permitted the Stosses thirty days from the date of its entry to file with this court those documents necessary to effect a transfer of the Stosses' claims dismissed by the United States District Court, as required by the transfer statute, 42 Pa.C.S.A. § 5103. The order was never intended to address, because it was never raised, whether such filing would be timely. In response to the order, on November 12, 2010, the Stosses filed certified copies of both the district court's final order dismissing their claims and the related first amended federal complaint. This was the first time copies of either of these critical documents was filed with this court.

On November 19, 2010, Defendants filed objections to the first amended federal complaint. In these objections, Defendants, for the first time, raised as an issue the promptness of the transfer. (Defendants' Preliminary Objections to Plaintiffs' First Amended Complaint, paragraphs 30-32). The reason for not raising this issue earlier was explained in footnote 2 of Defendants' brief filed in support of their objections wherein Defendants stated: "Defendants could not have raised the issue of promptness in either of its previous Preliminary Objections because the issue of promptness was not yet ripe." Prior to ruling on these objections, the Stosses filed their third amended complaint, to which the Defendants filed preliminary objections on December 23, 2010, again raising

the issue of promptness. (Defendants' Preliminary Objections to Plaintiffs' Third Amended Complaint, paragraphs 27-29, 49-50). By opinion and order dated February 29, 2012, the order appealed from, we addressed this issue for the first time.

Given this time sequence, it is inaccurate to state that the October 13, 2010, order excused any delay in the filing with this court of copies of either the district court's dismissal order or the related first amended federal complaint, or that this order is now the law of the case with respect to the timeliness of the Stosses' transfer. Fundamentally, we could not, and did not, address in the October 13, 2010 order issues or arguments that had not been raised by the parties. Commonwealth v. Bibbs, 970 A.2d 440, 452 n.3 (Pa.Super. 2009), *appeal denied*, 982 A.2d 1227 (Pa. 2009). Therefore, it is disingenuous and legally inaccurate to state that the October 13, 2010 order ruled on the timeliness of the Stosses' transfer and consequently became the law of the case on this issue.¹

¹ As stated in In re Estate of Elkins, "[t]he law of the case doctrine sets forth various rules that embody the concept that a court involved in the later phases of a litigated matter should not reopen questions decided by another judge of that same court or by a higher court in the earlier phases of the matter." 32 A.3d 768, 776 (Pa.Super. 2011) (citation and quotation marks omitted). Expounding further, and quoting the Pennsylvania Supreme Court, the Elkins Court stated:

Among the related but distinct rules which make up the law of the case doctrine are that: (1) upon remand for further proceedings, a trial court may not alter the resolution of a legal question previously decided by the appellate court in the matter; (2) upon a second appeal, an appellate court may not alter the resolution of a legal question previously decided by the same appellate court; and (3) upon transfer of a matter between trial judges of coordinate jurisdiction, the transferee trial court may not alter the resolution of a legal

It is also factually inaccurate to argue that the untimeliness of the Stosses' transfer is attributable to the October 13, 2010 order. The federal district court dismissed the Stosses' claims on February 24, 2010. Not until November 12, 2010, did the Stosses file with this court the pertinent pleading to which the federal court's dismissal order applied - the first amended federal complaint. This was thirty days after our October 13, 2010 order. Therefore, if any delay in the filing of the first amended federal complaint can be attributed to the October 13, 2010 order, which premise, we believe, is untenable, it is at most thirty days. This in no way excuses the 231 day delay - between February 24, 2010 and October 13, 2010 - which preceded the entry of our order and which, by itself, is excessive and inexcusable.

Finally, to the extent the Stosses may question the ability of the Defendants to raise the issue of timeliness in their third set of preliminary objections - an issue which may at best be hidden in several of the matters set forth in the Stosses'

question previously decided by the transferor trial court. *Id.* (quoting Commonwealth v. Starr, 664 A.2d 1326, 1331 (Pa. 1995)).

Since this case has not been previously appealed nor did another judge of this court issue the October 13, 2010 order, the law of the case doctrine is inapplicable. Moreover, "[a] trial judge may always revisit his own prior pre-trial rulings in a case without running afoul of the law of the case doctrine; by its terms, the doctrine only prevents a second judge from revisiting the decision of a previous judge of coordinate jurisdiction or of an appellate court in the same case." *Id.* at 777 (quoting Clearwater Concrete & Masonry, Inc. v. West Philadelphia Financial Services Institution, 18 A.3d 1213, 1216 (Pa.Super. 2011)). Finally, when applicable, the doctrine applies only if the specific question in issue has been previously decided, not when, as here, the issue previously decided was a related but not identical issue. *Id.* at 776.

concise statement (see e.g., issue 1) - the issue has been waived. At no time have the Stosses argued that the Defendants were barred from raising this issue in the objections filed on November 19, 2010, by virtue of their earlier preliminary objections. Rule 1032(a) of the Pennsylvania Rules of Civil Procedure expressly provides, with exceptions not applicable here, that "[a] party waives all defenses and objections which are not presented either by preliminary objection, answer or reply." Consequently, Defendants having contended that the issue could not be raised earlier because not ripe and the Stosses having failed to object to the raising of this issue at the time presented, we believe the issue was properly considered by us and decided.

BY THE COURT:

P.J.