2017 IL App (1st) 163377-U

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

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Appellate Court of Illinois,
First District,
FIRST DIVISION.

Arthur P. SCHUELER, Artuk, Inc., and Plastic Technologies, Inc., Plaintiffs–Appellants,
v.
Franz K. SCHOENECKER, Deborah Schoenecker, Franz and Deborah Schoenecker Joint Revocable Trust U/A March 24, 1995, AKT Corporation, Mark D. Malloy, and Elgin Molded Plastics, Inc., Defendants–Appellees.

No. 1–16–3377
|
September 25, 2017

Appeal from the Circuit Court of Cook County. No. 15 CH 382, The Honorable Peter Flynn, Judge Presiding.

ORDER

PRESIDING JUSTICE PIERCE delivered the judgment of the court.

***1** ¶ 1 *Held:* The circuit court's dismissal of plaintiffs' second amended complaint is affirmed.

¶ 2 Plaintiffs appeal from the circuit court's dismissal of the second amended complaint. Plaintiffs broadly argue that the circuit court's dismissal was "reversible error," but plaintiffs fail to provide us with a description of either the claims that were purportedly set forth in the second amended complaint or any of the proceedings below. We therefore affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 Ordinarily, an appellant seeking reversal of the circuit court's dismissal of a complaint will attempt to provide us with a description of the events giving rise to the claims set forth in the relevant pleadings, a description of those pleadings, and an argument as to why the claims set up in the pleadings should not have been dismissed. Here, however, the plaintiffs present us with only a partial explanation of the events leading up to the present litigation, no description at all of the actual pleadings in this case, and no meaningful description of the procedural history leading up to the present appeal. The following facts are set forth in plaintiffs' substituted appellant's brief.

¶ 5 Defendant AKT Corporation was formed by defendant Franz K. "Tucker" Schoenecker (who is apparently deceased) and Virginia C. Schueler (who is also deceased). Tucker and Virginia each owned a 50% share of AKT. AKT sold and distributed barrier wall and guardrail delineators made from metal, and provided related services to firms that supply such products to state and federal governmental bodies and agencies. Tucker and Arthur P. Schueler (who is Virginia's son), wanted AKT to invest in molds, dies, tools, and other equipment to enable AKT to manufacture, sell, and distribute plastic delineators, since there was declining demand for the metal delineators sold by ATK. Virginia refused to have AKT make the investment, but assented to Tucker and Arthur forming their own company, Artuk, Inc., to manufacture and sell plastic delineators. Tucker and AKT provided all of the marketing and sales for Artuk. In 2002, Tucker purchased Virginia's 50% ownership interest in ATK. Tucker continued to conduct the marketing and sales of Artuk's products through ATK.

¶ 6 In 2012, Arthur was informed by the person in charge of Artuk's receivables of certain irregularities in the billing and receipt records for Artuk's products. Arthur learned that between 2002 and 2012, nearly $2 million had been paid to ATK and Tucker for purchases of Artuk products, in addition to what Artuk had received for those purchases. Arthur confronted Tucker about these irregularities, and Tucker initially agreed to "make it right." Tucker, however, apparently changed his mind and refused to make any payments to Artuk, claiming that ATK was entitled to the money.

¶ 7 Arthur and Artuk filed suit against Tucker and ATK in Illinois state court. Mark D. Malloy, the attorney representing Tucker and ATK (and who himself is a defendant in this case), removed the action to federal district court (the federal litigation). Although plaintiffs in this action fail to describe the nature of the claims in the

federal litigation, we know that the federal litigation resulted in a settlement agreement. Under that agreement, Arthur, Artuk, and plaintiff Plastic Technologies, Inc. (PTI) agreed to: (1) release all claims against Tucker, AKT, and Franz and Deborah Schoenecker Joint Revocable Trust a/a March 24, 1995 (the Schoenecker trust); (2) pay Tucker $777,020.00; (3) execute and deliver a consulting agreement to Tucker; and (4) enter into a mutual noncompetition agreement with Tucker and AKT. Tucker, AKT, and the Schoenecker trust agreed to: (1) provide an assignment and delivery of 50% of AKT's stock; (2) release all claims against Arthur, Artuk, and PTI; (3) execute and deliver a consulting agreement executed by Tucker; and (4) enter into the mutual noncompetition agreement with Arthur, Artuk, and PTI.

***2** ¶ 8 According to plaintiffs, while the federal litigation was pending, defendant Elgin Molded Plastics, Inc. (EMP) "manufactured, fabricated, assembled and distributed products and product components for AKT." During the federal litigation, Tucker, ATK, and Malloy "unsuccessfully moved for a court order to have EMP take over and conduct the operations of Artuk as [r]eceiver for Artuk." Plaintiffs assert that in 2014, EMP was producing products intended to compete with Artuk, and had also prepared marketing and sales materials for those products. EMP started its marketing and sales efforts for its products two weeks after the settlement documents were executed in the federal litigation. Plaintiffs assert that EMP's president gave a deposition in which he denied receiving any assistance from Tucker or AKT, but admitted that EMP undertook efforts to compete with Artuk without having determined the costs to do so, possible sales volumes, or possible profits and losses. Plaintiffs also assert that prior to October 3, 2014, (the date on which the deal set forth in the settlement documents closed), whenever AKT received purchase orders for Artuk products, AKT would either fill the order or forward it to Artuk. After October 3, however, when AKT received an order for Artuk products, the order and customer were referred to EMP. Finally, plaintiffs assert that at trade shows after October 3, 2014, EMP displayed its marketing and sales materials for products that were competitive with Artuk's, as well as the products themselves. Plaintiffs assert that EMP ceased marketing and selling such products after being served with process in this case.

¶ 9 On January 9, 2015, plaintiffs filed an initial complaint. As we have noted, plaintiffs' appellant's brief provides no description of the factual allegations or the causes of action asserted in the initial complaint. The circuit court granted defendants' motion to dismiss a portion of plaintiffs' initial complaint with prejudice, but allowed plaintiffs to replead certain claims. Plaintiffs do not provide any description of the proceedings that were had in connection with the motion to dismiss, nor do plaintiffs provide any further description of the circuit court's order.

¶ 10 On July 20, 2015, plaintiffs filed a first amended complaint. Plaintiffs' appellant's brief provides no description of factual allegations or the causes of action asserted in the first amended complaint. The circuit court granted summary judgment in favor of the defendants on all but one of the claims in the first amended complaint. The sole remaining claim was dismissed without prejudice. Plaintiffs do not provide any description of the proceedings that were had in connection with the motion for summary judgment or the motion to dismiss, or provide any further description of the circuit court's order.

¶ 11 On July 18, 2016, plaintiffs filed a second amended complaint. Plaintiffs' appellant's brief provides no description of factual allegations or the causes of action asserted in the second amended complaint. On November 18, 2016, the circuit court dismissed the second amended complaint in its entirety with prejudice. Plaintiffs do not provide any description of the proceedings that were had in connection with the motion to dismiss, nor do plaintiffs provide any further description of the circuit court's order. Plaintiffs' motion to reconsider was denied on December 20, 2016. Plaintiffs filed a notice of appeal on December 22, 2016. The notice of appeal identifies the circuit court's November 18 and December 20 orders.

¶ 12 Plaintiffs filed an initial appellant's brief in this court on May 31, 2017. On June 19, 2017, plaintiffs filed a motion for leave to withdraw the initial appellant's brief and to file a substitute brief. Defendants objected to plaintiffs' motion. Before a decision was made on plaintiffs' motion, defendants filed appellee's briefs. On July 12, 2017, a different panel of this court allowed plaintiffs' motion to file a substitute brief, and ordered that the brief be filed by July 20, 2017. Plaintiffs missed the filing deadline. On August 10, 2017, plaintiffs filed a motion for leave to file a substitute brief *instanter*. Defendants objected, and sought to have this appeal dismissed. On August 22, 2017, we allowed plaintiffs leave to file the substitute brief *instanter*. Defendants' motions to dismiss this appeal were denied. Defendants subsequently moved to either strike portions of plaintiffs' substitute appellant's brief and dismiss this appeal, or in the alternative, for additional time to file response briefs. We denied the motions to strike plaintiffs' substitute brief and to dismiss this appeal, and we ordered that defendants' motions for additional time to file response

briefs be taken with the case.

¶ 13 ANALYSIS

***3** ¶ 14 Plaintiffs attempt to identify two issues on appeal. First, plaintiffs argue that the circuit court should not have dismissed the second amended complaint because it "contains several specific allegations about how Tucker and AKT violated [the noncompetition agreement]". Second, plaintiffs argue that the second amended complaint asserted a conspiracy claim against EMP and Malloy, apparently based on plaintiffs' assertion that there was a conspiracy to violate the noncompetition agreement.

¶ 15 Plaintiffs' violations of our supreme court's appellate rules are severe, and result in the forfeiture of all of plaintiffs' arguments on appeal. "A party's failure to comply with Rule 341 is grounds for disregarding its arguments on appeal based on an un-referenced statement of facts." *Jeffrey M. Goldberg & Associates, Ltd. v. Collins Tuttle & Co., Inc.*, 264 Ill. App. 3d 878, 886 (1994). Supreme Court Rule 341(h)(6) requires a statement of facts that "shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment * * *." Ill. S. Ct. R. 341(h)(6) (eff. July 1, 2017). Here, plaintiffs offer no description of the claims purportedly set up in any iteration of the complaint. The factual background set forth in plaintiffs' substitute appellant's brief appears to be taken from the background section of the second amended complaint, but plaintiffs' statement of facts does not provide us with any understanding of the actual claims set up therein. Furthermore, plaintiffs do not describe any of the motion practice or proceedings that took place in the circuit court that culminated in the notice of appeal. Plaintiffs offer no description of the dispositive motions that were filed or the substance of any of the circuit court's orders granting those dispositive motions. We, therefore, have no basis for understanding the nature of plaintiffs' case, any of the nearly two years of litigation that took place in the circuit court, or any of the federal litigation. Finally, we note that the argument section of plaintiffs' substitute brief fails to contain any citations to the record, in violation of Rule 341(h)(7), and the brief also lacks an index to the 16–volume record on appeal, in violation of Rule 342.

¶ 16 As a court of review, we are entitled to have the issues on appeal clearly presented. *Holmstrum v. Kunis*, 221 Ill. App. 3d 317, 325 (1991). "Reviewing courts will not search the record for purposes of finding error in order to reverse [a] judgment when an appellant has made no good-faith effort to comply with the supreme court rules governing the contents of briefs." *In re Estate of Parker*, 2011 IL App (1st) 102871, ¶ 47. It is not our duty to scour the record in an effort to understand an appellant's case when the appellant fails to adequately describe the proceedings below. We have the discretion to strike an appellant's brief or portions of the brief for failure to comply with our supreme court's rules. We also have the discretion to dismiss an appeal where those violations are so egregious as to impair our review of the merits of a claim. Here, rather than strike plaintiffs' brief or dismiss this appeal, we find that plaintiffs' myriad violations of our supreme court's rules, particularly the failure to provide us with a complete set of facts, results in forfeiture of plaintiffs' challenges to the November 18, 2016, order dismissing the second amended complaint with prejudice, and to the December 20, 2016, order denying plaintiffs' motion to reconsider.

***4** ¶ 17 At best, the argument section of plaintiffs' brief presents us with a set of reasons why plaintiffs believe that defendants violated the noncompetition provision found in the federal litigation settlement, and why plaintiffs believe that defendants did in fact conspire to violate the noncompetition provision. Plaintiffs, however, have not provided us with an adequate context for us to understand how plaintiffs' argument might have any merit. Even a cursory review of the appellees' original briefs and the record on appeal reveals that this dispute has a long and contentious history. Plaintiffs have failed to adequately apprise us of the nature of the dispute and of the relevant legal issues. Having found no basis for reversal of the circuit court's dismissal of the second amended complaint, we affirm the circuit court's judgment. And after careful consideration of plaintiffs' substitute appellant's brief, we find that further briefing from the defendants will not assist us in disposing of this appeal. The defendants' motions for additional time to file response briefs are therefore denied.

¶ 18 Finally, defendants request that we, having affirmed the circuit court's judgment, remand this matter back to the circuit court for a determination of attorney fees and costs as the "prevailing party," as provided for in the federal settlement agreement. We agree, and remand this matter for the sole purpose of having the circuit court determine what, if any, attorney fees and costs to which defendants are entitled under the settlement agreement.

¶ 19 CONCLUSION

¶ 20 For the foregoing reasons, the judgment of the circuit court is affirmed, and this matter is remanded for further proceedings consistent with this order.

¶ 21 Affirmed and remanded.

Justices Simon and Mikva concurred in the judgment.

All Citations

Not Reported in N.E.3d, 2017 IL App (1st) 163377-U, 2017 WL 4287564