STATE OF MICHIGAN

COURT OF APPEALS

HEATHERSTONE SQUARE,

Plaintiff/Counterdefendant-Appellant,

v

E & M VENTURES, LTD., ENZO MARZOLO, and 3-Q'S ENTERPRISES, INC.,

Defendants/Cross Defendants-Appellees,

and

JOHN DILAURO,

Defendant-Appellee,

and

DILAURO ENTERPRISES, INC.,

Defendant/Cross Plaintiff/Counterplaintiff/Third-Party Plaintiff-Appellee,

and

PASQUALE D'ONOFRIO, a/k/a PAT DENAFRIO,

Defendant/Counterdefendant-Appellee,

and

D'ONOFRIO BROTHERS, INC.,

UNPUBLISHED
June 22, 2001

No. 220585
Macomb Circuit Court
LC No. 98-001205-CK

Counterdefendant-Appellee,

and

JOHN DOE CORPORATION,

Defendant-Appellee,

and

CITY OF WARREN,

Third-Party Defendant-Appellee.

Before: Gage, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right the order adopting a receiver's recommendation and dismissing all pleadings and issues in the present case. Plaintiff contends that the trial court improperly disposed of the case without addressing plaintiff's claims for back rent and its petition for part of defendant DiLauro Enterprises, Inc.,'s assets in escrow. We affirm.

On January 18, 1989, plaintiff entered into a lease agreement with defendant E & M ventures, Ltd., a/k/a 3-Q Enterprises, for a building used as a restaurant. On March 31, 1993, 3-Q assigned the lease to defendant DiLauro Enterprises, Inc. (DEI). Plaintiff consented to the assignment, but the terms of the assignment provided that 3-Q was not released from liability under the original lease agreement.

According to plaintiff's complaint, as of July 31, 1996, $25,596 in rent was owed under the terms of the lease, and DiLauro agreed to pay plaintiff $500 per month in excess of the monthly rent against the back rent until the restaurant was sold. On February 4, 1997, plaintiff informed 3-Q that the lease agreement was in default and plaintiff was holding 3-Q to the lease obligations. Thereafter, plaintiff learned that DEI had entered into an agreement to sell the restaurant, including the liquor license, to D'Onofrio Brothers, Inc. D'Onofrio Brothers, Inc., subsequently entered into an agreement to sell the restaurant to Enzo's Restaurant, LLC.

On March 17, 1998, plaintiff filed a complaint against all of the defendants, and DEI subsequently filed a cross-complaint. On October 28, 1998, pursuant to a stipulated order, the trial court appointed a receiver "of all of the assets of [DEI]" to determine the priority of all claims against DEI and to distribute DEI's assets. The trial court further ordered that the court would determine the priority of all claims against DEI.

On November 16, 1998, the trial court ordered the receiver to enforce the agreement between Enzo's Restaurant, LLC, and D'Onofrio Brothers, Inc., or to sell the restaurant in a

commercially reasonable manner if the agreement could not be enforced. Plaintiff filed a motion for partial summary disposition against DEI and 3-Q's for unpaid rent plus prejudgment interest and attorney fees. The trial court dismissed E & M, Marzolo, and 3-Q's as defendants by stipulation of the parties. On February 1, 1999, the trial court dismissed DiLauro as a party with prejudice and issued a stipulated order of judgment against DEI in the amount of $20,596. Plaintiff's only remaining claims were those against D'Onofrio, D'Onofrio Brother's Inc., and the Michigan Liquor Control Commission. The dispute between DEI, D'Onofrio, D'Onofrio Brother's Inc., and Enzo's Restaurant was still before the court.

On December 14, 1998, the receiver's attorney filed his opinion, asserting the receiver's recommendation that all agreements regarding the sale and transfer of Enzo's Restaurant and the liquor license be enforced. On February 1, 1999, the trial court ordered that (1) the receiver was authorized to act on behalf of D'Onofrio Brothers, Inc., D'Onofrio and DiLauro to the extent necessary to transfer the interest in the liquor license and operating/management agreement to allow Enzo's Restaurant, LLC, to operate with the liquor license, (2) the receiver pay outstanding property taxes to the City of Warren in the amount of $31,462.37, and (3) the receiver be awarded fees in the amount of $3,697.50. On January 5, 1999, a default judgment was entered against D'Onofrio for his failure to defend against DEI's cross claim. In his report, the receiver noted that D'Onofrio had filed a motion to set aside the default, but that the trial court had not yet issued a judgment regarding the claims. In its April 12, 1999, order, the trial court ordered that DEI dismiss its claims against D'Onofrio upon performance of the remainder of the order.

On February 23, 1999, plaintiff petitioned the receiver for proceeds of the sale of Enzo's Restaurant, contending that DiLauro owed it $25,596 in back rent, and that the excess proceeds from the sale of Enzo's Restaurant would be adequate to "cover the Judgment Plaintiff has against DiLauro." Plaintiff contended that because it had a judgment against DiLauro it should be entitled to the excess funds in the receiver's control. Accordingly, it requested that the receiver recommend to the trial court that plaintiff receive $25,596 from the sale proceeds. Plaintiff did not address the possibility that D'Onofrio and/or D'Onofrio Brothers, Inc., had an interest in the excess funds.

On March 30, 1999, the trial court entered an order stating that:

> It is hereby ordered that the settlement conference is adjourned to 4/12/99 at 3:30 p.m. whereby Receiver shall make a written recommendation on all remaining issues including but not limited to disbursement and entitlement of remaining proceeds and accounting and setting aside default and/or amending counter-complaint.

On April 8, 1999, the receiver recommended that any excess funds after the sale be transferred to the seller, D'Onofrio Brothers, Inc, and on April 12, 1999, the trial court adopted the receiver's recommendations. Plaintiff's motion to vacate the trial court's order, which was based on plaintiff's arguments that its rights to collect on its money judgment against DiLauro gave it a right to collect the excess funds and that the trial court failed to address plaintiff's claims, was denied.

On review of a trial court's final order, we examine questions of law de novo and review the trial court's underlying findings of fact for clear error. *Cardinal Mooney High School v Michigan High School Athletic Ass'n*, 437 Mich 75, 80; 467 NW2d 21 (1991); *Schroeder v City of Detroit*, 221 Mich App 364, 366; 561 NW2d 497 (1997). We would first note that, at the time the trial court issued its April 12, 1999, order, the only defendants against which plaintiff still had pending claims were Pasquale D'Onofrio and D'Onofrio Brothers, Inc.; all other defendants had been dismissed with plaintiff's consent. To the extent that plaintiff challenges the substance of the trial court's decision, its argument is convoluted and plaintiff fails to provide any authority to support its argument. Therefore, we decline to address any such issues. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999); *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 116; 593 NW2d 595 (1999).

Plaintiff also contends that the trial court improperly disposed of the instant case in violation of MCR 2.602 when it failed to obtain plaintiff's approval of its April 12, 1999, order. We disagree. A trial court is permitted to "sign the judgment or order at the time it grants the relief provided by the judgment or order." MCR 2.602(B)(1). Here, the trial court comported with the requirements of MCR 2.602(B) by signing its order at the time it adopted the receiver's recommendation.

Plaintiff next argues that it was improperly excluded from settlement negotiations that preceded the trial court's order and that the trial court neglected to address plaintiff's claims against D'Onofrio and D'Onofrio Brothers, Inc. when it issued its April 12, 1999, order.[1] We first note that plaintiff has presented no evidence to support plaintiff's contention that the trial court agreed to reschedule the settlement conference when it was informed, on the day of the conference, that plaintiff's counsel would not be able to attend. Nonetheless, the record reveals that the receiver was ordered to make a written recommendation on *all* issues including disbursement and entitlement to the proceeds of the sale of the restaurant. The receiver's statements that *all* parties had presented their respective positions, that he had reviewed the "entire matter," that the receiver "looked at all prior agreements," and that the receiver made its decision "in an effort to be fair to *all* parties," establish that the receiver did consider plaintiff's claims. Accordingly, we reject plaintiff's argument that plaintiff's claims were not considered.[2]

Affirmed.

/s/ Hilda R. Gage
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey

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[1] At the time of the conference, all of the other defendants had been dismissed.

[2] Hence, plaintiff's recourse is to seek to enforce the January 19, 1999, judgment against DEI for unpaid rent in the amount of $20,596.