

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

AMERICAN FAMILY INSURANCE CO., :
 :
Plaintiff, :
 :
v. : Case No. 13CVH04-4005
 :
THREE-C BODY SHOP, : JUDGE LYNCH
 :
Defendant. :

DECISION AND ENTRY DENYING
MOTION OF PLAINTIFF FOR EXTENSION OF TIME TO FILE OBJECTIONS,
Filed May 13, 2015

and

DECISION AND ENTRY DENYING
MOTION OF DEFENDANT FOR REASONABLE ATTORNEYS FEES AND COSTS IN
DEFENSE OF FRIVOLOUS CLAIMS,
Filed May 14, 2015

and

DECISION AND ENTRY DENYING AS MOOT
MOTION OF PLAINTIFF FOR LEAVE TO FILE SUR-REPLY, INSTANTER
Filed June 3, 2015

and

DECISION AND ENTRY ADOPTING
MAGISTRATE’S AMENDED DECISION RENDERED APRIL 29, 2015

LYNCH, J.

This matter is before the Court regarding the Amended Decision Following Bench Trial (the “Amended Decision”) rendered by Magistrate McCarthy on April 29, 2015. In response to the Amended Decision, on May 13, 2015 Plaintiff filed a motion for an extension of time to file its objections to the Amended Decision, arguing that a transcript was required and that additional time was necessary to procure and file both the transcript and Plaintiff’s objections. On that same day, Defendant filed a memorandum in opposition

to Plaintiff's motion, arguing that not only could Plaintiff have filed its objections and subsequently filed the transcript, but that a transcript was not required at all in that the Magistrate's Amended Decision was based on law and exhibits presented during the bench trial. In other words, Defendant contends, as the Amended Decision is based on issues of law and not fact (other than the facts of certain exhibits already in evidence), a transcript is completely unnecessary. The Court is in complete agreement that not only would a transcript be wholly irrelevant in this case, in any event Plaintiff could have -- and indeed should have -- filed any objections within the time frame contemplated by Civ.R. 53(D)(b). Accordingly, the motion for extension of time to file objections is hereby **DENIED**.

Two related motions are also before the Court: Defendant's motion for reasonable attorneys fees and costs as sanctions for having to defend a frivolous action; and Plaintiff's motion for leave to file a sur-reply in further support of its motion for extension of time to file objections. Regarding the latter, because the Court has already denied the motion for extension of time to file objections, the motion to file a sur-reply, *instanter*, is hereby **DENIED** as being **MOOT**. Regarding the former, the Court does not find Defendant's motion for sanctions well taken and it is accordingly **DENIED**.

This matter was heard by Magistrate McCarthy in the form of a bench trial on September 29, 2014, and on January 21, 2015 he issued his decision. Subsequently, Defendant filed a motion to reconsider the January 21, 2015 decision, which was granted by the Magistrate. Thereafter, and upon such reconsideration, the Magistrate issued his Amended Decision dated April 29, 2015, finding in favor of Defendant. Upon consideration, the Court agrees with the findings, conclusions and Amended Decision of the Magistrate.

When reviewing objections to a magistrate's decision, the Court is required to undertake the equivalent of a *de novo* review determination, and independently assess the facts and conclusions contained in the report of a referee. *DeSantis v. Soller* (1990), 70 Ohio App. 3d 226, 232, 590 N.E.2d 886 (citing *Normandy Place Assoc. v. Beyer* (1982), 2 Ohio St. 3d 102, 443 N.E.2d 161). The Court has independently reviewed the Amended Decision of Magistrate McCarthy, all relevant written briefs/memoranda submitted by the parties, all evidence properly before the Court and the applicable law. After review of said material, the Court finds that Magistrate McCarthy considered all facts relevant to the matter before him and that he properly construed and applied the law pertinent to this case.

Therefore, the Court **ADOPTS** the Amended Decision rendered by Magistrate McCarthy on April 29, 2015, which is incorporated herein by reference. **This is a final appealable order and there is no just cause for delay.**

IT IS SO ORDERED.

Copies electronically to:

Todd J. McKenna, Esq.
Counsel for Plaintiff

Jennifer B. Croghan, Esq.
Counsel for Defendant

Franklin County Court of Common Pleas

Date: 06-25-2015
Case Title: AMERICAN FAMILY INSURANCE CO -VS- THREE-C BODY SHOP
Case Number: 13CV004005
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in cursive script, "Julie M. Lynch", is written over a circular, embossed seal. The seal is partially obscured by the signature and appears to be a court seal.

/s/ Judge Julie M. Lynch

Court Disposition

Case Number: 13CV004005

Case Style: AMERICAN FAMILY INSURANCE CO -VS- THREE-C
BODY SHOP

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 13CV0040052015-05-1399980000
Document Title: 05-13-2015-MOTION TO EXTEND TIME
Disposition: MOTION DENIED
2. Motion CMS Document Id: 13CV0040052015-05-1499980000
Document Title: 05-14-2015-MOTION FOR SANCTIONS
Disposition: MOTION DENIED
3. Motion CMS Document Id: 13CV0040052015-06-0399980000
Document Title: 06-03-2015-MOTION
Disposition: MOTION DENIED