Court of Appeals, State of Michigan

ORDER

GEORGE A GALLAGHER III V RICHFIELD EQUITIES LLC

Docket No. 293330

LC No. 05-082225-CK

Kathleen Jansen
Presiding Judge

Deborah A. Servitto

Elizabeth L. Gleicher
Judges

In lieu of granting the application for leave to appeal, pursuant to MCR 7.211(C)(4) the Court GRANTS the motion for peremptory reversal and REVERSES the Genesee Circuit Court's July 9, 2009 order denying defendants/counterplaintiffs/third party plaintiffs' motion to terminate bond. The letter of credit at issue was posted as a bond to stay collection of the final judgment while appellants pursued their appeal in docket number 283246. Appellants were partially successful in that appeal, which resulted in reversal of the circuit court's dismissal of one of appellants' counterclaims. This Court remanded the matter to the circuit court without retaining jurisdiction. *George A Gallagher v Richfield Equities LLC*, unpublished per curiam opinion of the Court of Appeals (docket no. 283246, 4/14/09). Due to this Court's ruling, the judgment previously awarded to appellee may be subject to a set-off based on the counterclaim. Until a final judgment is entered there is no need for an appeal bond to protect plaintiff's ability to collect the judgment amount. The circuit court made no findings suggesting that the bond was to secure costs under MCR 2.109. The amount of the bond would appear to greatly exceed the amount needed to secure the payment of costs and recoverable expenses under MCR 2.109(A).

In all other respects the application for leave to appeal is DENIED for failure to persuade.

COURT OF APPEALS OF THE STATE OF MICHIGAN
TUEBOR
CIRCUMSPICE
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A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

NOV 16 2009
Date

Sandra Schultz Mengel
Chief Clerk