Court of Appeals, State of Michigan

ORDER

American States Ins Co v Rick Hampton

Docket No. 279022

LC No. 05-522975-NZ

Christopher M. Murray
Presiding Judge

Michael J. Talbot

Brian K. Zahra
Judges

The Court orders that the motion to amend the claim of appeal is GRANTED TO THE EXTENT that the claim of appeal filed on June 27, 2007, is amended to reflect that the claim of appeal claims an appeal of right from both the final judgment entered on March 14, 2007, and the post judgment order awarding attorney fees and costs that was entered on June 7, 2007. However, the Court lacks jurisdiction for an appeal of right from the final judgment entered on March 14, 2007, because the appeal was not timely filed with respect to this final judgment. MCR 7.204(A)(1). The March 14, 2007, judgment was the "the first judgment or order that dispose[d] of all the claims and adjudicate[d] the rights and liabilities of all the parties" as defined in MCR 7.202(6)(a)(i) in spite of the judgment's reservation for later determination of the matter of the appropriate award of attorney fees and costs. See *Lincoln v Gupta,* 142 Mich App 615; 370 NW2d 312 (1985) and *Baitinger v Brisson,* 230 Mich App 112; 583 NW2d 481 (1998).

Nevertheless, the Court, pursuant to MCR 7.216(A)(7), orders that the claim of appeal from the March 14, 2007, judgment is treated as an application for leave to appeal and the Court GRANTS LEAVE TO APPEAL from the March 14, 2007, judgment—contingent on the payment of the entry fee that would have been required for a timely claim of appeal or an application for leave to appeal from the March 14, 2007, judgment. The appeal may proceed as an appeal from both the final judgment entered on March 14, 2007 (and prior non-final orders), and the post judgment order awarding attorney fees and costs that was entered on June 7, 2007, if defendant-appellants pay to the Clerk of this Court the required entry fee in the amount of $375 within 14 days after the Clerk's certification of this order. If the entry fee is not paid, the Clerk shall submit the appeal for partial dismissal pursuant to MCR 7.201(B)(3) and the appeal will proceed only with respect to the June 7, 2007, order.

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

AUG 30 2007
Date

Sandra Schultz Mengel
Chief Clerk