

IN THE SUPREME COURT OF THE STATE OF DELAWARE

T.A.H. FIRST INC., a Delaware corporation,	§	
	§	No. 253, 2011
	§	
Defendant Below,	§	
Appellant,	§	
	§	Court Below: Superior Court
v.	§	of the State of Delaware,
	§	in and for Kent County
CLIFTON LEASING COMPANY, INC., a Delaware corporation, t/a Delmarva Kenworth,	§	
	§	
	§	C. A. No. 09C-04-042
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: November 9, 2011

Decided: December 30, 2011

Before **STEELE**, Chief Justice, **BERGER** and **JACOBS**, Justices.

ORDER

This 30th day of December, 2011, on consideration of the parties' briefs and supplemental memoranda, it appears to the Court that:

1) T.A.H. First, Inc. appeals from a Superior Court decision denying its motion to vacate a default judgment. It argues that, as a result of the complaint filed against it by Clifton Leasing Company, Inc., T.A.H.'s trucks were repossessed and T.A.H. was put out of business. T.A.H. wants to continue the action, which was dismissed

by Clifton, so that the trial court can determine the truth about whether T.A.H. owed Clifton any money. We find no merit to this appeal, and affirm.

2) Clifton operates a diesel repair shop in Dover, Delaware. It leases and provides repair services for Kenworth trucks. In 1994, Clifton started leasing trucks to T.A.H.. In addition, Clifton maintained and repaired the leased trucks. Between April 2007 and September 2008, T.A.H. allegedly failed to pay Clifton approximately \$63,000 due under the lease and for other services.

3) Clifton filed suit against T.A.H. on April 28, 2009. It was unable to serve T.A.H.'s registered agent because T.A.H. had failed to register a change of address with the Secretary of State. On August 3, 2009, Clifton perfected substituted service on the Secretary of State in accordance with 8 *Del. C.* §321(b).

4) T.A.H. did not respond to the complaint, and Clifton obtained a \$73,913.54 default judgment on September 8, 2009. Clifton levied against trucks owned by T.A.H., and the New Castle County Sheriff seized the trucks on January 30, 2010. On February 9, 2010, T.A.H. entered its appearance and moved to stay execution and to vacate the default judgment. The trial court held a hearing and determined that no excusable neglect or extraordinary circumstances warranted vacating the default judgment. But the court permitted an inquisition hearing to determine the amount of

the judgment, and authorized the release of the seized vehicles if T.A.H. posted a bond in the amount of the default judgment.

5) In June 2010, PACCAR Financial Corp. filed a motion to release the trucks. PACCAR had financed T.A.H.'s purchase of the seized trucks, and it had a secured interest in the \$188,662.03 balance remaining on the loans. The finance company alleged that the value of the seized trucks was less than the amount it was owed.

6) It appears that the trucks were sold in November 2010 and the proceeds were insufficient to satisfy PACCAR's security interest. As a result, in April 2011, Clifton advised the Superior Court that it was going to seek dismissal of its claims. T.A.H. opposed dismissal because it wanted to have an inquisition hearing to establish that it did not owe Clifton the amount Clifton had alleged in its complaint. The trial court dismissed the Clifton action, noting that Clifton abandoned its claims and that any further action would waste judicial resources.

7) On appeal, T.A.H. acknowledges that the dismissal of Clifton's complaint renders the default judgment a nullity. It seeks appellate review, nonetheless, because T.A.H. wants to be able to seek "redress for the damage that it has sustained."¹ The dismissal of Clifton's complaint renders this appeal moot, and T.A.H. offers no

¹Appellant's Reply Supplemental Memorandum, p.1.

authority to the contrary. Moreover, the absence of appellate review does not preclude T.A.H. from filing a claim against Clifton based on its conduct in this case.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice