SUPREME COURT OF THE STATE OF DELAWARE

In re Liquidation of Indemnity Insurance Corporation, RRG

No. 185, 2022 · No. No. 185, 2022 · Decided July 28, 2022

SUMMARY

The Delaware Supreme Court dismissed Jeffrey Cohen’s appeal from an order entered in the liquidation proceeding for Indemnity Insurance Corporation, RRG. The Court held that the Court of Chancery’s order was interlocutory rather than final, and that Cohen had also failed to comply with the applicable timing and interlocutory-appeal requirements.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	Per curiam; signed by Justice Gary F. Traynor; Vaughn, Justice; Traynor, Justice; Montgomery-Reeves, Justice
JURISDICTION	Delaware
DECIDED	July 28, 2022
DOCKET	No. 185, 2022
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from the Court of Chancery's denial of Jeffrey Cohen's objections to receiver claim determinations and motion for leave to file a complaint against the receiver and its counsel; the Supreme Court issued a notice to show cause why the appeal should not be dismissed as an improperly taken interlocutory appeal.
STANDARD OF REVIEW	De novo review of whether the Court of Chancery's order was final and appealable; appellate jurisdiction is determined by the nature and finality of the order.
PRECEDENTIAL VALUE	Published Delaware Supreme Court opinion; precedential value not otherwise specified in the text.
PARTIES	Jeffrey Cohen v. Receiver of Indemnity Insurance Corporation, RRG

TOPICS

interlocutory appeal · appellate jurisdiction · final judgment rule · appellate procedure · insurance

PRACTICE AREAS

appellate procedure · insurance liquidation · civil procedure

QUESTIONS PRESENTED

1. Whether the Court of Chancery's order denying Cohen's motion for leave to file an independent complaint and addressing his objections to claim determinations was a final and appealable order.
2. Whether the Delaware Supreme Court had jurisdiction to hear the appeal when Cohen failed to comply with Supreme Court Rule 42 for an interlocutory appeal.
3. Whether the appeal was independently untimely because Cohen filed it more than thirty days after entry of the Court of Chancery's order.

HOLDINGS

1. The order was not final and appealable because the liquidation proceeding remained ongoing and Cohen's unresolved claim objections could still be addressed through the approved plans.
2. Because the order was interlocutory and Cohen did not comply with Supreme Court Rule 42, the Supreme Court lacked jurisdiction to hear the appeal.
3. The appeal was independently subject to dismissal because Cohen filed the notice of appeal more than thirty days after the Court of Chancery's order.

KEY QUOTATIONS

> *"An order is deemed final and appealable if the trial court has declared its intention that the order be the court's final act in disposing of all justiciable matters within its jurisdiction."* (at 3)

> *"Absent compliance with Rule 42, this Court lacks jurisdiction to hear an interlocutory appeal."* (at 3)

FACTUAL BACKGROUND

Indemnity Insurance Corporation, RRG was undergoing liquidation under the Delaware Uniform Insurers Liquidation Act, with Delaware's Insurance Commissioner serving as receiver. The receiver's claim-review process and related plans remained ongoing when Jeffrey Cohen objected to claim determinations and sought leave to file an independent complaint against the receiver and its counsel. The Court of Chancery denied the motions while indicating that unresolved claim objections would be addressed under the approved plans.

PROCEDURAL HISTORY

The Court of Chancery entered a liquidation and injunction order in 2014 and later approved the receiver's claim final determination and service plans. Cohen filed objections to claim determinations and sought leave to sue the receiver and its counsel. After the Court of Chancery denied those motions, Cohen appealed without complying with Supreme Court Rule 42. The Delaware Supreme Court held the order interlocutory and dismissed the appeal.

DISPOSITION

dismissed

CASES CITED

- Carr v. State, 554 A.2d 778, 779 (Del. 1989)
- Protective Life Ins. Co. v. Navarro, 2020 WL 5405865, at *3 (Del. Sept. 4, 2020)
- Eastern All. Ins. Co. v. Henry, 2021 WL 2418979, at *1 (Del. June 10, 2021)
- Julian v. State, 440 A.2d 990, 991 (Del. 1982)

OPINION

IMO Liquidation of Indemnity Insurance Corporation, RRG
PER CURIAM.
IN THE SUPREME COURT OF THE STATE OF DELAWARE
IMO LIQUIDATION OF §
INDEMNITY INSURANCE § No. 185, 2022
CORPORATION, RRG §
§ § Court Below–Court of Chancery § of the State of Delaware § § § C.A. No. 8601 § Submitted: July 5, 2022 Decided: July 28, 2022 Before VAUGHN, TRAYNOR, and MONTGOMERY-REEVES, Justices.
ORDER
After consideration of the notice to show cause and the parties' responses, it appears to the Court that:
(1) On April 10, 2014, the Court of Chancery entered a Liquidation and
Injunction Order under the Delaware Uniform Insurers Liquidation Act ("DUILA") concerning the liquidation of Indemnity Insurance Corporation, RRG ("IIC"). Among other things, the Liquidation Order appointed Delaware's Insurance Commissioner as IIC's receiver (the "Receiver"). By order dated August 17, 2020, the Court of Chancery approved the Receiver's claim final determination plan and service plan (the "Plans"). According to the Receiver's fourth accounting, as of December 31, 2020, the estate had substantially completed its review of proof of claims and has prepared approximately 2,945 notices of determination. On December 20, 2021, the Receiver filed its first claim recommendation report and a motion for order to show cause setting a deadline for claimants to object. The report and motion remain pending in the Court of Chancery.
(2) On February 23, 2021, the appellant, IIC's founder and former
controller Jeffrey Cohen, filed objections to the Receiver's claim determinations and, on September 7, 2021, Cohen filed a motion for leave to file a complaint against the Receiver and its counsel. On April 14, 2022, the Court of Chancery denied Cohen's motions (the "Order). The Court of Chancery concluded, among other things, that the motion for leave to file a complaint

was yet another inappropriate attempt by Cohen to bring an independent action subsumed within the liquidation proceeding. And the court found that, to the extent Cohen's objections to the Receiver's claim determinations had not previously been resolved, they would be addressed as contemplated by the Plans. This appeal followed.

(3) Because the case remains pending in the Court of Chancery, the Senior

Court Clerk issued a notice directing Cohen to show cause why his appeal should not be dismissed for his failure to comply with Supreme Court Rule 42 when taking an appeal from an apparent interlocutory order.1 In his response to the notice to 1 Cohen filed his notice of appeal on May 31, 2022—more than thirty days after the Court of Chancery issued the Order. Cohen's appeal was therefore subject to dismissal on this basis alone. Del. Supr. Ct. R. 6(a)(i); Carr v. State, 554 A.2d 778, 779 (Del. 1989) ("Time is a jurisdictional 2 show cause, Cohen contends that the order is final because it prevents him from suing the Receiver.

(4) At the Court's request, the Receiver also responded to the notice to

show cause and argues that the Order is interlocutory. Under the DUILA, "[a]n appeal shall lie to the Supreme Court from an order granting or refusing rehabilitation, liquidation or conservation and from every order in delinquency proceedings having the character of a final order as to the particular portion of the proceedings embraced therein."2 The Receiver observes that we recently held that the dismissal of a complaint in a rehabilitation proceeding does not have "the character of a final order" when the rehabilitation process is ongoing and it is possible that the petitioner could recover as part of that process.3 And the Receiver notes that the Court of Chancery emphasized that Cohen's objections to the Receiver's claim determinations may be made under the Plans.

(5) "An order is deemed final and appealable if the trial court has declared

its intention that the order be the court's final act in disposing of all justiciable matters within its jurisdiction."4 We agree with the Receiver that the Order is not a final and appealable order. Absent compliance with Rule 42, this Court lacks requirement. Accordingly, this Court has held that when an appeal is not filed within the statutory time period the Court is without jurisdiction to hear the appeal."). 2 18 Del. C. § 5902(e). 3 Protective Life Ins. Co. v. Navarro, 2020 WL 5405865, at *3 (Del. Sept. 4, 2020). 4 Eastern All. Ins. Co. v. Henry, 2021 WL 2418979, at *1 (Del. June 10, 2021). 3 jurisdiction to hear an interlocutory appeal.5 The appeal must therefore be dismissed. NOW, THEREFORE, IT IS HEREBY ORDERED, under Supreme Court Rule 29(b), that the appeal is DISMISSED. BY THE COURT: /s/ Gary F. Traynor Justice 5 Julian v. State, 440 A.2d 990, 991 (Del. 1982). 4