

## SUPREME COURT OF DELAWARE

### Century Indemnity Co. v. Viking Pump, Inc.

Century Indemnity · No. No. 371, 2014; C.A. No. N10C-06-141; C.A. No. 1465 · Decided August 15, 2014

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#### SUMMARY

The Delaware Supreme Court dismissed an appeal and cross-appeals as premature because a timely motion under Superior Court Civil Rule 59 remained pending in the trial court. The Court held that such a motion tolls the time for appealing an otherwise final judgment and waived the filing fee for any future appeal from the Superior Court's final judgment.

#### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                        |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Delaware                                                                                                                                                                                                                                                              |
| WRITING FOR THE COURT | Holland; Ridgely; Valihura                                                                                                                                                                                                                                                             |
| JURISDICTION          | Delaware                                                                                                                                                                                                                                                                               |
| DECIDED               | August 15, 2014                                                                                                                                                                                                                                                                        |
| DOCKET                | No. 371, 2014; C.A. No. N10C-06-141; C.A. No. 1465                                                                                                                                                                                                                                     |
| DISPOSITION           | dismissed                                                                                                                                                                                                                                                                              |
| PROCEDURAL POSTURE    | Defendants appealed from a Superior Court final judgment entered after a jury verdict. Because a timely motion under Superior Court Civil Rules 59(d) and (e) remained pending, the Supreme Court determined that the appeal was premature and dismissed the appeal and cross-appeals. |
| PRECEDENTIAL VALUE    | Published Delaware Supreme Court order                                                                                                                                                                                                                                                 |
| PARTIES               | Century Indemnity Co., et al. v. Viking Pump, Inc., et al., Warren Pumps, LLC                                                                                                                                                                                                          |

#### TOPICS

[appellate procedure](#)[interlocutory appeal](#)[motion for reconsideration](#)[civil procedure](#)[insurance](#)

#### PRACTICE AREAS

[appellate procedure](#)[civil procedure](#)[insurance](#)[commercial litigation](#)

#### QUESTIONS PRESENTED

1. Whether the appeal was timely and properly before the Supreme Court when a Rule 59 motion to reargue or amend the judgment remained pending.
2. Whether the appeal and cross-appeals should be dismissed as premature rather than treated as appeals from an interlocutory judgment.

## HOLDINGS

1. A timely filed motion for reargument or to amend a judgment tolls the time for taking an appeal from an otherwise final judgment; an appeal filed while that motion remains pending is premature.
2. The appeal and cross-appeals must be dismissed because they were filed before the Superior Court entered a final judgment resolving the pending Rule 59 motion.

## KEY QUOTATIONS

*“The law is clear that a timely-filed motion for reargument or to amend a judgment tolls the time for taking an appeal from an otherwise final judgment of the trial court.” (¶ 3)*

*“Consequently, the appeal is premature and must be dismissed.” (¶ 3)*

## FACTUAL BACKGROUND

The appeal arose after a jury verdict and entry of judgment in consolidated litigation involving Century Indemnity, Viking Pump, Warren Pumps, and other parties. Warren Pumps filed a timely motion under Superior Court Civil Rules 59(d) and (e) seeking clarification and supplementation of the judgment. That motion had not been resolved by a formal order when the defendants filed their notice of appeal.

## PROCEDURAL HISTORY

A jury verdict was rendered on November 15, 2012, and the Superior Court entered final judgment on June 9, 2014. Warren Pumps filed a Rule 59 motion to clarify and supplement the judgment on June 16, 2014. Defendants filed a notice of appeal on July 9, 2014, while the motion remained unresolved; the Supreme Court issued a show-cause notice concerning interlocutory appellate procedure and dismissed the appeal and cross-appeals as premature.

## DISPOSITION

dismissed

## CASES CITED

- *Tomasetti v. Wilmington Savings Fund Soc'y*, 672 A.2d 61, 64 (Del. 1996)

## OPINION

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF DELAWARE 1 CENTURY INDEMNITY CO., et al., § § No. 371, 2014 Defendants Below- § Appellants/Cross-Appellees, § Court Below- Superior Court § of the State of Delaware, v. § in and for New Castle County § C.A. No. N10C-06-141 VIKING PUMP, INC., et al., § § Court Below-Court of Chancery Plaintiffs Below- § of the State of Delaware Appellees/Cross-Appellants. § C.A.

No. 1465 § CONSOLIDATED Submitted: July 29, 2014 Decided: August 15, 2014 Before HOLLAND, RIDGELY, and VALIHURA, Justices. O R D E R This 15th day of August 2014, upon consideration of the notices to show cause and the responses thereto, as well as Warren Pump's motion to dismiss, it appears to the Court that: (1) Following a jury verdict rendered on November 15, 2012, the Superior Court entered a final judgment on June 9, 2014, On June 16, 2014, plaintiff, Warren Pumps, LLC, filed a motion under Superior Court Civil Rules 59(d) and (e) seeking to clarify and supplement the Superior Court's judgment.

On July 9, 2014, the defendants-appellants filed a notice of appeal with this Court from the Superior Court's June 9, 2014 judgment. On July 10, 2014, the Court issued a notice to the appellants directing them to show cause why their appeal should not be dismissed for their failure to comply with Supreme Court Rule 42 when appealing an interlocutory judgment.

(2) The appellants responded to the notice to show cause on July 14, 2014. The appellants contend that they filed the notice of appeal out of an abundance of caution to preserve their appellate rights given the uncertainty about the finality of a judgment issued in multiple cases in a single consolidated action. \_ (3) In its motion to dismiss, Warren Pumps asserts that the Superior Court's judgment is not final because of its pending Rule 59 motion.' Warren Pumps acknowledges that the Superior Court issued a letter dated July 11, 2014, after the appeal was filed, indicating its intent to deny Warren Pump's motion.

Nonetheless, Warren Pumps asserts, the Superior Court's letter is not a formal order denying its Rule 59 motion and does address the amount of monetary sanctions to be imposed upon certain of the insurer- defendants. Warren Pumps contends that this appeal must be dismissed for 1 Despite its contention that the appeal is interlocutory, Warren Pumps and Viking Pumps both filed notices of cross-appeal in the event the appeal is permitted to proceed.

The Court also issued Rules to Show Cause why the cross-appeals should not be dismissed as interlocutory. \_2\_ the appellants' failure to file an interlocutory notice of appeal in compliance with Supreme Court Rule 42.

(3) We agree. The law is clear that a timely-filed motion for reargument or to amend a judgment tolls the time for taking an appeal from an otherwise final judgment of the trial court.' Consequently, the appeal is premature and must be dismissed.

The filing fee for any future appeal from the Superior Court's final judgment shall be waived. NOW, THEREFORE, IT IS ORDERED that the appeal and cross- appeals are hereby DISMISSED. BY THE COURT: A.~Q,§/wt..tt.,.§\, Justice 2 Tomasetti v. Wilmington Savings Fund Society, 672 A.2d 61, 64 (Del. 1996). \_3\_