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TCIF Reo CIT LLC v. Gray

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BLD-051

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 10-3478

TCIF REO CIT LLC

v.

PATRICIA R. GRAY; T. BARRY GRAY;
ALL OCCUPANTS OF 141 7TH AVE

T. Barry Gray,
Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil No. 08-cv-02766)
District Judge: Honorable Edmund V. Ludwig

Submitted for Possible Dismissal Due to a Jurisdictional Defect or Summary Action
Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
November 24, 2010

Before: SLOVITER, JORDAN and GREENAWAY, JR., Circuit Judges

(Opinion filed: December 6, 2010)

OPINION

PER CURIAM

T. Barry Gray appeals the District Court's order denying his motion for a temporary restraining order or preliminary injunction. For the reasons below, we will summarily affirm the District Court's order.

The procedural history of this case and the details of Gray's claims are well known to the parties and need not be discussed at length. Briefly, Gray sought to remove an ejectment action which appellee had brought against him in state court. We affirmed, in relevant part, the District Court's June 26, 2009, order remanding the matter to the state court. See TCIF v. Gray, C.A. No. 09-2966 (3d Cir. Sept. 25, 2009). On August 10, 2010, Gray filed a motion for a temporary restraining order or a preliminary injunction in the District Court seeking to enjoin the state court action. The District Court denied the motion on the ground that it had remanded the matter and lacked subject-matter jurisdiction. Gray filed a notice of appeal.

An order denying a motion for a temporary restraining order is not appealable. Vuitton v. White, 945 F.2d 569, 573 (3d Cir. 1991). However, we do have jurisdiction over the District Court's denial of the motion for preliminary injunction pursuant to 28 U.S.C. § 1292. We review the denial of a motion for a preliminary injunction for an abuse of discretion but review the District Court's underlying legal conclusions de novo. Brown v. City of Pittsburgh, 586 F.3d 263, 268 (3d Cir. 2009). The District Court did not err in determining that it lacked subject-matter jurisdiction over the motion because

the case has been remanded to the state court. Thus, the District Court did not abuse its discretion in denying Gray's motion for a preliminary injunction.

Summary action is appropriate if there is no substantial question presented in the appeal. See Third Circuit LAR 27.4. For essentially the reasons set forth by the District Court, we will summarily affirm the District Court's August 12, 2010, order. See Third Circuit I.O.P. 10.6.