

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

TRANSCONTINENTAL INSURANCE CO.,	:	APPEAL NO. C-061051 TRIAL NO. 06CV15974
Plaintiff-Appellant,	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
PETER LAMPHIERT d.b.a. AMERICAN DRAFT SERVICE CO.,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Around June 2004, defendant-appellee Peter Lamphier² (d.b.a. American Draft Service Co.) was hired by Vintage Wine Seller to clean draft beer and wine lines. While completing this maintenance, Lamphier noticed drainage problems, which he brought to the attention of the owner. Lamphier offered to address this issue as well and did some of the work. During this time, the owner of Vintage Wine noticed water damage in the area. Unknown to Lamphier at the time, the owner blamed the damage on the work that Lamphier had done. The damage was repaired and paid for by plaintiff-appellant Transcontinental Insurance Company. Lamphier continued to do work for Vintage Wine Seller for at least another year after this, and the issue of the water damage was never mentioned.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² He was improperly named as "Lamphiert" in the complaint.

Two years later, Lamphier was contacted by an attorney representing Transcontinental regarding the water-damage issue. The two discussed the issue as well as other matters. In fact, the attorney apparently noticed that Lamphier might have a legal claim against a company using his trade name and offered to send Lamphier some paperwork to assist him with that issue. The attorney promised to mail him a courtesy copy of a complaint as well as some information on his trade-name issue.

After this conversation, Lamphier went on vacation until mid-July. According to his affidavit, he discovered the correspondence from the attorney upon his return. The attorney had mailed a “courtesy copy” of a complaint that he said he was filing with the Hamilton County Municipal Court. The copy did not contain a case number or a file-stamp from the clerk of courts. The letter indicated that he “should expect to receive the court process in the next few days/week.” The attorney also included documents relating to the trade-name issue and briefly discussed the matter. Alarming, the attorney also suggested that Lamphier “let me know if there is anything else you need at this time.” Notably, in this letter in which Transcontinental’s counsel seemed to discuss Lamphier’s legal rights, there is no indication that he should forward the complaint to counsel or his insurer.

According to his affidavit, Lamphier misconstrued the friendly conversation that he had with the attorney and the helpful letter he received, not understanding that litigation against him had actually commenced. In fact, the complaint had been filed while he was on vacation and the certified-mail service had been returned as unclaimed. Court records indicate that regular mail service was then completed. Lamphier declared by affidavit that he had received a copy of the complaint by regular mail “[in] early August” and had immediately forwarded it to his insurance agent. He

was contacted a short time later by an attorney hired by his insurance carrier and informed that a default judgment had already been entered against him. On September 14, the attorney for Lamphier sought relief from that judgment, which the trial court granted.

Transcontinental appeals the decision of the trial court granting relief from judgment. For a movant to prevail on a motion for relief from judgment, he must demonstrate that (1) he has a meritorious defense to present if relief is granted; (2) he is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) he has made his motion within a reasonable time.³ The only prong at issue in this case is whether the trial court abused its discretion by finding excusable neglect, as contemplated by Civ.R. 60(B)(1). We find no abuse of discretion.

The trial court had ample evidence before it that Lamphier had misconstrued his relationship with the attorney for Transcontinental and did not initially understand that a lawsuit had commenced. There was evidence that the first copy of the complaint that Lamphier received, in mid-July, was the “courtesy copy” from the Transcontinental attorney. That copy included a letter stating that he would receive an official copy from the court later. According to his affidavit, he received that official copy in early August and immediately forwarded it to his insurer. While Transcontinental provided contradictory affidavit evidence concerning some of the conversations, it was for the trial court to determine which version to believe.

³ *GTE Automatic Electric, Inc. v. ARC Industries, Inc.* (1976), 47 Ohio St.2d 146, 351 N.E.2d 113.

OHIO FIRST DISTRICT COURT OF APPEALS

Under these facts, it was not an abuse of discretion for the trial court to conclude that Lamphier had not acted with “complete disregard for the judicial system.”⁴ The judgment of the trial court is accordingly affirmed.

Further, a certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., CUNNINGHAM and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on November 21, 2007
per order of the Court _____.
Presiding Judge

⁴ See *Kay v. Marc Glassman, Inc.*, 76 Ohio St.3d 18, 20, 1996-Ohio-430, 665 N.E.2d 1102.