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A L E R T

AN INJUNCTION BY ANOTHER NAME MAY STILL IMMEDIATELY BE APPEALED

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The Third Circuit recently reaffirmed its authority to hear appeals from district court interlocutory orders that grant prospective equitable relief under 28 U.S.C. § 1292(a)(1), even where injunctive relief had not expressly been sought. *Ramara, Inc. v. Westfield Ins. Co.*, 814 F.3d 660 (3d Cir. 2016). Such an order is immediately appealable, even though remaining elements of a case prevent the order from being a final order.

In *Ramara*, the district court entered partial summary judgment in an insurance coverage dispute and, as part of the relief, ordered appellant Westfield Insurance Company to prospectively defend Ramara in an underlying tort action. Westfield had refused to defend or indemnify Ramara on the ground that Ramara was not an insured party under the applicable policy. In ruling in favor of Ramara, the district court held that Ramara was entitled to a defense; that it could recover nearly \$105,000 in fees and expenses that it had already incurred to that point in defending the tort action without Westfield's coverage; and (most importantly) that Westfield had to "prospectively . . . provide defense to Ramara in the underlying action" The court left open whether Westfield also had a duty to indemnify Ramara for any liability in the case.

After Westfield appealed the district court's order, Ramara moved to strike the prospective relief granted by the district court. The Court of

Appeals' decision did not explain the reasons for Ramara's motion, but they may have turned in part on the fact that Ramara had sought a declaratory judgment, but not the specific prospective injunction that was entered. The Court of Appeals also speculated that by striking the prospective relief, Ramara sought to make the district court's order for the payment of the \$105,000 in fees final and subject to execution. At the same time as it sought to strike the prospective relief, Ramara also moved in the district court to strike Westfield's appeal. On January 29, 2015, the district court issued an order purporting to strike Westfield's notice of appeal on the ground that the district court had not yet entered a final order, but the court did not rescind its requirement that Westfield defend Ramara in the tort case. Westfield then appealed that order too. In the Third Circuit, Ramara contended that Westfield's appeal should be dismissed because the lack of a final order meant that there was no appellate jurisdiction.

The Third Circuit agreed that the district court had not yet entered a final order in the case, but it held that it might nevertheless have jurisdiction if the district court's order could be construed as an injunction. To decide that issue, the Court of Appeals emphasized that it had to examine the order to determine "what the court actually did, not what it said it did." If the district court's order

functioned as an injunction, it was appealable regardless of how the district court labeled it.

To function as an injunction, the district court's order had to give some relief sought in the complaint, be enforceable by contempt, and provide a remedy that was equitable. The Court of Appeals held that an order requiring an insurance company to pay for a tort defendant's defense in an ongoing case was just such an order, and it therefore had appellate jurisdiction to hear Westfield's appeal. Although not characterized as injunctive relief by the district court, the order that Westfield "prospectively . . . provide defense to Ramara" *substantively* provided an equitable remedy, and that was all that was needed. Accordingly, the fact that the district court purported to strike Westfield's notice of appeal was of no consequence because the district court was divested of jurisdiction to take such action once Westfield's appeal was filed.

The Third Circuit's decision demonstrates that even where a party does not seek relief it considers equitable, an order granting prospective relief — even relief as common as a requirement to pay for a defense under an insurance policy — can contain sufficient hallmarks of an injunction to be immediately appealable. The way an order functions, rather than how it is labeled, will control the result. ♦

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