

AVCO CORPORATION, on behalf of its TEXTRON AVCO DIVISION, Plaintiff	: IN THE COURT OF COMMON PLEAS OF : AVCO COUNTY, PENNSYLVANIA : JURY TRIAL DEMANDED : : NO. 03-00,810 : : CIVIL ACTION – LAW : : : : ORDER DISSOLVING INJUNCTION
vs.	
INTERSTATE FORGING INDUSTRIES, INC., CITATION WISCONSIN FORGING, LLC, and CITATION CORPORATION Defendants	

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AVCO CORPORATION, on behalf of its TEXTRON AVCO DIVISION, Plaintiff	: IN THE COURT OF COMMON PLEAS OF : AVCO COUNTY, PENNSYLVANIA : JURY TRIAL DEMANDED : : NO. 03-00,888 : : CIVIL ACTION – EQUITY : : : : ORDER DISSOLVING INJUNCTION
vs.	
INTERSTATE FORGING INDUSTRIES, INC., CITATION WISCONSIN FORGING, LLC, and CITATION CORPORATION Defendants	

***Date: June 25, 2004***

**OPINION and ORDER**

Before the Court is the Motion to Vacate Stay filed May 4, 2004 by Plaintiff AVCO Corporation. The Court will grant the Motion for the reasons set forth in the following Opinion.

**Background**

AVCO Corporation (“AVCO”) has commenced two actions on behalf of its Textron Lycoming Division against Interstate Forging Industries, Inc., Citation Wisconsin Forging, LLC, and Citation Corporation (collectively, “Interstate”). AVCO filed and served a Complaint at law to No. 03-00,810 on June 6, 2003, seeking damages for defective crankshafts

supplied by Interstate. That same day, AVCO also filed a Complaint in equity to No. 03-00,888, to compel Interstate to comply with its agreement to deliver crankshafts to AVCO.

On October 2, 2003, this Court entered an Order staying the proceedings because of an anti-suit injunction entered against AVCO in Grimes County, Texas. The Texas action had been initiated against AVCO by Interstate Southwest, an affiliate of Interstate and/or Citation (“Interstate Southwest” will also collectively be referred to as “Interstate”).

The October 2, 2003 Order of this Court stayed the Lycoming County proceedings “pending resolution of the Texas injunction issues.” On May 4, 2004, the Fourteenth Court of Appeals of Texas issued its Opinion and Judgment, which reversed the Texas trial court’s decision, which had implemented the injunction. On the same day, AVCO moved to vacate the October 2, 2003 Stay Order. Interstate filed a response on May 10, 2004. Argument was held before this Court on June 1, 2004.

**Discussion**

The issue before the Court is whether or not the Texas Court of Appeals ruling has dissolved the injunction issued by the trial court in Grimes County, Texas. The opinion of the Fourteenth Court of Appeals filed May 4, 2004 held that the trial court had abused its discretion in issuing the injunction and stated, “Accordingly, the trial court’s Order granting the anti-suit injunction is reversed and the injunction is dissolved.” AVCO’s Motion to Vacate Stay Order, Exhibit B (Fourteenth Court of Appeals of Texas Opinion, p. 13). Also attached as part of Exhibit B is the judgment of the Fourteenth Court of Appeals dated May 4, 2004, which provides specifically the following:

This cause, an appeal from an injunction in favor of appellee, Interstate Southwest Ltd., signed September 25, 2003, was heard

on the transcript of record. We have inspected the record and find the trial court erred in granting the injunction. We therefore order the judgment of the court below **REVERSED** and the injunction **DISSOLVED**.

We order appellee, Interstate Southwest, Ltd., to pay all costs incurred in this appeal. We further order this decision certified below for observance.

AVCO's Motion to Vacate Stay Order, Exhibit B (Judgment of the Fourteenth Court of Appeals of Texas).

The foregoing Opinion and Judgment seem to dissolve the Texas trial court's injunction. If the injunction has been dissolved, then there has been a resolution of the Texas injunction issues as contemplated by this Court's October 2, 2003 Order and the stay we ordered in this case should be lifted. Interstate, however, asserts that under Texas law the order dissolving the Texas injunction has yet to be entered and the Texas injunction issues remain unresolved. This is because its motion for rehearing is pending before the Fourteenth Court of Appeals and, if denied, Interstate has the right to file a petition for review to the Texas Supreme Court. Furthermore, Interstate maintains that a mandate has not been issued by the Fourteenth Court of Appeals re-vesting the trial court with jurisdiction and such mandate is necessary to dissolve the Grimes County injunction.

The argument of Interstate seems to hinge on interpretation of Rule 18 of the Texas Rules of Appellate Procedure ("Texas R.App.P."), which relates to the issuance of a mandate following the rendering of a judgment in the appellate court. Under Rule 18.1, a mandate is to be issued by the clerk of the appellate court to the lower court ten days after the time expires for filing a motion to extend time to file a petition for review or motion for rehearing, if no review hearing or motion for rehearing or motion to extend time is pending.

Under Rule 18.6 of the Texas R.App.P., the appellate court's judgment on an appeal from an interlocutory order is to take effect when the mandate is issued.

AVCO disagrees. It argues that the language of the judgment directing that the decision be certified below for observance is a mandate as contemplated by Rule 18.6. Alternatively, AVCO argues that if judgment is not a mandate, then one is not necessary to dissolve the injunction.

Interstate in support of its position that a specific mandate is necessary cites to the case of *Dixie Gas and Fuel Company v. Jacobs, et al*, 66 S.W.2d 446 (1933), which holds a mandate is the direction to the lower court to abide by the judgment of the appellate court and re-vests jurisdiction in the lower court. *Id.*, at 448. *See, also, Universal Life Ins. Co., et al v. Giles*, 1998 Tex. App. Lexis 6313, 8. Interstate, citing *Dixie, supra*, argues the issuance of a mandate is a substantive requirement. AVCO, citing *Universal, supra*, argues a mandate is only a procedural/clerical function and not necessary to render a judgment operative.

*Dixie, supra*, involved a personal injury suit for damages in which the plaintiffs had won a verdict. Defendants appeal resulted in a reversal and the case was remanded for a new trial. Plaintiffs failed to pay the costs as directed by the appellate court order, and, therefore, a mandate returning the case to the trial court for trial was not issued. Thereafter, plaintiffs filed a new suit in the trial court. Defendants objected to the institution of the new action on the basis of a lack of jurisdiction since the mandate had not been issued in the first case re-vesting the trial court with the authority to proceed. Defendants' objection was upheld by the Court of Civil Appeals of Texas because jurisdiction had remained in the appellate court until the mandate was issued. *Dixie, supra* at 448.

We do not believe that the *Dixie* case rationale controls our decision. It would not be rational for Interstate to be able to delay the dissolution of the injunction until such time as they would pay the costs. Also, it must be recognized that Rule 18.5 of the Texas R.App.P. now provides for a mandate to issue without payment of costs. *Dixie* still appears to require a mandate be issued in order to re-vest the Texas trial court with jurisdiction to proceed. Therefore, all a delay in issuing the mandate would accomplish would be to preclude Plaintiffs in the Texas case from moving forward with a trial or other proceedings in Texas. However, a re-vesting of jurisdiction is not necessary to dissolve the injunction.

Rule 18.6, Texas R.App.P. provides:

The appellate court's judgment on an appeal from an interlocutory order takes effect when the mandate is issued. The court may issue the mandate with its judgment or delay the mandate until the appeal is finally disposed of. If the mandate is issued, any further proceeding in the trial court must conform to the mandate.

This Court finds that when the Fourteenth Court of Appeals in its judgment order of May 2004, stated, "We further order this decision certified below for observance" that it was electing to issue a mandate with its order under Rule 18.6 and the judgment dissolving the injunction was therefore dissolved on that date.

We also believe this result is consistent with the ruling in *Universal, supra*, at 8, which held the issuance of the mandate is not necessary to render a judgment final and its issuance is a procedural function not affecting jurisdiction.

It is clear that the Fourteenth Court of Appeals dissolved the Grimes County injunction, directed Southwest to pay all costs incurred in the appeal and further ordered the decision certified below for observance. Even if a mandate has not issued re-vesting

jurisdiction in the Texas trial court, the Texas injunction is no longer operable as to the proceedings in this Court. A review of the Fourteenth Court of Appeals' docket concerning the Texas matter ([www.14thcoa.courts.state.tx.us](http://www.14thcoa.courts.state.tx.us)) that Interstate has filed a motion for rehearing, which is scheduled to be argued on June 21, 2004. However, there is no indication on the docket or from any other source that the Fourteenth Court of Appeals' judgment dissolving the anti-suit injunction is stayed, recalled, or vacated.

This Court does not believe that the issuance of a mandate or other document is necessary by the Fourteenth Court of Appeals to decide the present Motion to Vacate Stay Order. The Court believes that both the Opinion language and the judgment are clear and that the Grimes County trial court anti-suit injunction has been dissolved.

Therefore, the Court concludes that the requirements contemplated by its October 2<sup>nd</sup> Order have been met. Accordingly, the following Order will be entered.

**ORDER**

It is hereby ORDERED and DIRECTED as follows:

1. The May 4, 2004 Motion to Vacate Stay Order of AVCO Corporation on behalf of its Textron Lycoming Division, is GRANTED.
2. The stay order entered on October 2, 2003 is hereby VACATED and DISSOLVED.
3. A scheduling conference will be held in this case on Thursday, July 8, 2004 at 2:00 p.m. At that time this Court will also consider the Motion to Bifurcate filed by AVCO on May 28, 2004. A separate scheduling order this date will be issued in relation to the Motion to Bifurcate. Briefs on the Motion to Bifurcate will be optional.

BY THE COURT,

William S. Kieser, Judge

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