

**COURT OF COMMON PLEAS  
CLERMONT COUNTY, OHIO**

<b>SANTORO &amp; SANTORO CO., INC.</b>	:	
Plaintiff	:	<b>CASE NO. 2009 CVH 02177</b>
vs.	:	<b>Judge McBride</b>
<b>GALLENSTEIN COMPANIES, LLC, et al.</b>	:	<b>DECISION/ENTRY</b>
Defendants	:	

Gregory A. Keyser, counsel for plaintiff and counterdefendant Santoro & Santoro Company, Inc., 6657 Hitching Post Lane, Cincinnati, Ohio 45230.

Nichols, Speidel & Nichols, Donald W. White, attorney for the defendants and counterclaimants Gallenstein Companies, LLC, MiamiView Properties, LLC, MiamiView Holdings, LLC, and American Southern Insurance Company, 237 Main Street, Batavia, Ohio 45103-2979.

This cause is before the court for consideration of a motion to compel filed by the plaintiff Santoro & Santoro Company, Inc. on November 4, 2011.

On May 9, 2011, the parties filed a Joint Stipulation of Dismissal which states that they were thereby dismissing all claims and counterclaims filed in the present matter without prejudice pursuant to Civ.R. 41(A). This joint stipulation of dismissal disposed of the case and was effective as of the date it was filed.<sup>1</sup>

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<sup>1</sup> *Wyman v. T.N.L. Invest. & Realty Co., Inc.* (Aug. 26, 2010), 8<sup>th</sup> Dist. No. 94378, ¶ 7.

Ohio law is clear that, when a case has been voluntarily dismissed pursuant to Civ.R. 41(A)(1), the trial court is divested of jurisdiction to issue any further orders or judgments in the matter.<sup>2</sup> In order for a court to retain jurisdiction to enforce the terms of a settlement agreement, the terms of that agreement, which include granting the court continuing jurisdiction over the enforcement of the matter, must be embodied in the order of dismissal or a separate order must be entered by the court containing a provision for the court's continuing jurisdiction over disputes arising out of the settlement agreement.<sup>3</sup> If there is only entered of record a general and unconditional dismissal of the action, the court cannot entertain any subsequent motion to enforce the settlement agreement.<sup>4</sup> In such a situation, "a party seeking to enforce the agreement must either file a new, separate action for breach of contract or a motion to vacate the dismissal order."<sup>5</sup>

The joint stipulation of dismissal filed in the present action is general and unconditional and contains no language giving the court continuing jurisdiction over enforcement of the settlement agreement between the parties. As a result, this court has no jurisdiction to hear or rule upon the plaintiff's motion to compel.

**IT IS SO ORDERED.**

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<sup>2</sup> See, e.g., *State ex. rel. Fifth Third Mtge. Co. v. Russo* (2011), 129 Ohio St.3d 250, 951 N.E.2d 414, 2011-Ohio-3177, ¶ 17; and *Harper v. Frantz*, 61 Ohio App.3d 341, 343, 572 N.E.2d 788 (Ohio App. 12<sup>th</sup> Dist., 1989).

<sup>3</sup> *Grace v. Howell* (Aug. 6, 2004), 2<sup>nd</sup> Dist. No. 20283, 2004-Ohio-4120, ¶ 12, citing *Kokkonen v. Guardian Life Ins.Co. Of America* (1994), 511 U.S. 375, 114 S.Ct. 1673, 128 L.Ed.2d 391.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

DATED: \_\_\_\_\_

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Judge Jerry R. McBride

**CERTIFICATE OF SERVICE**

The undersigned certifies that copies of the within Decision/Entry were sent via Facsimile this 28th day of November 2011 to all counsel of record and unrepresented parties.

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Tammy Merz