UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TRANS-INDUSTRIES, INC.,

Debtor,

RICHARD A. SOLON,

Appellant,

v.

Case Number 10-10401
Honorable David M. Lawson

DAVID W. ALLARD,

Appellee,
_____/

ORDER DISMISSING APPEAL

This matter is before the Court on an interlocutory appeal by defendant Richard Solon of an order entered by the bankruptcy court denying a motion to strike a jury demand in an adversary proceeding. The Trustee of debtor Trans-Industries, Inc. sued Solon and others, all of whom were officers or otherwise affiliated with the bankrupt company, alleging that the defendants mishandled the debtor's employee benefit plan and caused damage to the plan beneficiaries. The complaint alleged breach of fiduciary duty under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.*, and breach of contract under common law. The Trustee demanded a jury, and Solon moved to strike the jury demand.

The appeal was argued in August 2010 and remains under advisement in this Court. However, on May 17, 2011, the Court received a letter from counsel for the Trustee informing the Court that the parties had stipulated to withdraw the jury demand, and the bankruptcy court had entered an order to that effect withdrawing the jury demand. The bankruptcy court's order was made a part of the record in this Court.

Withdrawal of the jury demand renders moot the issue before the Court and deprives the Court of appellate jurisdiction. The doctrine of mootness is an extension of the Constitution's standing requirement and is part of the "irreducible constitutional minimum" necessary for a justiciable case or controversy under Article III. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). "[A] federal court has a continuing duty to ensure that it adjudicates only genuine disputes between adverse parties," *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 584 (6th Cir. 2006), and must question mootness at "every stage of a case," *McPherson v. Mich. High Sch. Athletic Ass'n, Inc.*, 119 F.3d 453, 458 (6th Cir. 1997) (en banc). "Mootness results when events occur during the pendency of a litigation which render the court unable to grant the requested relief." *Carras v. Williams*, 807 F.2d 1286, 1289 (6th Cir. 1986); *see also United States v. City of Detroit*, 401 F.3d 448, 450-51 (6th Cir. 2005) (noting that "mootness generally depends on 'whether the relief sought would, if granted, make a difference to the legal interests of the parties'" (quoting *McPherson*, 119 F.3d at 458)); *In re DSC, Ltd.*, 486 F.3d 940, 945 (6th Cir. 2007) (noting that a claim is moot "when it is factually, not legally, impossible to receive such relief" (internal citations and quotation marks omitted)). "If 'the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome,' then the case is moot and the court has no jurisdiction." *Libertarian Party of Ohio*, 462 F.3d at 584 (quoting *Los Angeles Cnty. v. Davis*, 440 U.S. 625, 631 (1979)). "A federal court has no authority to render a decision upon moot questions or to declare rules of law that cannot affect the matter at issue." *Cleveland Branch, N.A.A.C.P. v. City of Parma*, 263 F.3d 513, 530 (6th Cir. 2001) (citing *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992)).

When a party resolves or abandons an issue raised on appeal, there is no live controversy left to adjudicate. *See Remus Joint Venture v. McAnally*, 116 F.3d 180, 185 (6th Cir. 1997) ("[O]ur decision that no Article III case or controversy exists rests on a simple fact: plaintiffs voluntarily have abandoned an argument that was necessary for them to prevail in this federal court action."); *Patriot Cinemas, Inc. v. General Cinema Corp.*, 834 F.2d 208, 215 (1st Cir. 1987) ("[W]e are presented with an appeal from the dismissal of a count which the plaintiff no longer wishes to litigate. Such an appeal does not present a live controversy."). "'The test for mootness "is whether the relief sought would, if granted, make a difference to the legal interests of the parties. . . ."'" *McPherson*, 119 F.3d at 458 (quoting *Crane v. Indiana High Sch. Athletic Ass'n*, 975 F.2d 1315, 1318 (7th Cir. 1992)). This Court is not able to render any meaningful relief to the appellant because he already has gained by agreement that which he seeks on appeal. Any opinion the Court would render on the propriety of the jury demand — since withdrawn — would be merely advisory.

It has been observed generally that "voluntary cessation of a challenged practice does not moot a case." *Cooey v. Strickland*, 588 F.3d 924, 926 (6th Cir. 2009) (quoting *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 473 (6th Cir. 2008)). However, in this case, the jury demand was withdrawn by stipulation, effectuating a settlement of the legal issue. When mootness results from settlement, the Court must dismiss the appeal, although it does not necessarily vacate the lower court's ruling. *See Alvarez v. Smith*, 558 U.S. ---, ---, 130 S. Ct. 576, 581-82 (citing *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 21 (1994)).

Withdrawal of the jury demand renders the present appeal moot, and neither party has standing to proceed with it. *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990) (holding that the

standing requirement limits federal courts to addressing "only actual, ongoing cases or controversies"). The Court, therefore, has no subject matter jurisdiction to adjudicate the claim raised by the appellant.

Accordingly, it is **ORDERED** that the appeal is **DISMISSED as moot**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: May 24, 2011

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on May 24, 2011.

s/Deborah R. Tofil
DEBORAH R. TOFIL