

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL KERZNER : CIVIL ACTION
 :
 v. :
 :
 GLOBAL UPHOLSTERY CO., LTD. :
 :
 v. :
 :
 FAULTLESS DOERNER :
 MANUFACTURING CO. : NO. 95-1209

MEMORANDUM ORDER

Plaintiff filed a motion for a new trial on the ground that the verdict of the jury in this case was "inadequate and contrary to the weight of evidence." Before defendant filed a response to that motion, plaintiff filed a notice of appeal.

The basis of plaintiff's appeal is not apparent. Presumably he is not appealing from the denial of a new trial since his motion has not been decided. Presumably he is not appealing from the mere entry of a judgment which must be done promptly after a jury decides a case, see Fed. R. Civ. P. 58, and to which the grant of a new trial is linked. See Fed. R. Civ. P. 59(b) & (d). Moreover, plaintiff never objected to the entry of judgment upon the verdict of the jury when the court advised the parties on the record that this would be done the day following the return of the verdict. In any event, the filing of an appeal normally divests the district court of jurisdiction. Where a new trial motion has been filed, however, the time for appeal runs from the date of disposition and a notice of appeal filed while

such a motion is pending is ineffective to commence an appeal from the judgment or order in question. See Fed. R. App. P. 4(a)(4).

The court is thus perplexed. It is unclear whether plaintiff has asserted some ground for appeal unrelated to his motion and now wishes to abandon the motion or needlessly appealed and does wish to pursue his motion. The court is reluctant to proceed until plaintiff's actions and wishes can be clarified.

ACCORDINGLY, this day of July, 1997, **IT IS**
HEREBY ORDERED that plaintiff shall advise the court within seven days that he is abandoning or pursuing his motion for a new trial.

BY THE COURT:

JAY C. WALDMAN, J.