

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EMPIRE FINANCIAL SERVICES, INC.,	§ § No. 504, 2000 § §
Plaintiff Below, Appellant,	§ §
v.	§ Court Below: Superior Court § of the State of Delaware. § in and for New Castle County
THE BANK OF NEW YORK (DELAWARE),	§ C.A. No. 99C-01-207 § §
Defendant Below, Appellee.	§ §

Submitted: November 1, 2000
Decided: November 13, 2000

Before **VEASEY**, Chief Justice, **WALSH** and **STEELE**, Justices.

ORDER

This 13th day of November 2000, it appears to the Court that:

(1) On October 17, 2000, this Court received the appellant, Empire Financial Services, Inc.'s, notice of appeal from the Superior Court's decision of September 18, 2000, which granted a motion to dismiss the Bank of New York (Delaware) in the above-captioned matter.

(2) On October 19, 2000, the Clerk of the Supreme Court issued a notice pursuant to Supreme Court Rule 29(b) directing Empire to show cause why the appeal should not be dismissed for failure to comply with Supreme

Court Rule 42 when taking an appeal from an apparent interlocutory order. Empire filed a response to the Notice to Show Cause on November 1, 2000. In its response, Empire states it is not seeking an appeal pursuant to Supreme Court Rule 42. It merely wished to preserve its right to appeal given its uncertainty regarding the finality of Superior Court's decision. Empire also states that there are claims pending against another party to the Superior Court case that remain unresolved.

(3) Absent compliance with Rule 42, the jurisdiction of this Court is limited to the review of final judgment of trial courts.¹ An order is deemed final if the trial court has clearly declared its intention that the order be the court's "final act" in the case.² At the time Empire filed its appeal in this Court, there were claims that remained pending against other parties in the case in the Superior Court.

(4) The proceedings before the Superior Court are ongoing. Until all issues are disposed of, the judgment of September 18, 2000, is not final. Accordingly, an appeal from the Superior Court to this Court is premature absent

¹ *Julian v. State*, Del. Supr., 440 A.2d 990, 991 (1982).

² *J.I. Kislak Mortgage Corp. v. William Matthews, Builder, Inc.*, Del. Supr., 303 A.2d 648, 650 (1973).

compliance with the requirements for taking an interlocutory appeal in accordance with Supreme Court Rule 42. Appellant has not attempted to comply with this Rule.

NOW, THEREFORE, IT IS ORDERED that appellant's appeal is DISMISSED.

BY THE COURT:

/S/ E. Norman Veasey
Chief Justice