[Cite as *Bounce Properties, L.L.C. v. Rand*, 2010-Ohio-511.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92691

BOUNCE PROPERTIES, LLC

PLAINTIFF-APPELLANT

vs.

BERNARD E. RAND, ET AL.

DEFENDANTS-APPELLEES

JUDGMENT:
DISMISSED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-604491

BEFORE: Cooney, J., Kilbane, P.J., and Jones, J.

RELEASED: February 18, 2010

JOURNALIZED:

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COLLEEN CONWAY COONEY, J.:

{¶ 1} Bounce Properties, LLC ("Bounce") appeals the trial court's judgment in favor of Trudy and Michael Stack ("the Stacks") and Clear Channel Outdoor, Inc. ("Clear Channel") and against Bounce on Bounce's complaint to quiet title and for unjust enrichment. Because we lack jurisdiction over this untimely appeal, we dismiss it.

{¶ 2} In October 2006, Bounce sued Bernard Rand ("Rand"),[1] JAS Partnership ("JAS"), and Clear Channel to quiet title after it learned that Rand was profiting from the lease of a rooftop billboard on a building that Bounce owned.[2] In December 2006, Rand answered, counterclaimed against Bounce seeking declaratory judgment, and filed a third-party complaint against JAS. Thereafter, Bounce and Rand dismissed their claims against JAS. Bounce, Rand, and Clear Channel moved for summary judgment, but the trial court denied the motions and ordered the parties to proceed to trial before a magistrate. After the trial, the magistrate issued his recommendations, and the parties filed their objections to the magistrate's decision.

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[1]Rand died during the pendency of the litigation, and the Stacks were substituted in his place.

[2]Rand had originally owned the building and sold it to JAS, which in turn sold it to Bounce.

{¶ 3} Thereafter, the trial court entered judgment on December 10, 2008, holding:

> "To the extent that the objections to the October 03, 2008, magistrate's decision object to the magistrate's finding that any lease entered into by Defendant Rand, his successors and assigns, prior to September 19, 2011, automatically terminate on September 19, 2011, said objections are sustained. Consistent with the remaining findings of the magistrate, the court finds that the deed reservation reserves in Defendant Rand, his successors and assigns, the right to enter into a rooftop-sign lease whose term extends past September 19, 2011, when Rand's reserved rights end, however, such a lease agreement must be entered into prior to September 19, 2011. As of September 19, 2011, the owner of the subject property automatically assumes landlord status under the ongoing lease. Except as noted herein, the remainder of the magistrate's decision attached hereto and incorporated herein is adopted. Judgment rendered in favor of defendants Trudy Stack, Michael Stack, and Clear Channel Outdoor, Inc. and against Plaintiff Bounce Properties, LLC on its complaint to quiet title and for unjust enrichment."

{¶ 4} Then on December 16, 2008, the trial court journalized the following entry:

> "The court order issued 12/10/2008, granting judgment in favor Defendants Trudy Stack, Michael Stack, and Clear Channel Outdoor, Inc. and against Plaintiff Bounce Properties, LLC on its complaint to quiet title and for unjust enrichment is a final order. Pursuant to Civ. R. 54(B) the court finds there is no just cause for delay. Final."

{¶ 5} Bounce now appeals. Clear Channel and the Stacks argue that Bounce's appeal is untimely because the December 10th journal entry disposed of the entire case. Bounce counters that because it appealed within 30 days of the December 16th entry, its appeal is timely. We find Clear Channel's and the Stacks' argument more persuasive.

{¶ 6} App.R. 4(A) requires that an appeal be filed within thirty days of the date of the entry of the judgment being appealed. It is well-settled that an appellate court lacks jurisdiction over any appeal that is not timely filed. See, e.g., *State ex rel. Pendell v. Adams County Bd. of Elections* (1988), 40 Ohio St.3d 58, 60, 531 N.E.2d 713.

{¶ 7} A judgment that resolves all of the parties' claims is a final judgment even if that judgment lacks explicit Civ.R. 54(B) language. In *General Acc. Ins. Co. v. Insurance Co. of North America* (1989), 44 Ohio St.3d 17, 540 N.E.2d 266, the Ohio Supreme Court held,

> "the absence of Civ.R. 54(B) language will not render an otherwise final order not final. Thus, when all claims and parties are adjudicated in an action, Civ.R. 54(B) language is not required to make the judgment final. See *Commercial Natl. Bank v. Deppen* (1981), 65 Ohio St.2d 65, 19 O.O.3d 260, 418 N.E.2d 399. Furthermore, even though all the claims or parties are not expressly adjudicated by the trial court, if the effect of the judgment as to some of the claims is to render moot the remaining claims or parties, then compliance with Civ.R. 54(B) is not required to make the judgment final and appealable. *Wise v. Gursky* (1981), 66 Ohio St.2d 241, 20 O.O.3d 233, 421 N.E.2d 150; see, also, *Harleysville Mut. Ins. Co. v. Santora* (1982), 3 Ohio App.3d 257, 3 OBR 289, 444 N.E.2d 1076."

{¶ 8} In the instant case, the December 10th judgment entry resolved all of the parties' claims, so it was a final appealable order. Bounce should have appealed within 30 days of that order. Bounce maintains that the judgment entry did not resolve all of the claims in Rand's counterclaim, so it was not a final appealable order, but we find that argument disingenuous. In his counterclaim, Rand sought a declaration that the deed through which he conveyed the property

to Bounce's predecessor, JAS, contained a reservation allowing him and his heirs to enter into new rooftop-sign leases 1) until at least September 19, 2011, and 2) with terms extending beyond September 19, 2011. The magistrate determined that Rand, his successors and assigns owned the lease rights until September 19, 2011. The trial court, therefore, impliedly rejected Rand's claim that he and his successors and assigns owned the lease rights beyond September 19, 2011. Moreover, none of the parties argued in their objections that the magistrate had failed to rule on any of the pending claims. The December 10th judgment entry declared the parties' rights, creating a final appealable order.

{¶ 9} Because the December 10th order was final and appealable, Bounce should have appealed within 30 days of that date. Its January 15th notice of appeal was untimely. The trial court's December 16th entry did not extend the time to appeal, and indeed it declared that the December 10th order was a final order.

{¶ 10} Therefore, we lack jurisdiction over this untimely appeal. The appeal is dismissed.

It is ordered that appellees recover of appellant costs herein taxed.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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COLLEEN CONWAY COONEY, JUDGE

MARY EILEEN KILBANE, P.J., and
LARRY A. JONES, J., CONCUR