

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

KONINKLIJKE AHOLD, N.V.,)	
)	
Plaintiff/Counterclaim-Defendant,)	
)	
v.)	CASE NO. 2:10-cv-1060-MEF
)	(WO – Do Not Publish)
MILLBROOK COMMONS, LLC, <i>et al.</i> ,)	
)	
Defendants/Counterclaim-)	
Plaintiffs.)	

ORDER

Before the Court is Defendant/Counterclaim Plaintiff Millbrook Commons' ("Millbrook") Motion to Extend Time for Filing Notice of Appeal. (Doc. #63.) Millbrook moves this Court to enter an order declaring that, pursuant to Federal Rule of Appellate Procedure 4(a)(4), Millbrook's timely-filed Federal Rule of Civil Procedure 54(d)(2) Motion for Reasonable Attorneys' Fees and Costs of Litigation, or, in the Alternative, Motion to Alter or Amend (Doc. #61) has the same effect on the deadline for filing a Notice of Appeal as a motion made under Federal Rule of Civil Procedure 59 to alter or amend the judgment. *See* Fed. R. App. P. 4(a)(4)(A)(iii) (providing that the time for filing an appeal begins to run on the date the district court enters an order disposing of a Civil Rule 54 motion for attorneys' fees, if the district court extends the time to appeal under Civil Rule 58).

The Court entered final judgment in this case on November 20, 2012. (Doc. #60.) Pursuant to Appellate Rule 4(a)(1)(A), the parties' time for filing a notice of appeal is due to expire on December 20, 2012. *See* Fed. R. App. P. 4(a)(1)(A) (providing that a notice of

appeal “must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.”).

On December 4, 2012, Millbrook timely filed a Rule 54(d)(2) motion seeking reasonable attorneys’ fees and costs. (Doc. #61). The Court then ordered that Plaintiff Koninklijke Ahold (“Ahold”) show cause as to why Millbrook’s Rule 54 motion should not be granted, with a response deadline of December 21, 2012. (Show Cause Order, Doc. #62 at 1.)

Federal Rule of Civil Procedure 58(e) provides:

[I]f a timely motion for attorney’s fees is made under Rule 54(d)(2), the court may act before a notice of appeal has been filed and become effective to order that the motion have the same effect under Federal Rule of Appellate Procedure 4(a)(4) as a timely motion under Rule 59.

Fed. R. Civ. P. 58(e). Because Millbrook timely filed its Rule 54(d)(2) motion for attorneys’ fees, which has the same effect on the appeal deadline as a timely motion made under Civil Rule 59, and because this Court has the authority under Rule 58(e) to extend the notice of appeal deadline in this case, the Court finds that the parties’ notice of appeal deadline is due to be extended.

Accordingly, it is hereby ORDERED that:

(1) Millbrook’s Motion to Extend Time for Filing Notice of Appeal (Doc. #63) is GRANTED, and;

(2) The deadline for filing a Notice of Appeal in the above-styled action is EXTENDED through and including **January 20, 2012**.

DONE this the 18th day of December, 2012.

/s/ Mark E. Fuller

UNITED STATES DISTRICT JUDGE