

THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY, OHIO

J.P. MORGAN MORTGAGE ACQUISITION CORP.,	:	MEMORANDUM OPINION
	:	
Plaintiff-Appellee,	:	CASE NO. 2009-G-2915
	:	
- vs -	:	
	:	
STEVE N. MEDVEC, et al.,	:	
	:	
Defendants-Appellants.	:	

Civil Appeal from the Court of Common Pleas, Case No. 09 F 000375.

Judgment: Appeal dismissed.

Melissa N. Meinhart, Manley, Deas, Kochalski, L.L.C., P.O. Box 165028, Columbus, OH 43216-5028, and *Nelson M. Reid*, Bricker & Eckler, L.L.P., 100 South Third Street, Columbus, OH 43215-4236 (For Plaintiff-Appellee).

Kelly Adelman and *Jeffrey J. Fanger*, 600 Superior Avenue, East, #1300, Cleveland, OH 44114 (For Defendants-Appellants).

CYNTHIA WESTCOTT RICE, J.

{¶1} On August 13, 2009, appellants, Steve N. Medvec and Jessica L. Medvec, filed a notice of appeal from a July 17, 2009 judgment entry of the Geauga County Court of Common Pleas, in which the trial court denied appellants' motion to dismiss the complaint filed by appellee, J.P. Morgan Mortgage Acquisition Corp.

{¶2} On September 8, 2009, appellee filed a motion to dismiss the appeal for lack of jurisdiction. Appellee posits that appellants have appealed from the denial of a

Civ.R. 12 motion to dismiss, which is not a final order within the meaning of R.C. 2505.02.

{¶3} On September 25, 2009, appellants filed a motion for leave to file a response to the motion to dismiss and a response brief to appellee's motion to dismiss. In their response, appellants allege that this case appears to be an issue of first impression and involves a very narrow issue of "whether or not the denial of a failure to state a claim upon which relief can be granted in light of a failure to mitigate where [appellee] but for their own unclean hands would not have standing to bring the action can be appealed."

{¶4} This court has stated that in order "[f]or this court to have jurisdiction, the appealed judgment must be a final appealable order pursuant to R.C. 2505.02. This court has held that the denial of a motion to dismiss a complaint is not a final appealable order." *Sason v. Shepherd*, 11th Dist. No. 2007-L-199, 2008-Ohio-173, at ¶3, citing *Hill v. Home & Roam Pools*, 11th Dist. No. 2003-A-0097, 2003-Ohio-5862. See, also, *Ferrell v. Standard Oil Co. of Ohio* (1984), 11 Ohio St.3d 169, 171.

{¶5} Based upon the foregoing analysis, the judgment of the trial court in this matter is not a final appealable order. Thus, this court is without jurisdiction to consider this appeal. Appellee's motion to dismiss is granted, and this appeal is hereby dismissed for lack of a final appealable order.

{¶6} Appeal dismissed.

DIANE V. GRENDELL, J.,
TIMOTHY P. CANNON, J.,
concur.