

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEauga COUNTY, OHIO**

WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR STRUCTURED ASSET SECURITIES CORPORATION MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-BC1,	:	MEMORANDUM OPINION
	:	CASE NO. 2014-G-3244
Plaintiff-Appellee,	:	
- VS -	:	
PHILIP S. LAWES, II, et al.,	:	
Defendants-Appellants.	:	

Civil Appeal from the Geauga County Court of Common Pleas, Case No. 13 CF 000907.

Judgment: Appeal dismissed.

Laura C. Infante and Jason A. Whitacre, The Law Offices of John D. Clunk Co., L.P.A., 4500 Courthouse Boulevard, Suite 400, Stow, OH 44224 (For Plaintiff-Appellee).

Bridget M. Wasson, Doucet & Associates Co., L.P.A., 700 Stonehenge Parkway, Suite 2B, Dublin, OH 43017 (For Defendants-Appellants).

THOMAS R. WRIGHT, J.

{¶1} On December 17, 2014, appellants, Phillip S. Lawes, II, and Rebecca Lawes, by and through counsel of record, Bridget M. Wasson, filed a notice of appeal from a November 20, 2014 judgment entry of the Geauga County Court of Common Pleas.

{¶2} A review of the record in this matter reveals that on October 3, 2013, appellee, Wells Fargo Bank, National Association, as Trustee for Structured Asset Securities Corporation Mortgage Pass-Through Certificates, Series 2007-BC1, initiated a foreclosure action against appellants, Bainbrook Homeowners Club and the Geauga County Treasurer. In lieu of filing an answer, on December 9, 2013, appellants filed a motion to dismiss, which was denied by the trial court. On February 27, 2014, appellants filed an answer and counterclaim against appellee. Appellee filed a motion to dismiss the counterclaim on March 27, 2014, which was granted by the trial court on June 2, 2014. On August 20, 2014, appellee filed a motion for summary judgment against appellants.

{¶3} In a November 20, 2014 entry, the trial court granted appellee's motion for summary judgment and instructed appellee to provide the court with a separate order reflecting that decision. On December 11, 2014, appellee filed a motion for default judgment against Bainbrook Homeowners Club, which has not yet been ruled on by the trial court. On December 17, 2014, appellants filed the instant appeal from the November 20, 2014 entry. On December 22, 2014, the trial court issued an order indicating that the court "finds itself without jurisdiction to render a decision on the motion for default judgment at this time."

{¶4} On December 29, 2014, appellee filed a motion to dismiss the appeal claiming that this court does not have jurisdiction to consider this appeal since the entry appealed from was not a final appealable order. Appellee asserts that the claims against Bainbrook Homeowners Club are still pending, and the trial court's November 20, 2014 entry did not contain the requisite Civ.R. 54(B) language. In addition, appellee

maintains that the trial court instructed it to prepare an appropriate order entering summary judgment, which has not been done as of yet.

{¶5} On January 8, 2015, appellants filed a brief in opposition to the motion to dismiss requesting that this court deny appellee's motion to dismiss.

{¶6} Initially, we must determine whether there is a final, appealable order, as this court may entertain only those appeals from final judgments or orders. *Noble v. Colwell*, 44 Ohio St.3d 92, 96 (1989). According to Section 3(B)(2), Article IV of the Ohio Constitution, a judgment of a trial court can be immediately reviewed by an appellate court only if it constitutes a "final order" in the action. *Germ v. Fuerst*, 11th Dist. No. 2003-L-116, 2003-Ohio-6241, ¶3. If a lower court's order is not final, then an appellate court does not have jurisdiction to review the matter, and the matter must be dismissed. *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.*, 44 Ohio St.3d 17, 20 (1989). For a judgment to be final and appealable, it must satisfy the requirements of R.C. 2505.02 and if applicable, Civ.R. 54(B). See *Children's Hosp. Med. Ctr. v. Tomaiko*, 11th Dist. No. 2011-P-0103, 2011-Ohio-6838, ¶3.

{¶7} Civ.R. 54(B) provides the following:

When more than one claim for relief is presented in an action whether as a claim, counterclaim, cross-claim, or third-party claim, and whether arising out of the same or separate transactions, or when multiple parties are involved, the court may enter final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay. In the absence of a determination that there is no just reason for delay, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties, shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

{¶8} This court has repeatedly held that where there are multiple claims and/or parties involved, an entry entering final judgment as to one or more but fewer than all of the claims or parties is not a final, appealable order in the absence of Civ.R. 54(B) language stating that “there is no just reason for delay[.]” *Meffe v. Griffin*, 11th Dist. No. 2012-T-0032, 2012-Ohio-3642, ¶11. See also *Elia v. Fisherman’s Cove*, 11th Dist. No. 2010-T-0036, 2010-Ohio-2522, ¶6.

{¶9} Here, it appears that there are claims still pending in the trial court against Bainbrook Homeowners Club and without the inclusion of Civ.R. 54(B) language, no final, appealable order exists at this time. Further, appellee was ordered to provide the trial court with a separate order reflecting the granting of summary judgment in favor of appellee, which has not yet been done.

{¶10} Based upon the foregoing analysis, the motion to dismiss filed by appellee is hereby granted, and this appeal is dismissed due to lack of a final, appealable order.

{¶11} Appeal dismissed.

DIANE V. GRENDELL, J.,

COLLEEN MARY O’TOOLE, J.,

concur.