

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

JORI, LLC,	:	MEMORANDUM OPINION
Plaintiff-Appellant,	:	
- vs -	:	CASE NO. 2016-L-046
B2B INTERNATIONAL, LLC, et al.,	:	
Defendants-Appellees,	:	
- vs -	:	
JOHN FADDOUL,	:	
Third Party Defendant- Appellant.	:	

Civil Appeal from the Court of Common Pleas, Case No. 2015 CV 000814.

Judgment: Appeal dismissed.

Stanley M. Dub, 20600 Chagrin Boulevard, Suite 400, Shaker Heights, OH 44122 (For Plaintiff-Appellant and Third Party Defendant-Appellant).

Edgar H. Boles, Dinn, Hockman & Potter, LLC, 5910 Landerbrook Drive, Suite 200, Cleveland, OH 44124 (For Defendants-Appellees).

COLLEEN MARY O'TOOLE, J.

{¶1} This appeal is taken from an entry in which the Lake County Court of Common Pleas denied the partial motion for summary judgment of appellants, Jori, LLC and John Faddoul.

{¶2} The docket in this case reveals that on May 13, 2015, appellant Jori, LLC filed an action for rescission and damages pursuant to R.C. 1334.09 against appellees, B2B International, LLC and Elie Chamoun. Appellees answered the complaint and filed a counterclaim and third party complaint against appellant John Faddoul. Appellants moved for partial summary judgment on the issue of whether appellees are liable under count one of the complaint, which alleges violation of R.C. Chapter 1334. Appellees opposed the motion for partial summary judgment.

{¶3} In a judgment entry dated April 4, 2016, the trial court found that the motion for partial summary judgment was not well-taken and denied it. In an entry dated May 6, 2015, the trial court sua sponte clarified its April 4, 2016 ruling and found that the license agreement at issue did not meet the statutory definition of a business opportunity plan, and therefore, is not subject to the Ohio Business Opportunity Purchasers Protection Act. The trial court then ruled that Jori, LLC was not entitled to judgment as to count one of the complaint and denied the motion for partial summary judgment. The trial court entry noted that “[t]here is no just cause for delay.” On May 13, 2016, appellants filed the instant notice of appeal.

{¶4} On July 19, 2016, this court issued an entry ordering appellants to show cause why the appeal should not be dismissed by this court for lack of a final appealable order. In response to our entry, on July 27, 2016, appellants filed a brief in support of jurisdiction alleging that the appeal not be dismissed because the trial court decision meets the requirement of R.C. 2505.02 since it “determines the action and prevents a judgment.”

{¶5} We must determine if the entry appealed from is a final appealable order. According to Section 3(B)(2), Article IV of the Ohio Constitution, a judgment of a trial court can only be immediately reviewed by an appellate court if it constitutes a “final order” in the action. *Estate of Biddlestone*, 11th Dist. Trumbull No. 2010-T-0131, 2011-Ohio-1299, ¶ 3. If a lower court’s order is not final, an appellate court has no jurisdiction to review the matter and the matter must be dismissed. *Gen. Acc. Ins. Co. v. Ins. 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).

{¶6} Pursuant to R.C. 2505.02(B), there are seven categories of a “final order,” and if the trial court’s judgment satisfies any of them, it will be deemed a “final order” and can be immediately appealed and reviewed by a court of appeals.

{¶7} R.C. 2505.02(B) states that:

{¶8} “An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

{¶9} “(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

{¶10} “(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

{¶11} “(3) An order that vacates or sets aside a judgment or grants a new trial;

{¶12} “(4) An order that grants or denies a provisional remedy and to which both of the following apply:

{¶13} “(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

{¶14} “(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

{¶15} “(5) An order that determines that an action may or may not be maintained as a class action;

{¶16} “(6) An order determining the constitutionality of any changes to the Revised Code * * *;

{¶17} “(7) An order in an appropriation proceeding * * *.”

{¶18} Here, appellants have attempted to appeal the denial of a motion for partial summary judgment. The trial court’s entry does not fit within any of the categories of R.C. 2505.02. “An order denying a motion for summary judgment is not a final appealable order.” *State ex rel. Overmeyer v. Walinski*, 8 Ohio St.2d 23 (1966). Moreover, the denial of summary judgment is always reviewable on an appeal from a subsequent final judgment. *Sagenich v. Erie Ins. Group* (Dec. 12, 2003), 11th Dist. Trumbull No. 2003-T-0144, 2003 WL 22952586, at ¶ 3. Furthermore, the mere inclusion of Civ.R. 54(B) language into a non-final order does not transform it into a final and appealable order. *Sason v. Shepherd*, 11th Dist. Lake No. 2007-L-199, 2008-Ohio-173, at ¶ 3.

{¶19} Based upon the foregoing analysis, the judgment of the trial court is not a final appealable order. Appellants will have a meaningful and effective remedy by way

of an appeal once a final judgment is reached as to all claims and parties when the case is decided and/or dismissed. See *Johnson v. Warren Police Dept.*, 11th Dist. No. 2005-T-0117, 2005-Ohio-6904, at ¶14. Thus, this court is without jurisdiction to consider this appeal, and this appeal is hereby, sua sponte, dismissed for lack of a final appealable order.

{¶20} Appeal dismissed.

CYNTHIA WESTCOTT RICE, P.J.,

THOMAS R. WRIGHT, J.,

concur.