

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

RANDOLPH WORTHINGTON

Plaintiff-Appellant

-vs-

WELLS FARGO BANK MINNESOTA,
NA, et al.

Defendants-Appellees

JUDGES:

Hon. Julie A. Edwards, P. J.
Hon. William B. Hoffman, J.
Hon. John W. Wise, J.

Case No. 10 CA 40

OPINION

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common
Pleas, Case No. 09 CV 195

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

September 22, 2010

APPEARANCES:

For Plaintiff-Appellant

JOANN P. HOARD
One Marion Avenue
Suite 103
Mansfield, Ohio 44903

For Defendant-Appellee Jindo

HUNTER HAVENS
HERMAN, CAHN & SCHNEIDER
1301 East Ninth Street, Suite 500
Cleveland, Ohio 44114

For Defendant-Appellee Wells

DALE SMITH
THOMPSON HINE LLP
3900 Key Tower, 127 Public Square
Cleveland, Ohio 44144-1291

Wise, J.

{¶1} Plaintiff-Appellant Randolph Worthington appeals the February 26, 2010, decisions entered in the Richland County Court of Common Pleas granting partial summary judgment in favor of Defendant-Appellee Jindo Properties on the matter of punitive damages and also denying Appellant's motion to amend his complaint to add a party.

STATEMENT OF THE FACTS AND CASE

{¶2} In 2006, Plaintiff-Appellant Randolph Worthington filed a Complaint for conversion of his personal property against Defendants-Appellees, Wells Fargo Bank, Safeguard Properties, Inc. and Jindo Properties. Plaintiff voluntarily dismissed that complaint in December 2008.

{¶3} On February 11, 2009, Plaintiff-Appellant re-filed the case. In his Complaint, Appellant alleges that Appellees unlawfully entered upon his real property and wrongfully converted the contents of the building that housed his personal property, including his business tools and inventory.

{¶4} During the pendency of the previous case, all claims against Safeguard Properties were dismissed.

{¶5} On October 16, 2009, Appellee Wells Fargo filed a motion to dismiss the complaint as against Wells Fargo Bank alleging that Appellant failed to state a claim upon which relief can be granted. As of the filing of this appeal, the trial court has not ruled on the motion and Wells Fargo has not answered the complaint.

{¶6} On or about January 11, 2010, Appellee Jindo Properties filed a Motion for Partial Summary Judgment on the issue of punitive damages included in

Appellant's prayer for relief.

{¶7} On January 22, 2010, Appellant filed a motion to amend his complaint to conform to the evidence based on admissions included in Appellee Jindo's motion for summary judgment, to include actions in trespass, trespass to chattels and negligence.

{¶8} On or about February 8, 2010, Appellant discovered that Wells Fargo Bank had transferred all or some of its interests in the real property that was the subject of Appellant's foreclosure to Aurora Loan Services.

{¶9} On February 8, 2010, Appellant issued a second set of discovery requests to Wells Fargo. Wells Fargo's counsel refused to respond to discovery pending a decision on its motion to dismiss.

{¶10} On February 16, 2010, Appellant moved the trial court to amend the complaint to add Aurora Loan Services as a Defendant based on this information, stating such in the amended complaint which was attached to the motion.

{¶11} On February 26, 2010, the trial court granted Defendant Jindo Properties' motion for partial summary judgment against Appellant on the matter of punitive damages, stating that no genuine issues remained to be determined by a trier of fact regarding the matter of punitive damages.

{¶12} On February 26, 2010, the trial court also denied Appellant's motion to amend his complaint to add a necessary party, stating that the complaint failed to state a reason Aurora Loan Services should be joined as a necessary party.

{¶13} Appellant now appeals, raising the following assignments of error:

ASSIGNMENTS OF ERROR

{¶14} “I. THE TRIAL COURT ERRED IN GRANTING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT AS A MATTER OF LAW WHEN THERE REMAINED GENUINE ISSUES OF MATERIAL FACT THAT SHOULD BE PRESENTED TO A JURY REGARDING DEFENDANT, JINDO PROPERTIES’ LIABILITY FOR PUNITIVE DAMAGES.

{¶15} “II. THE TRIAL COURT ERRED IN DENYING PLAINTIFF’S MOTION TO AMEND HIS COMPLAINT TO ADD A NECESSARY PARTY.”

I., II.

{¶16} As a preliminary matter, we will first address Appellee Jindo Properties’ Motion to Dismiss Due to a Lack of a Final Appealable Order.

{¶17} An appellate court has jurisdiction to review and affirm, modify, or reverse judgments or final orders of the trial courts within its district. See Section 3(B)(2), Article IV, Ohio Constitution; see also R.C. §2505.02 and *Fertec, LLC v. BBC & M Engineering, Inc.*, 10th Dist. No. 08AP-998, 2009-Ohio-5246. If an order is not final and appealable, then we have no jurisdiction to review the matter and must dismiss it. See *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.* (1989), 44 Ohio St.3d 17, 20, 540 N.E.2d 266.

{¶18} To be final and appealable, an order must comply with R.C. §2505.02 and Civ.R. 54(B), if applicable. R.C. §2505.02(B) provides the following in pertinent part:

{¶19} “(B) 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:

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

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

{¶22} Civ.R. 54(B) provides:

{¶23} “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.”

{¶24} Therefore to qualify as final and appealable, the trial court's order must satisfy the requirements of R.C. §2505.02, and if the action involves multiple claims and the order does not enter a judgment on all the claims, as is the case here, the order must also satisfy Civ.R. 54(B) by including express language that “there is no just reason for delay.” *Internatl. Bhd. of Electrical Workers, Local Union No. 8 v. Vaughn Indus., L.L.C.*, 116 Ohio St.3d 335, 2007-Ohio-6439, ¶ 7, citing *State ex rel. Scruggs v. Sadler*, 97 Ohio St.3d 78, 2002-Ohio-5315, ¶ 5-7.

{¶25} The Supreme Court of Ohio has established a two-step process for determining whether an order is both final and appealable. *Gen. Acc. Ins. Co. v. Ins. Co.*

of *N. Am.* (1989), 44 Ohio St.3d 17. In the first step, the appellate court must determine whether the order fits within one of the categories set forth in R.C. §2505.02(B) and thus constitutes a final order. *Olive Branch Holdings, L.L.C. v. Smith Technology Dev., L.L.C.*, 181 Ohio App.3d 479, 2009-Ohio-1105, ¶ 13, citing *Noble* and *Gen. Acc. Ins. Co.* If the order satisfies R.C. §2505.02(B), then the second step requires the court to determine whether Civ.R. 54(B) language is required. *Id.* at ¶ 14. In the absence of express Civ.R. 54(B) language, an appellate court may not review an order disposing of fewer than all claims. *Internatl. Bhd. of Electrical Workers* at ¶ 8, citing *Scruggs* at ¶ 6. However, “the mere incantation of the required language does not turn a non-final order into a final appealable order.” *Noble* at 96.

{¶26} Upon review of the case sub judice, we initially find that neither of the judgment entries being appealed contain the requisite Civ.R. 54(B) language.

{¶27} Pursuant to Civ.R. 54, it is clear that if a trial court's written decision fully disposes of fewer than all of the pending claims or parties in a civil action, then the decision will not be considered a “final judgment” unless the trial court also makes an express finding of no just reason for delay. *Smith v. Wyatt*, 5th Dist. No. 2003CA 00233, 2005-Ohio-371, ¶ 10. Absent such a finding, the decision is interlocutory in nature, is not immediately appealable, and can be revised by the trial court at any time prior to the final determination of the entire action. *Id.*

{¶28} Further, we find that this case contains multiple claims against more than one party, i.e. Wells Fargo Bank and Jindo Properties. The trial court's decision granting Jindo Properties' motion for partial summary judgment is limited to the issue of punitive damages only.

{¶29} This Court has also previously held an order on “summary judgment dismissing the punitive damages prayer for relief while leaving the compensatory damage claim extant is not a final appealable order. *Aamco Transmissions v. Hatcher*, (June 19, 1989), 5th Dist. No. CA-7660.

{¶30} We likewise find that Appellant’s appeal of the trial court’s denial of his motion to amend is not a final appealable order.

{¶31} “ * * * [T]he denial of a motion to amend a complaint to include a new cause of action is analogous to the dismissal of a claim after it has been filed. Unless the judgment contains Civ.R. 54(B) language, it is not a final appealable order. * * * Accordingly, this Court does not have jurisdiction to consider this claim.” *Germ v. Fuerst*, 11th Dist. No. 2003-L-116, 2003-Ohio-6241, at ¶ 7. (Internal citation omitted.)

{¶32} As Appellant seeks to add a new defendant and thus new claims, and as the trial court’s entry denying said motion does not include Civ.R. 54(B) language, we find that such judgment is not a final appealable order pursuant to *Germ*, supra.

{¶33} Based on the foregoing, we decline to address the merits of Appellant’s arguments at this time as we find the order being appealed is not a final appealable order.

{¶34} For the foregoing reasons, the appeal of the judgment of the Court of Common Pleas of Richland County, Ohio, is dismissed.

By: Wise, J.

Edwards, P. J., and

Hoffman, J., concur.

JUDGES

JWW/d 0805

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

RANDOLPH WORTHINGTON :
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 Plaintiff-Appellant :
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 -vs- : JUDGMENT ENTRY
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 WELLS FARGO BANK :
 MINNESOTA, NA, et al. :
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 Defendants-Appellees : Case No. 10 CA 40

For the reasons stated in our accompanying Memorandum-Opinion, the appeal of the judgment of the Court of Common Pleas of Richland County, Ohio, is hereby dismissed.

Costs assessed to Appellant.

JUDGES