[Cite as *Venneri v. August Homes Co.*, 2011-Ohio-858.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF LORAIN	)	

CHARLES F. VENNERI	C.A. No. 10CA009829
Appellant	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
AUGUST HOMES CO.	COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO
Appellee	CASE No. 08CV159659

DECISION AND JOURNAL ENTRY

Dated: February 28, 2011

WHITMORE, Judge.

{¶1} Plaintiff-Appellant, Charles F. Venneri, d/b/a C.V. Plumbing & Sewer, appeals from the decision of the Lorain County Court of Common Pleas. This Court dismisses.

I

{¶2} Venneri began working as a plumbing subcontractor for August Homes Co. ("August Homes") in August 2005. Initially, the parties agreed to a base price for plumbing work to be done in each home, which they then adjusted given the design specifications of each home. Shortly after the parties' relationship started, however, the cost of plumbing materials such as PVC pipes and copper tubing increased dramatically, due, in part, to the effects of Hurricane Katrina. Consequently, Venneri had to pay more for materials from his suppliers, but was unable to recover his increased cost under the arrangement he had in place with August Homes. In March 2006, Venneri had a meeting with John Jensen, the president of August Homes, to discuss the structure and pricing for the plumbing work in future homes, given the

significant change in his supply costs. Though the parties dispute the nature of the agreements reached at that meeting, neither one disputes that from that point forward, Venneri agreed to provide August Homes with an individual estimate of the plumbing construction costs for each home being built, instead of working from a base-price approach. The parties disagree, however, as to whether August Homes agreed to pay Venneri for the increased supply costs of $8,191.05 that he incurred on the homes already constructed in exchange for his agreement to continue working as the plumbing subcontractor on future homes.

{¶3} In November 2006, one of Venneri's suppliers filed a complaint against him seeking to recover the balance due on an unpaid account for plumbing supplies and materials. See *Robertson Heating Supply Co. v. Charles F. Venneri*, Oberlin Municipal Court No. 06CVF00848. As part of that proceeding, Venneri filed a third-party complaint against August Homes alleging that August Homes owed him money for labor and materials on two single-family homes it was building in the area, in which he utilized his supplier's materials. The case was transferred to the Lorain County Court of Common Pleas, and ultimately, Venneri dismissed his third-party complaint against August Homes without prejudice. See *Robertson Heating Supply Co. v. Charles F. Venneri* (Nov. 20, 2008), Lorain County Court of Common Pleas No. 07CV149339.

{¶4} On November 25, 2008, Venneri filed a separate suit against August Homes, which serves as the basis for this appeal. In his complaint, he asserted the following three claims against August Homes: (1) a breach of contract claim for $11,124.40 in materials and work provided on the two single-family homes already built; (2) a breach of contract claim for the payment of $8,191.05 in increased material costs for work performed between August 2005 and March 2006 under the agreement reached by the parties in March 2006; and, in the alternative,

(3) a promissory estoppel claim for $8,191.05 based on the same March 2006 agreement. August Homes timely answered, denying it owed any money to Venneri.

{¶5} In September 2009, August Homes filed a motion for summary judgment as to the second and third causes of action, in which Venneri sought to recover his increased costs for materials under the parties' initial agreement. The trial court denied August Homes' motion, and the matter was set for trial. Following a two-day trial in March 2010, a jury awarded Venneri $11,124.40 under his first breach of contract claim, but found in favor of August Homes as to the second breach of contract claim seeking to recover his increased material costs. Venneri filed a motion for a new trial in light of the jury instructions given with respect to the second breach of contract claim, which the trial court denied. Venneri now appeals from the trial court's decision, asserting two assignments of error for our review.

II

Assignment of Error Number One

> "THE TRIAL COURT ERRED AS A MATTER OF LAW, TO THE PREJUDICE OF THE APPELLANT, WHEN IT INSTRUCTED THE JURY THAT IF IT WAS PROVEN THAT APPELLEE HAD PAID THE APPELLANT FOR ALL OF THE MATERIALS UNDER THE ORIGINAL CONTRACTS, THAT THE APPELLANT WAS NOT ENTITLED TO RECOVER THE DEMANDED $8,191.25 UNDER COUNT TWO OF THE COMPLAINT."

Assignment of Error Number Two

> "THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT DENIED THE APPELLANT'S MOTION FOR A NEW TRIAL PURSUANT TO CIVIL RULE 59(A)(9)."

{¶6} Initially, this Court is obligated to raise questions related to our jurisdiction sua sponte. *Whitaker-Merrell Co. v. Geupel Constr. Co., Inc.* (1972), 29 Ohio St.2d 184, 186. Our jurisdiction is limited to the review of judgments or final orders from lower courts. Article IV, Section 3(B)(2), Ohio Constitution; R.C. 2501.02. In the absence of a final, appealable order,

this Court must dismiss the appeal for lack of subject matter jurisdiction. *Lava Landscaping, Inc. v. Rayco Mfg., Inc.* (Jan. 26, 2000), 9th Dist. No. 2930-M, at *1. Civ.R. 54(B) provides that a trial 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." "A judgment that 'does not dispose of all the claims between all the parties, and does not contain an express determination that there is no just reason for delay *** is not a final, appealable order.'" *Edwards v. Vito Gironda Constr. Co.*, 9th Dist. No. 24322, 2008-Ohio-5974, at ¶9, quoting *Davis v. Chrysler Corp.* (Apr. 12, 2000), 9th Dist. No. 19525, at *1. The omission of the phrase "there is no just reason for delay" is "fatal not only to the order's finality, but also this Court's jurisdiction." *David Moore Builders, Inc. v. Hudson Village Joint Venture et. al.*, 9th Dist. No. 21702, 2004-Ohio-1592, at ¶7.

{¶7} As stated, Venneri's complaint asserts three claims: two based in breach of contract and one in promissory estoppel. One of the breach of contract claims and the promissory estoppel claim both sought to recover $8,191.05 in damages based on Venneri's assertion that, at their March 2006 meeting, August Homes agreed to compensate him for the increased cost of materials used on houses built under the parties' initial contract in exchange for his agreement to continue as the plumbing subcontractor on future homes. August Homes filed a motion for summary judgment on both of the foregoing claims, and the trial court denied its motion. Accordingly, the matter proceeded to trial. In their respective pre-trial briefs, both parties asserted that three causes of action remained before the court: two breach of contract claims and one claim of promissory estoppel. The jury instructions, verdict forms, and subsequent orders of the court, however, resolved only the breach of contract claims. There is no disposition as to the promissory estoppel claim contained in the record.

{¶8} To the extent either party acknowledges any disposition as to the promissory estoppel claim in their briefs to this Court, August Homes alleges that "***Venneri withdrew his promissory estoppel claim.***" (Emphasis in original.) August Homes' citation to the record in support of this assertion directs this Court to Venneri's proposed jury instructions for the promissory estoppel claim. Presumably, August Homes' citation is meant to inform this Court that Venneri intended on pursuing this claim at trial, as demonstrated by his proposed jury instructions, but later withdrew it. Venneri's brief does not shed any light on the disposition of his promissory estopppel claim, despite having been unsuccessful at trial in his breach of contract claim seeking to recover the same amount. Because the record is silent as to the promissory estoppel claim and the trial court's order fails to indicate that there is no just cause for delay, Venneri has not appealed from a final, appealable order. See Civ.R. 54(B). See, also, *Spano Bros. Constr. Co. Inc. v. Adolph Johnson & Son Co.*, 9th Dist. No. 22943, 2006-Ohio-4083, at ¶15 (dismissing an appeal for lack of a final order in the absence of Civ.R. 54(B) language and noting that where "[t]he record is conspicuously silent on the pending claims *** it could be presumed that [the appellee] had dismissed the claims[,] but there is no evidence of any such dismissal in the record").

{¶9} Because Venneri's promissory estoppel claim remains pending in the trial court, this Court is without jurisdiction to entertain Venneri's appeal. Accordingly, Venneri's appeal is dismissed.

III

{¶10} This Court does not have jurisdiction to consider Venneri's assignments of error because he has not appealed from a final, appealable order. Consequently, his appeal is dismissed.

Appeal dismissed.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

CARR, P. J.
DICKINSON, J.
CONCUR

APPEARANCES:

MARK E. STEPHENSON, Attorney at Law, for Appellant.

WILLIAM F. KOLIS, and AMY L. DELUCA, Attorneys at Law, for Appellee.