

**COURT OF APPEALS
THIRD APPELLATE DISTRICT
UNION COUNTY**

RYAN MASON,

CASE NUMBER 14-07-12

PLAINTIFF-APPELLANT,

v.

OPINION

JOE RECCHIE, ET AL.,

DEFENDANT-APPELLEES.

CHARACTER OF PROCEEDINGS: Civil appeal from Common Pleas Court.

JUDGMENT: Appeal dismissed.

DATE OF JUDGMENT ENTRY: September 24, 2007

ATTORNEYS:

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For Appellees.

Willamowski, J.

{¶1} Plaintiff-appellant Ryan C. Mason (“Mason”) brings this appeal from the judgment of the Court of Common Pleas of Union County granting judgment on the pleadings to defendants-appellees Joseph J. Recchie Sr. et al (“Recchie”).

{¶2} On October 17, 2006, Mason filed a complaint in the trial court alleging breach of contract, promissory estoppel, and specific performance. Recchie filed his answer and counterclaim on November 21, 2006. On January 3, 2007, Recchie filed a motion for judgment on the pleadings. Subsequent to this filing, Mason allegedly obtained consent of Recchie to move or plead in response to the motion for judgment on the pleadings. An amended complaint was then filed on January 22, 2007. Recchie filed an answer to the amended complaint on January 31, 2007. On February 21, 2007, Recchie filed a motion for judgment on the amended complaint. On March 1, 2007, the trial court dismissed the original complaint with prejudice. Mason appeals from this judgment and raises the following assignment of error.

Pursuant to Civil Rule 15 and the January 10, 2007, agreed stipulation between the parties, the trial court should have allowed amendment of the plaintiff’s complaint. Therefore, dismissal in this matter was an abuse of discretion.

{¶3} Although the assignment of error considers the denial of the amended complaint, a review of the record indicates that the filing of an amended complaint was not disallowed. Mason filed his amended complaint on January 22, 2007. Recchie then filed an answer to the amended complaint on January 31, 2007. A motion for judgment on the amended complaint was filed by Recchie on February 21, 2007. At no time did Recchie file a motion to strike the amended complaint. Thus, the amended complaint and subsequent motion for judgment on the pleadings are still pending.

{¶4} The judgment from which this appeal is taken states as follows.

(1) Defendant’s Motion for Judgment on the Pleadings as to Plaintiff’s Complaint, filed January 3, 2007, is hereby GRANTED.

(2) Judgment is hereby entered in favor of Defendants on Plaintiff’s Complaint, filed October 17, 2006.

March 1, 2007 Judgment Entry. This entry dismisses the original complaint, but does not address the amended complaint. Since the record lacks any indication that the amended complaint has been stricken or resolved in any manner, the matter is still pending. “A final order determines the whole case, or a distinct branch thereof, and reserves nothing for future determination, so that it will not be necessary to bring the cause before the court for further proceedings.” *Savage v. Cody-Ziegler, Inc.*, 4th Dist. No. 06CA5, 2006-Ohio-2760, ¶8. See also *Catlin v. United States* (1945), 324 U.S. 229, 65 S.Ct. 631, 89 L.Ed. 911. Since the

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amended complaint is still pending, there is no final appealable order for this court to review and this appeal must be dismissed.

Appeal dismissed.

ROGERS, P.J., and SHAW, J., concur.

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