

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Mary Jo Hudson, Superintendent, Ohio Department of Insurance, in her capacity as Liquidator of the Guarantee Title and Trust Co.,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 08AP-1047
v.	:	(C.P.C. No. 08CVH07-10725)
	:	
The Guarantee Title and Trust Co.,	:	(ACCELERATED CALENDAR)
	:	
Defendant-Appellee,	:	
	:	
(Christopher Likens and Hiram Blomquist,	:	
	:	
Defendants-Appellants).	:	
	:	
Mary Jo Hudson, Superintendent, Ohio Department of Insurance, in her capacity as Liquidator of the Guarantee Title and Trust Co.,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 08AP-1048
v.	:	(C.P.C. No. 08CVH07-10725)
	:	
The Guarantee Title & Trust Co.,	:	(ACCELERATED CALENDAR)
	:	
Defendant-Appellee,	:	
	:	
(Nations Holding Co., Inc. et al.,	:	
	:	
Defendants-Appellants).	:	

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D E C I S I O N

Rendered on September 10, 2009

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*Nelson Levine de Luca & Horst, LLC, and Randall S. Rabe, for appellants Christopher Likens and Hiram Blomquist.*

*Allen Kuehnle Stovall & Neuman LLP, Douglas L. Hertlein, Todd H. Neuman, and Lisa L. Norris, for appellants Nations Holding Company and Texas Nations Title Agency, Inc.*

*Richard Cordray, Attorney General; Kohrman Jackson & Krantz PLL, Valoria C. Hoover and David S. Blocker, special counsel for appellee.*

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APPEALS from the Franklin County Court of Common Pleas.

TYACK, J.

{¶1} This matter is an attempt by the former directors of an insolvent insurance company that was ordered liquidated, under R.C. 3903.17, to bring an interlocutory appeal of various orders of the liquidation court. Because the case has multiple defendants, each with different interests in the outcome, there are now two appeals pending from the single case. We have, however, consolidated both cases for our determination herein.

{¶2} Appellants assign three errors for our review:

[I.] THE LOWER COURT LACKED JURISDICTION TO ISSUE *IN PERSONAM* ORDERS AGAINST APPELLANTS LIKENS/BLOMQUIST.

[II.] THE LOWER COURT ERRED IN INCLUDING FACTUAL FINDINGS IN ITS FINAL ORDER AND JUDGMENT OF LIQUIDATION REGARDING PERSONAL JURISDICTION AND THE ADMISSIBILITY OF BUSINESS RECORDS OF GTT.

[III.] THE LOWER COURT ERRED IN FINDING THAT APPELLANTS LIKENS/BLOMQUIST VIOLATED PRIOR COURT ORDERS IN THE ABSENCE OF DUE PROCESS.

{¶3} Plaintiff-appellee has also filed a motion to dismiss (both appeals) pursuant to App.R. 15. Thus, before we may consider the merits of the appeal, we must determine whether the liquidation court's order was a final, appealable order, within the meaning of R.C. 2505.02. See *MD Acquisition, L.L.C. v. Myers*, 173 Ohio App.3d 247, 250, 2007-Ohio-3521, ¶9 (holding that Ohio appellate courts may only review final orders or judgments). (Citing Section 3(B)(2), Article IV, Ohio Constitution.)

{¶4} The primary defendant in this case is the Guarantee Title and Trust Company ("GTT"), an insurance company licensed in Kansas and Ohio. As an insurer, within the meaning of R.C. 3903.01(L), doing business in Ohio, GTT is subject to the Insurer's Supervision, Rehabilitation, and Liquidation Act in Chapter 3903 of the Ohio Revised Code. GTT became the defendant herein when plaintiff-appellee, who is acting in her official capacity as superintendent of the Ohio Department of Insurance, filed a motion to liquidate GTT on October 27, 2008 pursuant to R.C. 3903.16(A).<sup>1</sup> GTT's directors did not oppose the liquidation, and we note, especially, that GTT, itself, is not an appellant herein.

{¶5} The appellants are situated as follows: GTT is a wholly-owned subsidiary of Reliant Holding Company, Inc. Appellant Christopher M. Likens is the sole owner of Reliant, and was a director of GTT. Likens also owns appellant Nations Holding

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<sup>1</sup> The case originally began as a rehabilitation of GTT on July 28, 2008, but was converted to liquidation because of GTT's insolvency.

Company which, itself, has 29 subsidiaries, including appellant Texas Nations Title Agency, Inc. Appellant Hiram Blomquist is the former president and also a former director of GTT. Blomquist is also an employee and in-house counsel for Nations. These four individuals/entities are the appellants herein. The crux of their arguments is that the liquidation court improperly exercised personal jurisdiction over them, by ordering them to produce documents and business records belonging or relating to GTT.

{¶6} The liquidation court issued this final order and judgment of liquidation on October 27, 2008. (R. 50–51.) The liquidation court subsequently issued an order on November 21, 2008 finding that appellants were in violation of the October 27, 2008 order, which is also at issue in this appeal. We find, however, that neither order was final nor appealable.

{¶7} This court derives its judicial authority from the Ohio Constitution, which provides that Ohio appellate courts may only review final orders or judgments. See *MD Acquisition* (citing Section 3(B)(2), Article IV, Ohio Constitution). "An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it \* \* \* affects a substantial right in an action that in effect determines the action and prevents a judgment," or "affects a substantial right made in a special proceeding or upon a summary application in an action after judgment." R.C. 2505.02(B).

{¶8} For example, an order granting a motion for summary judgment is a final, appealable order, but an order denying a motion for summary judgment is not. Similarly, an order granting a Crim.R. 29 judgment of acquittal is a final appealable order, but an order denying the same is not. The rationale behind this rule is that the

party who loses a motion for summary judgment, or acquittal still has an opportunity to prove his or her case at trial. When a party wins such a motion, the other party is without recourse (in that same tribunal); thus, appellate review of the decision is appropriate.

{¶9} In the liquidation order, the court specifically stated that it "shall retain jurisdiction in this case for the purpose of granting such other and further relief as the nature of this case or the interests of the creditors, stockholders or the members of the public may require." (R. 50–51.) This is just one indication that the court did not fully resolve or adjudicate the matter. Another indication is that the liquidation court set the matter for continuous hearings to be held on November 21 and December 17, 2008, and January 22, 2009: "Plaintiff's Counsel shall file with the Court an Agenda for each of these scheduled continuous hearings two (2) days prior to the hearing." (Jan. 30, 2009 Liquidation Order at 18.) It is clear from these instructions that the matter is ongoing. Furthermore, it was after the November 21, 2008 hearing when the liquidation court issued its order finding appellants in violation of the prior order, and directing them to comply with the prior order, or face possible sanctions. (R. 55 at 2.)

{¶10} As plaintiff-appellee points out in its motion to dismiss, the November 21, 2008 order does not even contain the "no just cause for delay" language required by Civ.R. 54(B). Although the inclusion or exclusion of this language is not, itself, dispositive, see, e.g., *MD Acquisition* at ¶10, its inclusion or exclusion is nonetheless relevant to our discussion. The dispositive aspect of the November 21, 2008 order, however, is that it bears zero resemblance of finality. The order, which is styled simply as "Order," is merely

a recitation of the court's instructions to appellants to turn over business records relevant to the ongoing liquidation. By the fact that the court issued a warning to appellants with possible consequences for non-compliance, the court impliedly stated that the order was in no way final.

{¶11} Based on the procedural history of this case, and the liquidation court's carefully chosen language in both of the orders from which appellants are appealing, we conclude that the matter is, in effect, still pending before the liquidation court. Accordingly, we lack jurisdiction to exercise appellate review. Because the matter is still pending before the liquidation court, appellants are not without a venue to voice their objections.

{¶12} Having found that neither order by the liquidation court was final or appealable, we grant plaintiff-appellee's motion to dismiss.

*Appeal dismissed.*

McGRATH and CONNOR, JJ., concur.

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