[Cite as *Oaktree Condominium Assoc. v. Hallmark Bldg. Co.*, 2008-Ohio-7148.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

OAKTREE CONDOMINIUM ASSOCIATION, INC.,	:	**MEMORANDUM OPINION**
Plaintiff-Appellee,	:	**CASE NO. 2008-L-076**
- vs -	:	
THE HALLMARK BUILDING COMPANY, et al.,	:	
Defendants-Appellants.	:	

Civil Appeal from the Court of Common Pleas, Case No. 07 CV 002615.

Judgment: Appeal dismissed.

Steven M. Ott, Latha M. Srinivasan, Brandy M. Slates, Ott & Associates Co., L.P.A., 55 Public Square, #1400, Cleveland, OH 44113-1901 (For Plaintiff-Appellee).

Thomas J. Connick, Davis & Young Co., L.P.A., 1200 Fifth Third Center, 600 Superior Avenue, East, Cleveland, OH 44114-2654 (For Defendants-Appellants).

MARY JANE TRAPP, J.

{¶1} On May 14, 2008, appellants, The Hallmark Building Company and Fairfax Apartments, Inc. (collectively "Hallmark"), filed a notice of appeal from the May 7, 2008 judgment entry of the Lake County Court of Common Pleas.

{¶2} In the May 7, 2008 judgment entry, the trial court denied Hallmark's motion for summary judgment. In that entry, the trial court found that R.C. 2305.131 was not applicable and did not bar Oaktree's actions. The trial court further stated that

"[h]aving deemed that R.C. §2305.131 does not apply in this case, the issue of retroactive or prospective application of the statute is moot." The trial court also indicated that Oaktree's "alternative argument that R.C. §2305.131 is unconstitutional as applied in this case has been rendered moot." It is from that entry that Hallmark filed the instant appeal.

{¶3} On May 30, 2008, this court issued a judgment entry indicating that we may not have jurisdiction to consider this appeal. On June 18, 2008, Hallmark filed a memorandum in support of jurisdiction and a request to amend the notice of appeal. In their memorandum, Hallmark makes three assertions: one, that the judgment is a final appealable order because it affects a substantial right; two, that it denies a provisional remedy; and three, that it de facto held that R.C. 2305.131 was unconstitutional.

{¶4} On June 30, 2008, Oaktree filed a brief in opposition rebutting these three assertions.

{¶5} Section 3(B)(2), Article IV of the Ohio Constitution limits the jurisdiction of an appellate court to the review of final judgments of lower courts. A final order is statutorily defined by R.C. 2505.02(B), which provides as follows:

{¶6} "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:

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

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

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

{¶10} "(4) An order that grants or denies a provisional remedy ***;

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

{¶12} "(6) An order determining the constitutionality of any changes made by Am. Sub. S.B. 281 of the 124th general assembly, including the amendment of sections **** [R.C.] 2305.131 ***."

{¶13} For a judgment to be final and appealable, the requirements of R.C. 2505.02 and Civ.R. 54(B), if applicable, must be satisfied. See *Alden v. Kovar*, 11th Dist. Nos. 2006-T-0050 and 2006-T-0051, 2006 WL 1816263, at ¶5, citing to *Chef Italiano Corp. v. Kent State Univ.* (1989), 44 Ohio St.3d 86, 88. Moreover, "[a]n order denying a motion for summary judgment is not a final appealable order." *State ex rel. Overmeyer v. Walinski* (1966), 8 Ohio St.2d 23, 23. We note that the denial of a summary judgment motion "is always reviewable on an appeal from a subsequent final judgment." *Alea London Ltd. v. Skeeter's 19th Hole, Inc.*, 11th Dist. No. 2007-G-2803, 2007-Ohio-6013, 2007 Ohio App.LEXIS 5291, at ¶3.

{¶14} We find Oaktree's rebuttal persuasive. It is our position that the trial court's denial of Hallmark's summary judgment motion does not satisfy the requirements of a final order under R.C. 2505.02(B). First, the trial court's order did not affect a substantial right in an action that in effect determines the action or prevents a judgment because other issues remain pending for determination and a judgment in the matter has not been prevented. Second, the judgment did not deny a provisional remedy because the consideration of a summary judgment motion is not an ancillary proceeding since summary judgment can be fully determinative of the issues before the

court, and thus, it is not a provisional remedy. See *Bishop v. Dresser Industries, Inc.* (1999), 134 Ohio App.3d 321, 324. Third, the judgment entry clearly did not de facto or otherwise determine the constitutionality of R.C. 2305.131.

{¶15} Based upon the foregoing analysis, this appeal is dismissed due to lack of a final appealable order.

{¶16} Appeal dismissed.

DIANE V. GRENDELL, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.