

IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO

JACK F. NEFF SAND & GRAVEL, INC., :	MEMORANDUM OPINION
n.k.a. JOHN F. NEFF, INC., et al.,	
:	
Plaintiffs-Appellants,	CASE NO. 2012-L-085
:	
- vs -	
:	
GREAT LAKES CRUSHING, LTD., et al.,	
:	
Defendants-Appellees.	

Civil Appeal from the Court of Common Pleas, Case No. 11 CV 000003.

Judgment: Appeal dismissed.

Robert P. DeMarco, 30505 Bainbridge Road, #225, Solon, OH 44139 (For Plaintiffs-Appellants).

Richard N. Selby, II, Dworken & Bernstein Co., L.P.A., 60 South Park Place, Painesville, OH 44077 (For Defendants-Appellees).

MARY JANE TRAPP, J.

{¶1} On July 26, 2012, appellants, Jack F. Neff Sand & Gravel, Inc., n.k.a. John F. Neff, Inc. and Joann Neff, Executrix of the Estate of John F. Neff, filed a notice of appeal from a June 29, 2012 entry of the Lake County Court of Common Pleas.

{¶2} A review of the record reveals that on January 3, 2011, appellants filed a complaint against appellee, Great Lakes Crushing, Ltd. On February 15, 2011, they amended their complaint and added appellees, Mark M. Belich and Erik L. Walter, as co-defendants. The allegations in the complaint and amended complaint included

breach of contract (count one), civil theft (count two), conversion (count three), punitive damages (count four), deceptive trade practices (count five), common law trade name infringement (count six), and abuse of process (count seven).

{¶3} On March 14, 2011, Great Lakes filed its answer and counterclaim. Great Lakes along with Mr. Belich and Mr. Walter filed a motion for summary judgment on August 8, 2011, as to civil theft (count two), deceptive trade practices (count five), common law trade name infringement (count six) and abuse of process (count seven). On February 21, 2012, appellants filed a motion for default judgment as to Mr. Belich and Mr. Walter and filed a reply to Great Lakes' answer and counterclaim.

{¶4} In two separate entries dated February 24, 2012, the trial court denied appellants' motion for default judgment, and denied the motion for summary judgment as to civil theft (count two), granted the motion as to deceptive trade practices (count five), denied the motion as to Mr. Belich regarding common law trade name infringement (count six), but granted the motion as to common law trade name infringement (count six) regarding Mr. Walters, and denied the motion as to abuse of process (count seven).

{¶5} A jury trial ensued. Thereafter, on June 25, 2012, Great Lakes filed a motion for prejudgment interest. Appellants filed a motion for judgment notwithstanding the verdict on June 27, 2012. In an entry dated June 29, 2012, the trial court rendered judgment on the jury verdict for Great Lakes on appellants' claim for breach of contract. In that entry, the trial court also rendered judgment for Great Lakes on its counterclaims for breach of contract and conversion, and ordered that appellants pay compensatory damages to appellee in the amount of \$462,000.

{¶6} It appears from a review of the docket that the trial court has not ruled upon several of the claims listed in the complaint as well as Great Lakes' motion for prejudgment interest and appellants' motion for judgment notwithstanding the verdict. Nonetheless, appellants filed the instant appeal.

{¶7} Civ.R. 54(B) provides that:

{¶8} "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."

{¶9} This court has stated that where there are multiple claims and/or parties involved, an entry that enters final judgment as to one or more but fewer than all of the claims is not a final appealable order in the absence of Civ.R. 54(B) language stating that "there is no just reason for delay[.]" *Montello v. Ackerman*, 11th Dist. No. 2009-L-111, 2009-Ohio-6383, at ¶6. See, also, *Kessler v. Totus Tuus, L.L.C.*, 11th Dist. No. 2007-A-0028, 2007-Ohio-3019, at ¶7.

{¶10} In the case at hand, it is clear from a review of the record that while some of the claims have been determined, there are still many other claims pending.

Furthermore, the June 29, 2012 judgment entry that was appealed from does not contain any Civ.R. 54(B) language. Without the inclusion of Civ.R. 54(B) language, no final appealable order exists at this time.

{¶11} Based upon the foregoing analysis, this court is without jurisdiction to entertain this appeal. Accordingly, this appeal is hereby, sua sponte, dismissed for lack of a final appealable order.

{¶12} Appeal dismissed.

DIANE V. GRENDELL, J.,

THOMAS R. WRIGHT, J.,

concur.