

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

RBS Citizens, N.A., etc.

Court of Appeals No. L-12-1136

Appellee

Trial Court No. CI0201006885

v.

Lee G. Ryan, et al.

DECISION AND JUDGMENT

Appellants

Decided: March 29, 2013

* * * * *

Marjan Neceski, for appellee.

Barry E. Savage, for appellants.

* * * * *

PIETRYKOWSKI, J.

{¶1} Appellants are Lee G. Ryan and Sharon A. Ryan (“Ryans”). They appeal judgments of June 23, 2011, and April 20, 2012, of the Lucas County Court of Common Pleas that denied their Civ.R. 60(B) motions to vacate an October 26, 2010 cognovit judgment entered against them in favor of RBS Citizens, N.A. d/b/a Charter One

(“Charter One”). The cognovit judgment awarded Charter One judgment in the amount of \$572,282.68 with pre and post judgment interest, attorneys’ fees, expenses and costs.

{¶2} The Ryans also appeal an April 25, 2012 judgment substituting VFC Partners 18 LLC (“VFC”) for Charter One as party plaintiff. Charter One filed a motion requesting the change on the basis that VFC became the holder of the note on which this action is based in February 2012 and Charter One assigned its interest in the October 26, 2010 judgment to VFC on April 3, 2012. VFC is appellee.

{¶3} We have reviewed, sua sponte, the record and conclude that although the trial court awarded attorney fees to Charter One in the October 26, 2010 cognovit judgment, the court has not determined the amount of the attorney fee award. The trial court also has not made an express determination pursuant to Civ.R. 54(B) that there is no just reason for delay. For the reasons that follow, we dismiss this appeal for lack of a final appealable order.

The Case

{¶4} The dispute relates to obligations arising out of a December 26, 2001 commercial loan. In the transaction, the Ryans executed a Business Loan Agreement (“loan agreement”), a promissory note (“note”) in the principal amount of \$715,000, and an open-end mortgage. The Ryans and C.O.R. Packaging and Box Company (“COR”) executed a commercial security agreement. COR also executed a commercial guaranty of performance by the Ryans of their obligations under the note. The note required the

Ryans to make 119 monthly payments of \$4,503.94 and one last balloon payment of approximately \$548,299.48.

{¶5} Charter One filed suit against the Ryans and COR in the Lucas County Court of Common Pleas on October 1, 2010. In the complaint, Charter One alleged the occurrence of events of default under the note and breach of covenants in the note by the Ryans. Charter One alleged that under the terms of the note the Ryans were obligated to pay all amounts owed to Charter One under the note. Charter One asserted a claim against COR under the Commercial Guaranty for the amount of the claimed indebtedness of the Ryans to Charter One. Charter One also asserted breach of contract claims for attorneys' fees and costs against both the Ryans and COR. Shortly after the complaint was filed, Charter One secured the October 26, 2012 cognovit judgment against the Ryans and COR.

{¶6} The Ryans filed two motions in the trial court to vacate the cognovit judgment. They filed the first on November 29, 2010. They filed a second motion on October 18, 2011. The trial court denied the first motion in on June 23, 2011. The court denied the second motion on April 20, 2012. In the April 20, 2012 judgment, the trial court also denied a request by appellants that it include in its judgment a determination, under Civ.R. 54(B), that there was "no just reason for delay."

{¶7} On April 25, 2012, the trial court granted a motion by Charter One to substitute VFC for it as the party plaintiff in this case.

{¶8} On May 21, 2012, the Ryans filed a notice of appeal of both judgments that denied Civ.R. 60(B) relief and the judgment substituting VFC for Charter One as plaintiff. COR is not a party to the appeal.

Final Appealable Order

{¶9} This case presents a threshold issue of whether the June 23, 2011 and April 20, 2012 judgments denying Civ.R. 60(B) relief and judgment substituting VFC as plaintiff constitute final, appealable orders. “An order which adjudicates one or more but fewer than all the claims or the rights and liabilities of fewer than all the parties must meet the requirements of R.C. 2505.02 and Civ.R. 54(B) in order to be final and appealable.” *Noble v. Colwell*, 44 Ohio St.3d 92, 540 N.E.2d 1381 (1989), syllabus.

{¶10} In *Internatl. Bhd. of Electrical Workers, Local Union No. 8 v. Vaughn Industries, L.L.C.*, 116 Ohio St.3d 335, 2007-Ohio-6439, 879 N.E.2d 187, at paragraph two of the syllabus, the Ohio Supreme Court held:

When attorney fees are requested in the original pleadings, an order that does not dispose of the attorney-fee claim and does not include, pursuant to Civ.R. 54(B), an express determination that there is no just reason for delay, is not a final, appealable order.

{¶11} Ohio courts also recognize that where a court awards attorney fees but defers making a determination of the amount of the fee award and the judgment does not contain Civ.R. 54(B) language expressly determining that there is no just reason for

delay, the judgment is not a final appealable order. *Estate of Beavers v. Knapp*, 175 Ohio App.3d 758, 2008-Ohio-2023, 889 N.E.2d 181, ¶ 76 (10th Dist.); *Cwynar v. Jackson Twp. Bd. of Trustees*, 178 Ohio App.3d 345, 2008-Ohio-5011, 897 N.E.2d 1181, ¶ 54 (5th Dist.).

{¶12} Here, the cognovit judgment did not resolve all claims against the Ryans and COR. The amount of the attorney fee award remains to be determined. The trial court did not make an express determination under Civ.R. 54(B) that there was no reason for delay. Accordingly, we dismiss this appeal for lack of a final, appealable order. Pursuant to App.R. 24, we order appellants to pay the costs of this appeal.

Appeal dismissed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See also 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
