

[Cite as *Myles v. Quail Woods Holdings, L.L.C.*, 2009-Ohio-5561.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92413

LISA J. MYLES

PLAINTIFF-APPELLANT

vs.

QUAIL WOODS HOLDINGS, LLC, ET AL.

DEFENDANTS-APPELLEES

**JUDGMENT
DISMISSED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-639260

BEFORE: Dyke, J., Stewart, P.J., and Jones, J.

RELEASED: October 22, 2009

JOURNALIZED:

ATTORNEYS FOR APPELLANT

Joanne Brown
2136 Noble Road
Cleveland, Ohio 44112

FOR APPELLEE

Quail Woods Holdings, LLC
12072 Quail Wood Drive
Chardon, Ohio 44027

Jeffrey Swopes
12072 Quail Woods Drive
Chardon, Ohio 44027

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this courts announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

ANN DYKE, J.:

{¶ 1} Plaintiff Lisa Myles appeals from the order of the trial court that awarded summary judgment to defendant Quail Woods Holdings, LLC ("Quail

Woods”) and dismissed the claims against defendant Jeffrey Swope in plaintiff’s action for fraud and other claims. For the reasons set forth below, we dismiss this appeal for lack of jurisdiction.

{¶ 2} On October 22, 2007, plaintiff filed this action against Quail Woods, Swope, and first Class Title Agency¹ in connection with the 2005 purchase of residential property located on Comstock Road in Bedford Heights, Ohio. In relevant part, plaintiff alleged that defendants agreed in connection with the sale of the premises to install a new furnace and that they installed a defective furnace that does not conform to the Bedford Heights building code. Plaintiff asserted that defendants committed unfair, deceptive, and unconscionable practices in violation of the Consumer Sales Practices Act, R.C. Chapter 1345. She further alleged that Quail Woods failed to disclose water intrusion and water accumulation on the property, and made misrepresentations and/or omissions in connection with the purchase of the property.

{¶ 3} Swope and Quail Woods denied liability and moved for summary judgment on the basis that the Consumer Sales Practices Act is inapplicable to real estate transactions. In support of the motion, Swope averred that in connection with her purchase of real estate, Myles requested the installation of a new furnace after she inspected the premises, that Quail Woods purchased a

¹ Plaintiff did not obtain service upon this defendant.

new furnace (with Myles paying one-half the cost) and installed it, prior to the closing date.

{¶ 4} In opposition, plaintiff asserted that the transaction at issue was a “mixed transaction” and that R.C. Chapter 1345 was therefore applicable to the property or services portion. She further asserted that she is a “consumer” and that Swope and Quail Woods are “suppliers” as those terms are defined in the Consumer Sales Practices Act.

{¶ 5} The trial court subsequently ruled that the Consumer Sales Practices Act was inapplicable since the transaction was a “pure real estate transaction,” that plaintiff did not own the property at the time of the furnace agreement was made, and that the furnace, incorporated into the real estate, did not meet the definition of “goods” under the act.

{¶ 6} Plaintiff dismissed her remaining causes of action against Quail Woods and Swope without prejudice. She now appeals, arguing that the transaction at issue herein is a mixed transaction and that the installation of the furnace is covered by the Consumer Sales Practices Act.

{¶ 7} We note, however, that “when a plaintiff has asserted multiple claims against one defendant, and some of those claims have been ruled upon but not converted into a final order through Civ.R. 54(B), the plaintiff may not create a final order by voluntarily dismissing pursuant to Civ.R. 41(A) the remaining claims against the same defendant.” *Pattison v. Grainger*, 120 Ohio St.3d 142, 2008-Ohio-5276. See, also, *Dohme v. Eurand Am., Inc.*, 121 Ohio St.3d 277,

2009-Ohio-506. The *Pattison* Court reasoned that Civ.R. 41(A)(1)(a) provides that a plaintiff “may dismiss all claims asserted by that plaintiff against a defendant” and does not authorize dismissal of a single claim against a defendant.

{¶ 8} Addressing considerations of judicial economy and the need to streamline cases, the Court stated:

{¶ 9} “[W]ere Civ.R. 41(A) to be used to dismiss fewer than all of the claims against a certain defendant, a plaintiff could create a final and appealable order as to one issue under Civ.R. 41(A) while still saving the dismissed claim to be refiled later. To allow a partial Civ.R. 41(A) dismissal is potentially prejudicial to defendants. In cases in which all claims against a party are dismissed without prejudice, there still is the risk of the action being refiled, but the amount of potential litigation that a defendant is subjected to is the same. When an individual claim against a defendant is dismissed without prejudice, however, the defendant is forced to go through the appeal process and may perhaps still be subjected to the dismissed claim upon refiling. The defendant in that situation is vulnerable to an increased overall burden due to the Civ.R. 41 dismissal.”

{¶ 10} In this matter, the trial court ruled that Quail Woods was entitled to summary judgment and it also dismissed the claim against Swope. The court did not include the “no just reason for delay” language of Civ.R. 54(B). Under the language of Civ.R. 41(A)(1)(a), plaintiff cannot dismiss some but not all of her

claims against the defendants. We therefore lack jurisdiction in this matter and dismiss the appeal.

It is ordered that appellant recover from appellees her costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANN DYKE, JUDGE

MELODY J. STEWART, P.J., and
LARRY A JONES, J., CONCUR