[Cite as *Dawson v. Famous Gyro George*, 2009-Ohio-5967.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92641

DENNIS DAWSON, ET AL.

PLAINTIFFS-APPELLEES

vs.

FAMOUS GYRO GEORGE, ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
DISMISSED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-619534

BEFORE: Blackmon, J., Rocco, P.J., Stewart, J.

RELEASED: November 12, 2009

JOURNALIZED:

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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 court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

PATRICIA ANN BLACKMON, J.:

{¶ 1} Appellants Felix Fedor ("Fedor") and Ali Mohammadpour ("Mohammadpour") appeal the trial court's decision granting summary judgment in their favor on the issue of liability under the Telephone Consumer Protection Act ("TCPA"), but awarding less than the statutory damages. Fedor and Mohammadpour assign the following errors for our review:

> **"I. The trial court erred in entering summary judgment on the issue of damages, since there was no evidence before the court in regard to that matter."**
>
> **"II. The trial court erred in entering summary judgment on the issue of damages, by failing to comply with Article I, Section 5, of the Bill of Rights of the Ohio Constitution, as well as Ohio Civil Rule 38, and by misrepresenting the plaintiffs' allegations."**

{¶ 2} For the reasons that follow, we dismiss the instant appeal for lack of a final appealable order.

{¶ 3} On November 13, 2006, Dennis Dawson, Fedor, and Mohammadpour (collectively "the claimants") filed a complaint in Lake County Common Pleas Court against Famous Gyro George, et al. ("Famous George") alleging violations of the TCPA, which prohibits the sending of unsolicited facsimile advertisements.

{¶ 4} The claimants specifically alleged that they received 27 separate facsimile from Cleveland Fax Today, which included advertisement from Famous George. In the first count, the claimants sought statutory damages of $500 per fax and $1,500 per fax as maximum based on the allegations that Famous George acted intentionally.

{¶ 5} In the second count, the claimants asserted that Jon Doe may be the party responsible for any violations of the [TCPA] as alleged against Famous Gyro George in this complaint. In the third count, claimants sought certification of the case as a class action pursuant to Civ.R. 23 and sought damages as allowed by law for themselves and on behalf of the members of the class.

{¶ 6} Famous George filed a motion to dismiss based on lack of venue, which the trial court denied. On February 9, 2007, the case was transferred to the Cuyahoga County Common Pleas Court. Dawson voluntarily dismissed his claim, but later re-filed it in the Lake County Common Pleas Court, which transferred it back to the Cuyahoga County Common Pleas Court. Dawson subsequently filed a second notice of a voluntary dismissal, which operated as a dismissal on the merits.

{¶ 7} The remaining claimants ultimately filed motions for summary judgment on the issue of liability. On December 12, 2008, the trial court granted the remaining claimants' motions on the issue of liability and awarded $100 in damages for a combined total of $2,116.67. However, the trial court failed to rule on the issue of class certification.

{¶ 8} Appellate courts in Ohio have jurisdiction to review the final orders or judgments of inferior courts within their districts.[1] If an order is not final and

[1]Section 3(B)(2), Article IV, Ohio Constitution; R.C. 2501.02; *Prod. Credit Assn. v. Hedges* (1993), 87 Ohio App.3d 207, 210, 1362; *Kouns v. Pemberton* (1992), 84 Ohio App.3d 499, 501.

appealable pursuant to R.C. 2505.02, a court of appeals does not have jurisdiction to consider the matter.[2]

{¶ 9} A judgment that leaves issues unresolved and contemplates that further action must be taken is not a final appealable order.[3] In the case sub judice, because the trial court left the issue of class certification unresolved, we find that the December 12, 2008 judgment is not final or appealable; thus, this court does not have jurisdiction to consider the merits of the appeal.

Appeal dismissed.

It is ordered that appellees recover of appellants their costs herein taxed.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

PATRICIA ANN BLACKMON, JUDGE

KENNETH A. ROCCO, P.J., and
MELODY J. STEWART, J., CONCUR

[2]Id.

[3]*Bell v. Horton*, 4th Dist. No. 99CA2530, 2001-Ohio-2593, citing *Chef Italiano Corp. v. Kent State Univ.* (1989), 44 Ohio St.3d 86.