[Cite as *Stamatopoulos v. All Seasons Contracting, Inc.*, 2015-Ohio-1141.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101439

EVANGELOS STAMATOPOULOS, ET AL.

PLAINTIFFS-APPELLEES/
CROSS-APPELLANTS

vs.

ALL SEASONS CONTRACTING, INC., ET AL.

DEFENDANTS-APPELLANTS/
CROSS-APPELLEES

JUDGMENT:
DISMISSED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CV-12-785907 and CV-12-795314

BEFORE: Laster Mays, J., Jones, P.J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: March 26, 2015

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ANITA LASTER MAYS, J.:

{¶1} Defendants-appellants Mark Fourtounis ("Mark"), Global Outdoor Solutions, L.L.C. ("Global"), and Nikolas and Marika Fourtounis, individually, and as Trustees of the Nikolas and Marika Fourtounis Living Trust ("the Fourtounises"), appeal from trial court orders that: (1) ordered some of the parties to comply with the terms of a settlement agreement, (2) entered a jury verdict in favor of the Fourtounises in the amount of $100,000 against plaintiffs-appellees Evangelos Stamatopoulos and Lightning Capital Holdings, L.L.C., and (3) denied their motions for an "entry of final judgment" along with Global's motion for a new trial on damages. Appellees have filed a cross-appeal from those same trial court orders.

{¶2} Appellants present this court with seven assignments of error. Appellees present this court with five cross-assignments of error. However, because the record reflects that the trial court's orders are inadequate, even taken together, to constitute a final appealable order, this court lacks jurisdiction to consider them. This case, consequently, is dismissed.

{¶3} In order to explain this court's disposition of this case, a lengthy description of the underlying procedural occurrences is necessary. The record reflects that on June 27, 2012, appellees filed a complaint[1] in Cuyahoga County Common Pleas Court seeking replevin, an order of possession, "and other relief" against the following parties: (1) All Seasons Contracting, Inc., (2) All Seasons Contracting and Painting, Inc., (3) All Seasons Contracting and Landscaping,[2] (4) Mark Fourtounis, (5) Global, (6) "Doe Corporation," and (7) the Fourtounises.

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[1]Case No. CV-12-785907.

[2]Collectively, these first three parties will be referred to hereinafter as "All Seasons."

{¶4} Appellees presented seven claims: (1) "alter ego," (2) breach of contract, (3) fraudulent inducement, (4) conversion, (5) replevin, (6) unjust enrichment, and (7) trespass to chattel. Appellees also sought and obtained from the trial court, without posting a bond, an emergency order of possession of 44 specific pieces of machinery, together with "[a]ll other assets purchased by the Stamatopoulos Parties in the bankruptcy of Defendants All Seasons * * * which are reasonably identifiable and which have yet to be turned over * * * ." The record reflects that only the Fourtounises received service of the complaint.

{¶5} Nevertheless, all of the appellants filed in the trial court requests for a hearing and an emergency stay of the order of possession. The court conducted a hearing and ordered appellants to provide appellees with a list of the locations of the property at issue.

{¶6} On November 9, 2012, the Fourtounises filed a separate action against appellees in the trial court seeking confession of judgment on a cognovit note.[3] Shortly thereafter, these same appellants filed an answer to appellees' claims in the original case.

{¶7} On November 21, 2012, Mark filed an answer and a counterclaim to appellees' claims in the original case. Mark averred in his answer that the All Seasons companies had been "liquidated by order of the U.S. Bankruptcy Court on June 13, 2011 and the corporate charters for each corporation [were] thereafter cancelled by the Ohio Secretary of State."

{¶8} In his counterclaim, Mark sought an order from the trial court to enforce a settlement agreement. Mark averred that on March 30, 2012, appellee Stamatopoulos had entered into an agreement with appellants to resolve claims for "past due rent," and for "repayment of loans."

{¶9} According to the terms of this agreement, which was attached to Mark's counterclaim as an exhibit, Stamatopoulos executed a "Cognovit Promissory Note made payable

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[3]Case No. CV-12-795314.

to Manolis Investments, LLC"[4] and the Fourtounises in the amount of $112,000. As security for the note, Stamatopoulos would, inter alia, transfer both the title and the possession of a Volvo truck known as a "Super Sucker" to the Fourtounises. Mark claimed that appellees had failed to comply with the terms of the settlement agreement, and demanded that the trial court enforce it.

{¶10} For some time, the cases proceeded separately. On May 30, 2013, the trial court consolidated the two cases. In July 2013, the Fourtounises amended their cognovit complaint against appellees. The Fourtounises set forth five claims in their amended complaint: (1) breach of the settlement agreement, (2) breach of the Note, (3) wrongful attachment, (4) violation of civil rights under color of state law, and (5) punitive damages.

{¶11} On May 30, 2013, Global filed an answer to appellees' original complaint, together with a counterclaim.[5] The counterclaim alleged six causes of action: (1) breach of the settlement agreement, (2) breach of the "Letter Agreement," (3) wrongful seizure of property, (4) violation of civil rights under state law, (5) malicious conduct intended to cause economic harm, and (6) malicious conduct intended to intimidate Global from pursuing its civil remedies.

{¶12} After appellees filed an answer to the Fourtounises' amended complaint in the cognovit case, the trial court referred the cases to mediation. Mediation proved unsuccessful; therefore, the court resumed trial preparations. In July 2013, appellees filed answers to Mark's and Global's counterclaims. Appellees asserted the defense of duress.

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[4]The record contains no indication of who owned this company.

[5]The record contains no indication that Global received service of appellees' complaint.

{¶13} The record reflects that the cases proceeded to a jury trial in February 2014, although the trial court's docket is silent as to the precise date. According to one of the trial court's journal entries, motions "were ruled on during trial; transcript will indicate rulings."[6]

{¶14} The jury's verdict forms supplied by the parties pursuant to App.R. 9(E) indicate that the jury found for the Fourtounises against appellees in the amount of $100,000 "on their counterclaim." Presumably, this was the Fourtounises' claim for "wrongful attachment," because the jury's answer to an interrogatory stated that the Fourtounises proved "by a preponderance of the evidence that they were damaged by [Stamatopoulos's] seizure of the Super Sucker." Although the jury made no specific findings on either Mark's or Global's counterclaims against appellees, when asked in an interrogatory whether Mark and Global proved they were damaged by appellees' seizure of their trucks and equipment, the jury answered, "No." The record does not reflect that the jury rendered any verdict on either appellees' claim for fraudulent inducement or appellees' defense of duress.

{¶15} Despite this absence, on April 3, 2014, in response to appellants' March 5, 2014 "request for an entry of judgment," the trial court issued a journal entry that stated:

> As a result of the jury's verdict finding that [appellees] failed to prove duress in the signing of the Settlement Agreement and Cognovit Note, the parties are hereby ordered to comply with the terms and conditions of the Settlement Agreement, signed by the parties on or about March 30, 2012 within 30 days of this journal entry. The court retains jurisdiction over all post-judgment motions. * * * Final. * * * .

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[6] The trial court is reminded that it "speaks only through its journal." *Schenley v. Kauth*, 160 Ohio St. 109, 113 N.E.2d 625 (1953), paragraph one of the syllabus. If the parties agreed during trial to permit the court rather than the jury to determine some of the issues and if the court made rulings on motions, therefore, the docket should so reflect. *Ohio Bulk Transfer Co. v. S.E. Johnson Cos.*, 8th Dist. Cuyahoga No. 78194, 2001 Ohio App. LEXIS 1880 (Apr. 26, 2001).

{¶16} On April 16, 2014, Global filed a motion for a new trial "on damages." On April 17, 2014, appellants filed a "motion for entry of final appealable judgment."

{¶17} On May 1, 2014, the trial court issued another journal entry that stated:

> Entry of 04/03/2014 is amended to include the following language: inasmuch as it was the clear intention of the parties and the jury was advised, that in the event that [appellees] did not prevail on their claim of duress in signing the Settlement Agreement, the Court would enforce the Settlement Agreement. In addition, the jury returned a verdict in favor of [the Fourtounises] for $100,000. It is so ordered. Final.

{¶18} On May 14, 2014, the trial court issued a journal entry that denied Global's motion for a new trial on damages. The same journal entry stated that appellants' motions for entry of a final appealable judgment were "moot."

{¶19} Appellants filed their notice of appeal from the journal entries of April 3, May 1, and May 14, 2014. Appellees filed their cross-appeal from the same. However, despite the trial court's use of the word "final," because none of these journal entries was adequate to create a final appealable order, this court lacks jurisdiction to consider either the appeal or the cross-appeal.

{¶20} According to R.C. 2505.02(B)(1), an order is a "final order" subject to appeal "when it affects a substantial right in an action that in effect determines the action and prevents a judgment." The primary function of a final order is the termination of a case or controversy that the parties to the action have submitted to the trial court for resolution. *Harkai v. Scherba Indus.*, 136 Ohio App.3d 211, 215, 736 N.E.2d 101 (9th Dist. 2000).

{¶21} Thus, a fundamental principle in the interpretation of judgments is that, in order to terminate the matter, the order must contain a statement of the relief that is being afforded to each of the parties to that action on each of the claims. *Id.* Appellees in this case presented seven claims, Mark presented one, the Fourtounises presented five, and Global presented six.

The trial court's journal entries specifically grant judgment only as follows: (1) Mark was granted judgment in his favor on his claim for enforcement of the settlement agreement between appellees, "Manolis Investments, LLC," and the Fourtounises, and (2) the jury made a finding for the Fourtounises "on their counterclaim."

{¶22} In discussing this case, it must be noted, too, that the word "parties" has been used by appellants, appellees, and the trial court loosely. For example, it is unclear that Mark established standing to pursue an action against appellees on behalf of "Manolis Investments, LLC" and the Fourtounises. None of the parties named in the pleadings was dismissed. Some, such as the All Seasons companies, were never served and never filed answers, but it appears that those entities took part in the proceedings.

{¶23} At any event, it is a fundamental premise of appellate jurisdiction that an order that adjudicates either the rights and liabilities of fewer than all the parties, or one or more but fewer than all the claims, must meet the requirements of both 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; *Chef Italiano Corp. v. Kent State Univ.*, 44 Ohio St.3d 86, 541 N.E.2d 64 (1989), syllabus. Pursuant to Civ.R. 54(B), "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." *Demsey v. Sheehy*, 8th Dist. Cuyahoga No. 100693, 2014-Ohio-2409, ¶ 10. Assuming arguendo that such language was appropriate in this case, the trial court did not include it in any of its purportedly "final" journal entries.

{¶24} Thus, neither the trial court's pronouncements in this case concerning what the jury's intent was and what the parties agreed the court's role would be, nor the court's order that the parties comply with the "settlement agreement of March 30, 2012," served to dispose of the

numerous claims and counterclaims presented.[7] *The Condominiums at Stonebridge Owners' Assn. v. Patton*, 8th Dist. Cuyahoga No. 92039, 2009-Ohio-2586, ¶ 4. Only one of the journal entries specifically states the relief afforded to a party, i.e., the jury made a finding for the Fourtounises "on their counterclaim," presumably, for "wrongful attachment," and it lacks any Civ.R. 54(B) language. Consequently, all of the claims presented by the parties remain pending before the trial court. *Id.*; *Chef Italiano Corp.*; *see also Landis v. Assoc. Materials, Inc*, 9th Dist. Wayne No. 06CA0005, 2006-Ohio-5060.

{¶25} This court also is compelled to point out to the trial court that the matters presented to it for resolution should be disposed of "such that the parties need not resort to any other document to ascertain the extent to which their rights and obligations have been determined." *Bergin v. Berezansky*, 9th Dist. Summit No. 21451, 2003-Ohio-4266, ¶ 5. In this case, although the trial court references the "settlement agreement" in one of its journal entries, that document is buried in the voluminous record. If the trial court seeks to enforce that document as a judgment, it must be incorporated into the court's journal entry. *Excel Mtge. Corp. v. Figitakis*, 9th Dist. Summit No. 25273, 2011-Ohio-1351, ¶ 9-10.

{¶26} For the foregoing reasons, this court lacks jurisdiction to review the trial court's orders.

{¶27} Appeal dismissed.

It is ordered that appellants and appellees share costs herein taxed.

The court finds there were reasonable grounds for this appeal.

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[7]As an aside, because the settlement agreement the trial court sought to enforce was signed in 2012, it would seem unlikely that any of the equipment mentioned in that agreement would have remained in the same condition for purposes of resolving the monetary issues raised in this case.

It is ordered that a special mandate be sent to said 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.

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ANITA LASTER MAYS, JUDGE

LARRY A. JONES, SR., P.J., CONCURS;
SEAN C. GALLAGHER, J., DISSENTS WITH
SEPARATE OPINION

SEAN C. GALLAGHER, J., DISSENTING:

{¶28} I dissent from the majority opinion indicating that this case is not a final appealable order. I respectfully disagree.

{¶29} This is a civil action in which the surviving claims were submitted to a jury. Seven jury forms were given to the jury along with a number of jury interrogatories. The jury determined all issues, and the general verdict awarded money damages in the amount of $100,000 to Nikolas and Marika Fourtounis upon their counterclaim against appellees. The trial court entered judgment upon the jury verdict and ordered specific enforcement of the settlement agreement, which is susceptible to enforcement by the court. All claims were disposed of in the action, and the trial court retained jurisdiction over any post-trial motions. Thus, there was a final appealable order in this action. The trial court aptly recognized as much by denying defendants' motion for entry of final appealable judgment as moot.

{¶30} This court accepted the appeal for review. The matter has been fully briefed on appeal, and the parties deserve a final resolution. Respectfully, I believe this court has jurisdiction over this appeal and the majority should be addressing the merits, rather than dismissing the case and prolonging the litigation.