**[Cite as *No-Burn, Inc. v. Murati*, 2009-Ohio-6951.]**

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| STATE OF OHIO | ) | IN THE COURT OF APPEALS |
| | )ss: | NINTH JUDICIAL DISTRICT |
| COUNTY OF SUMMIT | ) | |

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| NO-BURN, INC. | C. A. No. 24577 |
| Appellant/Cross-Appellee | |
| v. | APPEAL FROM JUDGMENT ENTERED IN THE |
| PEDRO MURATI | COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO |
| Appellee/Cross-Appellant | CASE No. CV 2008 08 5602 |

DECISION AND JOURNAL ENTRY

Dated: December 31, 2009

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CARR, Judge.

**{¶1}** Appellant/cross-appellee, No-Burn, Inc. ("NBI"), appeals the judgment of the Summit County Court of Common Pleas which dismissed its complaint for declaratory judgment. Cross-appellant/appellee, Dr. Pedro Murati, cross-appeals the judgment which granted, in substantial part, his counterclaim for injunction, but denied his demand for litigation expenses, including attorney fees. This Court dismisses the appeal and cross-appeal for lack of jurisdiction.

I.

**{¶2}** NBI is an Ohio corporation with its principal place of business in Wadsworth, Ohio. Dr. Murati is a resident of Kansas and a shareholder in NBI since May 2007, having invested $600,000.00 in the company. After becoming a shareholder, Dr. Murati demanded the right to examine, copy, or make extracts from eighteen sundry categories of corporate documents and records. On August 8, 2008, NBI filed a complaint for declaratory judgment "setting forth

the rights and responsibilities of [the parties] as to documents and information which should be produced in response to [Dr. Murati's] demand for information ***."

**{¶3}** Before filing any responsive pleading, Dr. Murati filed a notice of removal of the case to the United States District Court for the Northern District of Ohio on the grounds of diversity jurisdiction. On September 25, 2008, the Honorable Sara Lioi of the United States District Court remanded the matter to the state court upon finding that the federal district court lacked subject matter jurisdiction because the jurisdictional amount in controversy was not satisfied. On September 30, 2008, the Federal District Clerk of Courts sent a certified copy of the district court's docket sheet to the Summit County Clerk of Courts. On October 21, 2008, Dr. Murati's counsel filed a letter in which he asserted he was filing "a copy of all pleadings and motions filed by either party while this case was before the Federal judge." Appended to his letter was only the federal docket which indicated that the following substantive documents had been filed in the federal court: (1) Dr. Murati's August 26, 2008 motion for mandatory injunction requiring NBI to allow inspection of corporate records, with sixteen attachments; (2) Dr. Murati's September 4, 2008 answer and counterclaim; (3) NBI's September 8, 2008 opposition to Dr. Murati's motion for mandatory injunction, with one attachment; (4) Dr. Murati's reply to NBI's memorandum in opposition to the motion for mandatory injunction, with one attachment; and (5) NBI's September 24, 2008 answer to Dr. Murati's counterclaim. The record, however, does not contain copies of any of those documents.

**{¶4}** This matter was tried to the bench on December 19, 2008. On December 31, 2008, the trial court issued its judgment, dismissing NBI's complaint and awarding partial judgment in favor of Dr. Murati on his counterclaim. The judgment entry states, in relevant part:

> "[Dr.] Murati's Counterclaim for an injunction against NBI is GRANTED, as follows:
>
> "NBI shall not later than thirty days from the date of this Judgment comply fully with [Dr.] Murati's inspection demand of August 4, 2008, except as to categories No. 14 in part (excluding credit cards) and No. 18. The parties shall enter into such reasonable confidentiality agreement as NBI may request.
>
> "[Dr.] Murati's demand for an award of litigation expenses, including its reasonable attorney fees, is DENIED, but it is awarded costs as to its Counterclaim."

The judgment entry does not contain any statement pursuant to Civ.R. 54(B) that there is no just reason for delay.

**{¶5}** NBI attempted to appeal, raising five assignments of error for review. Dr. Murati attempted to cross-appeal, raising one assignment of error for review. At oral argument, the panel raised the issue of this Court's jurisdiction to address the merits of the appeal because it appeared that the trial court's judgment did not constitute a final, appealable order. Dr. Murati filed a notice of supplemental authority on December 8, 2009, arguing in support of this Court's jurisdiction. We have considered his arguments.

II.

**{¶6}** The parties raise numerous assignments of error which we decline to reiterate here.

**{¶7}** This Court is obligated to raise sua sponte questions related to our jurisdiction. *Whitaker-Merrell Co. v. Geupel Constr. Co., Inc.* (1972), 29 Ohio St.2d 184, 186. This Court has jurisdiction to hear appeals only from final judgments. Article IV, Section 3(B)(2), Ohio Constitution; R.C. 2501.02. In the absence of a final, appealable order, this Court must dismiss the appeal for lack of subject matter jurisdiction. *Lava Landscaping, Inc. v. Rayco Mfg., Inc.* (Jan. 26, 2000), 9th Dist. No. 2930-M. "An order is a final appealable order if it affects a

substantial right and in effect determines the action and prevents a judgment." *Yonkings v. Wilkinson* (1999), 86 Ohio St.3d 225, 229.

**{¶8}** "[T]o terminate the matter, the order must contain a statement of the relief that is being afforded the parties." *Hawkins v. Innovative Property Mgt.*, 9th Dist. No. 22802, 2006-Ohio-394, at ¶5, quoting *Harkai v. Scherba Industries, Inc.* (2000), 136 Ohio App.3d 211, 215. This Court has further held that "[a]n order is not final until the trial court rules on all of the issues surrounding the award, 'leaving nothing outstanding for future determination.'" *Carnegie Cos., Inc. v. Summit Properties, Inc.*, 9th Dist. No. 24553, 2009-Ohio-4655, at ¶18, quoting *State v. Muncie* (2001), 91 Ohio St.3d 440, 446.

**{¶9}** This Court concludes that the trial court's judgment is not a final, appealable order for two reasons.

**{¶10}** First, the trial court recognized that Dr. Murati has the right as a shareholder to examine certain corporate records pursuant to R.C. 1701.37, but not every type of document without limitation. The trial court further stated that Dr. Murati agreed to enter into a confidentiality agreement to assuage NBI's fears regarding the unfettered disclosure of proprietary information. By merely ordering that the parties enter into a "reasonable confidentiality agreement as NBI may request," the trial court left for future determination the scope of the records that NBI must present to Dr. Murati for his inspection. Therefore, the trial court did not fully dispose of Dr. Murati's counterclaim seeking an injunction requiring the inspection and copying of corporate records.

**{¶11}** "When a trial court enters a judgment in a declaratory judgment action, the order must declare all of the parties' rights and obligations in order to constitute a final, appealable order." *Bowman v. Middleburg Hts.*, 8th Dist. No. 92690, 2009-Ohio-5831, at ¶6, quoting *Dutch*

*Maid Logistics, Inc. v. Acuity*, 8th Dist. No. 86600, 2006-Ohio-1077, at ¶10. "Indeed, 'even if the [trial] court determines the plaintiff is wrong, *** the court must declare the appropriate rights.'" *Bowman* at ¶6, quoting *Galloway v. Horkulic*, 7th Dist. No. 02JE52, 2003-Ohio-5145, at ¶24. Accordingly, nor did the trial court fully dispose of NBI's complaint seeking declaratory judgment setting forth the rights and responsibilities of the parties regarding the documents and information which must be produced in response to Dr. Murati's demand for information.

**{¶12}** Second, the trial court appears to have considered Dr. Murati's counterclaim as the mirror image of NBI's complaint, so that the granting of judgment in favor of one party necessarily precluded judgment in favor of the other. NBI sought a declaration as to the rights and responsibilities of the parties regarding the production of documents and information expressly demanded by Dr. Murati in his August 4, 2008 demand letter. Because Dr. Murati's counterclaim, motion for mandatory injunction, and reply in support of his motion for mandatory injunction are not contained in the record before this Court, it is impossible to determine the scope of his request for the production of corporate documents and information. Accordingly, this Court cannot determine whether the issues raised by Dr. Murati mirror those raised in NBI's complaint for declaratory judgment. By merely ordering NBI to "comply fully with [Dr.] Murati's inspection demand of August 4, 2008," the trial court declared NBI's responsibility without declaring the corporation's rights. Again, the order that the parties enter into a confidentiality agreement "as NBI may request" leaves NBI's specific rights and Dr. Murati's specific responsibilities unresolved.

**{¶13}** Moreover, a significant issue in this case concerns the specific documents and information NBI must provide to Dr. Murati. Both parties acknowledge the need to protect NBI's proprietary information from disclosure to third parties. Therefore, this Court must be

able to review the reasonableness of the confidentiality agreement. Where the trial court has not determined the terms of the confidentiality agreement, this Court cannot reach the underlying issue of the propriety of the trial court's disclosure order.

**{¶14}** By failing to determine the scope of the parties' confidentiality agreement and to declare the parties' rights and responsibilities, the trial court's judgment fails to contain a statement of the relief being afforded to the parties, leaving the matter subject to further action by the trial court. Accordingly, the December 31, 2008 judgment does not constitute a final, appealable order, and this Court is without jurisdiction to consider the merits of the appeal. See *Ohio Bur. of Workers' Comp. v. Testa*, 9th Dist. No. 05CA008708, 2006-Ohio-2179, at ¶13. The appeal and cross-appeal are dismissed for lack of jurisdiction.

Appeal dismissed.

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Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed equally to both parties.

DONNA J. CARR
FOR THE COURT

DICKINSON, P. J.
CONCURS

BELFANCE, J.
DISSENTS, SAYING:

**{¶15}** I respectfully dissent as I believe the trial court's judgment entry fully resolved all of the claims before the trial court and constitutes a final, appealable order. Thus I would address the appeal on the merits.

**{¶16}** NBI filed a complaint for declaratory judgment. In that complaint, it related that Murati had made a formal demand for inspection of 18 categories of corporate documents. NBI further alleged that it stood ready to produce all information required to be produced to a shareholder in accordance with R.C. 1701.37, however, Murati had taken the position that he was entitled to virtually all of the corporate information of NBI, irrespective of whether he was entitled to the information under R.C. 1701.37. NBI stated that a "dispute and controversy has arisen between NBI and Murati as to what documents and information are required to be produced by a corporation to its shareholders under R.C. 1701.37."

**{¶17}** In response, Murati filed a counterclaim in which he sought the turnover of 18 categories of corporate documents and an injunction. Thus, the core dispute between Murati and NBI was over what documents were required to be produced in accordance with R.C. 1701.37. In my view, the trial court fully resolved that issue when it dismissed NBI's complaint for declaratory judgment, entered judgment in favor of Murati on his counterclaim and injunction, and specifically identified which documents NBI was required to produce. The trial court was clear that NBI had a duty to fully comply with the document request, subject to two categories of omitted documents. The trial court also ordered Murati to enter into "such reasonable confidentiality agreement as NBI may request." Thus, there was no confusion or ambiguity as to what NBI's and Murati's rights and responsibilities were pursuant to the court's judgment.

**{¶18}** The majority contends that the entry is not final and appealable because it does not declare all the rights and obligations of the parties. The majority believes that the trial court's statement that "[t]he parties shall enter into such reasonable confidentiality agreement as NBI may request[]" leaves "the matter subject to further action by the trial court." I disagree. In my view, the order was final and appealable as the rights and obligations of the parties are clear. I also disagree that the fact that NBI might request a confidentiality agreement somehow left open the parties' rights and responsibilities or has a bearing on the scope of the disclosure.

**{¶19}** The trial court was clear that NBI had a duty to fully comply with the request, subject to two categories of omitted documents. Moreover, it is clear that Murati had a right to have the documents produced. Further, Murati had a duty to enter into a reasonable confidentiality agreement *should NBI request one*. Thus, the rights and duties of both parties are not ambiguous or unknown.

**{¶20}** None of the pleadings concerned a dispute regarding a confidentiality agreement. Thus, this was not an issue that was left unresolved by the trial court. The fact that NBI might request a confidentiality agreement in the future has no bearing on our review of the merits of the trial court's determination regarding the scope of production of the documents under R.C. 1701.37. A confidentiality agreement would merely set forth the means of *preserving* confidentiality of those documents that were ordered to be produced pursuant to the trial court's final judgment. A confidentiality agreement would not be a vehicle for NBI to limit the scope of disclosure ordered by the trial court. The scope of the disclosure was determined by the trial court and any confidentiality agreement entered into by the parties could not alter that. Thus, the advent of a confidentiality agreement does not create any ambiguity with respect to the parties'

respective rights and responsibilities concerning the judgment ordering NBI to produce the documents.

**{¶21}** Furthermore, the trial court did not order the parties to submit a confidentiality agreement for its review and approval, rather it merely ordered Murati to assent to a reasonable confidentiality agreement "as NBI may request." Thus, there was nothing left for the trial court to do with regard to the dispute before it. However, under the majority's analysis there is a possibility that there may never be a final order, and thus, neither side may ever be able to appeal the trial court's judgment. It is entirely possible that NBI, for whatever reason, might not request Murati to enter into a confidentiality agreement. Thus, NBI's failure to request a confidentiality agreement would leave the parties in an indefinite holding pattern with respect to their ability to appeal the merits of this case.

**{¶22}** Finally, the fact that Murati was ordered to enter into a reasonable confidentiality agreement as NBI may request, certainly imposed a duty for which a post-judgment action could be taken against Murati in the event of non-compliance. This is no different than any final order that requires parties to take a particular action or to refrain from taking that action in the future. The remedy that may lie for the failure to comply is a contempt motion. See, e.g., *Estate of Harrold v. Collier*, 9th Dist. Nos. 07CA0074, 08CA0024, 2009-Ohio-2782, at ¶13 (Internal quotations and citation omitted.) ("Typically, civil contempt involves confining a contemnor indefinitely until he complies with an affirmative command [of the court] to do something like testify or produce documents.").

APPEARANCES:

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