

[Cite as *Van's Camera, Inc. v. Hanover Ins. Co.*, 2009-Ohio-6333.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

VAN'S CAMERA, INC.

Plaintiff-Appellee

-vs-

THE HANOVER INSURANCE CO.,
ET AL.

Defendants-Appellants

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. William B. Hoffman, J.

Hon. John W. Wise, J.

Case No. 2009 CA 00094

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas, Case No. 2008 CV 03391

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

November 30, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendants-Appellants

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Hoffman, J.

{¶1} Defendants-appellants The Hanover Ins. Co., Citizens Ins. Co. of America and Massachusetts Bay Ins. Co. (collectively “Hanover”) appeal the March 26, 2009 Judgment Entry entered by the Stark County Court of Common Pleas, granting declaratory relief in favor of plaintiff-appellee Van’s Camera, Inc. (“Van’s”).

STATEMENT OF THE CASE¹

{¶2} Van’s filed a Complaint for Declaratory Judgment and a Breach of Contract claim against Hanover on August 4, 2008. Hanover filed a Motion for Summary Judgment on January 5, 2009. Following Van’s Memorandum in Opposition and Hanover’s Reply Brief, the trial court filed its Judgment Entry on March 26, 2009, declaring Hanover’s four successive one-year Business Owners policies issued to Van’s each provided \$50,000 of coverage for a forgery scheme perpetrated by Glenda Vierheller. On April 8, 2009, the trial court filed an Order and Nunc Pro Tunc Judgment Entry, reiterating its previous declaration as to insurance coverage, adding the appropriate Civ.R. 54(B) certification.

{¶3} It is from the latter entry Hanover prosecutes this appeal, assigning as error:

{¶4} “I. THE TRIAL COURT ERRED IN ITS MARCH 26, 2009 JUDGMENT ENTRY BY DENYING DEFENDANTS HANOVER INS. CO., CITIZENS INS. CO. OF AMERICA AND MASSACHUSETTS BAY INS. CO.’S MOTION FOR SUMMARY JUDGMENT AND GRANTING DECLARATORY RELIEF IN FAVOR OF PLAINTIFF.”

¹ A complete rendition of the facts is unnecessary for our resolution of this appeal.

{¶15} As a preliminary matter, we must first determine whether the order under review is a final appealable order. If an order is not final and appealable, then we have no jurisdiction to review the matter and must dismiss it. See *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.* (1989), 44 Ohio St.3d 17, 20, 540 N.E.2d 266. In the event that the parties to the appeal do not raise this jurisdictional issue, we must raise it sua sponte. See *Chef Italiano Corp. v. Kent State Univ.* (1989), 44 Ohio St.3d 86, 541 N.E.2d 64, syllabus; *Whitaker–Merrell v. Carl M. Geupel Const. Co.* (1972), 29 Ohio St.2d 184, 186, 58 O.O.2d 399, 280 N.E.2d 922.

{¶16} We decline to address the merits of Appellants' arguments at this time as we find the order being appealed is not a final appealable order, despite the trial court's certification under Civ.R. 54(B). We do so under the authority of the Ohio Supreme Court's decision in *Walburn v. Dunlap*, 2009-Ohio-1221.

{¶17} The *Walburn* court held, although an action seeking a declaration of the parties' rights and responsibilities as they pertained to UM coverage was a special proceeding under R.C. 2505.02, an order declaring an insured is entitled to coverage but not addressing damages does not affect a "substantial right"; therefore, is not a final appealable order despite the trial court's certification there was no just cause for delay.

{¶8} Because Van's damages have not been determined, we find no final appealable order exists. Accordingly, we dismiss this appeal for lack of jurisdiction.

By: Hoffman, J.

Farmer, P.J. and

Wise, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ John W. Wise
HON. JOHN W. WISE

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

VAN'S CAMERA, INC.	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
THE HANOVER INSURANCE CO.,	:	
ET AL.	:	
	:	
Defendants-Appellants	:	Case No. 2009 CA 00094

For the reason set forth stated in our accompanying Opinion, this appeal is dismissed. Costs to Appellants.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ John W. Wise
HON. JOHN W. WISE