

[Cite as *Hoffman v. Stearns & Lehman, Inc.*, 2008-Ohio-577.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DEBORAH L. HOFFMAN, ET AL.

Plaintiffs-Appellants

-vs-

STEARNS & LEHMAN INC., ET AL.

Defendant-Appellee

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. Patricia A. Delaney, J.

Case No. 07-CA-81

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Richland County Court of
Common Pleas, Civil Case No. 05CV356H

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

February 7, 2008

APPEARANCES:

For Plaintiffs-Appellants

For Defendant-Appellee

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Hoffman, P.J.

{¶1} Plaintiffs-appellants Deborah L. Hoffman, et al. appeal the August 28, 2007 Decision and Judgment Entry of the Richland County Court of Common Pleas which rendered summary judgment in favor of Defendant-appellee Stearns & Lehman, Inc. and dismissed with prejudice Appellants' Complaint.

{¶2} Initially this Court must determine whether the trial court's August 28, 2007 entry is a final appealable order ripe for review, which vests this Court with jurisdiction. *State ex rel. White vs. Cuyahoga Metro. Hous. Aut.*, 79 Ohio St.3d 543, 544, 1997-Ohio-366, 684 N.E.2d 72.

{¶3} Appellate courts have jurisdiction to review the final orders or judgments of lower courts within their appellate districts. Section 3(B)(2), Article IV, Ohio Constitution. If a lower court's order is not final, then an appellate court does not have jurisdiction to review the matter and the matter must be dismissed. *General Acc. Ins. Co. vs. Insurance of North America* (1989), 44 Ohio St.3d 17, 20, 540 N.E.2d 266; *Harris v. Conrad* (June 17, 2002), 12th Dist. No. CA-2001-12 108. For a judgment to be final and appealable, it must satisfy the requirements of R.C. §2505.02 and if applicable, Civ.R. 54(B). *Denham v. New Carlisle* (1999), 86 Ohio St.3d 594, 596, 716 N.E.2d 184; *Ferraro v. B.F. Goodrich Co.* (2002), 149 Ohio App.3d 301, 2002-Ohio-4398, 777 N.E.2d 282.

{¶4} Revised Code §2505.02(B)(1) defines a final order as "an order that affects a substantial right in an action that in effect determines the action and prevents a judgment." A final order determines the whole case, or a distinct branch thereof, and reserves nothing for future determination, so that it will not be necessary to bring the

cause before the court for further proceedings. *Catlin v. United States* (1945), 324 U.S. 229, 233, 65 S.Ct. 631, 89 L.Ed. 911.

{¶5} Civil Rule 54(B) provides that if there are multiple claims or parties, a court may enter final judgment as to one or more but fewer than all the claims or parties only upon an express determination there is no just reason for delay. In the absence of such a determination, a decision which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not a final appealable order.

{¶6} Civ.R. 54(B) makes use of the “no just reason for delay” language mandatory. *Jarrett v. Dayton Osteopathic Hosp., Inc.* (1985), 20 Ohio St.3d 77, 486 N.E.2d 99, syllabus. Unless those words appear, the order can not be either final or appealable even if the trial court declares it to be. *Ft. Frye Teachers Assn. v. Ft. Frye Local School Dist. Bd. of Edn.* (1993), 87 Ohio App.3d 840, 843, fn. 4, citing *Pickens v. Pickens* (Aug. 27, 1992), Meigs App. No. 459.

{¶7} Though likely moot, there remains pending in the trial court a third-party complaint by Appellee against Linker Equipment Corporation and Automated Machinery & Equipment, Inc. The trial court entry neither disposes of this claim nor

recites the requisite Civ. R. 54(B) language. As such, we dismiss this appeal, sua sponte, for want of jurisdiction.

By: Hoffman, P.J.

Farmer, J. and

Delaney, J. concur

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

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

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY

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JUDGMENT ENTRY

Case No. 07-CA-81

For the reason stated in our accompanying Memorandum-Opinion, we hereby order this appeal dismissed. Costs assessed to Appellants.

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

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

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY