

IN THE SUPREME COURT OF OHIO

LORNA B. RATONEL, et al. : CASE NO. 2015-0724  
Appellees, :  
v. : On Appeal from the  
: Montgomery County Court of Appeals  
: Second Appellate District  
ROETZEL & ANDRESS, LPA, et al. :  
Appellants. : Court of Appeals  
: Case No. 26259

---

APPELLEES' MOTION TO DISMISS THE INSTANT  
APPEAL, AND REQUEST FOR SANCTIONS

---

David C. Greer (0009090)  
James H. Greer (0046555)  
Curtis G. Moore (0091209)

Sam G. Caras (0016376)  
David M. Deutsch (0014397)  
Mitchell J. Anderson (0086950)

Phone: (937) 223-3277  
Fax: (937) 223-6339  
E-Mail: [dcg@bglaw.com](mailto:dcg@bglaw.com)  
[jhg@bglaw.com](mailto:jhg@bglaw.com)  
[cgm@bglaw.com](mailto:cgm@bglaw.com)

Phone: (937) 223-2200  
Fax: (937) 223-8989  
E-Mail: [samcaras@caraslaw.com](mailto:samcaras@caraslaw.com)  
[deutsch.lawyer@gmail.com](mailto:deutsch.lawyer@gmail.com)  
[manderson@caraslaw.com](mailto:manderson@caraslaw.com)

Counsel for Appellants

Counsel for Appellees

Now come Appellees, pursuant to S. Ct. Prac. R. 4.01 and S. Ct. Prac. R. 4.03(A), respectfully moving this Court to dismiss the instant appeal and issue appropriate sanctions for the reasons set forth in the following Memorandum.

### MEMORANDUM

#### **I. THE APPELLATE COURT’S DENIAL OF APPELLANTS’ MOTION FOR SUMMARY JUDGMENT IS NOT A FINAL APPEALABLE ORDER.**

“Section 2, Article IV of the Ohio Constitution” makes clear that the “jurisdiction of the Supreme Court over the Court of Appeals” extends only to “final” judgments or orders. *Humphrys v. Putnam*, 172 Ohio St. 456, 460-61, 178 N.E.2d 506, 510 (1961). Likewise, “R.C. 2505.03 limits the appellate jurisdiction of any court, including the Supreme Court, to the review of final orders, judgments, or decrees.” *State ex rel. White v. Cuyahoga Metro Hous. Auth.*, 79 Ohio St.3d 543, 544 (1997). The denial of a motion for summary judgment which does not involve purely legal questions is neither a final nor appealable order. *See, e.g., Hubbell v. City of Xenia*, 2007-Ohio-4839, ¶ 9, 115 Ohio St. 3d 77, and cases cited therein; R.C. 2505.02.<sup>1</sup>

On March 27, 2015, the Second District Court of Appeals reversed the trial court’s grant of summary judgment after properly construing the material evidence of record in Appellees’ favor. The appellate court did not dispose of the merits of the parties’ claims. Nor did the

---

<sup>1</sup> *See also Humphrys v. Putnam*, 172 Ohio St. 456, 461 (1961) (holding “it is axiomatic under our system of jurisprudence that orders must be final before they are reviewable[.]”); *State ex rel. Boddie v. Franklin Cty. 911 Admr.*, 135 Ohio St.3d 248, 2013-Ohio-401, ¶ 2 (where appellate court’s order did not determine mandamus action or prevent judgment, Supreme Court held: “We thus lack jurisdiction over this appeal and dismiss it.”); *State ex rel. Sawicki v. Court of Common Pleas Lucas Cty.*, 121 Ohio St.3d 507, 2009-Ohio-1523, ¶ 11 (refusing to consider denial of motion to intervene in procedendo action for want of final appealable order because appellate court’s denial did not dispose of merits of malpractice case or prevent judgment); *State ex rel. Downs v. Panioto*, 107 Ohio St.3d 347, 2006-Ohio-8, ¶ 17; *State ex rel. Keith v. McMonagle*, 103 Ohio St.3d 430, 2004-Ohio-5580, ¶¶ 3-4; *Komorowski v. John P. Hildebrand Co., L.P.A.*, 2015-Ohio-1295, ¶ 21 (8th Dist. Cuyahoga) (citing R.C. 2505.03, court dismissed appeal because “[t]he denial of summary judgment is\*\*\*not a final appealable order.”)

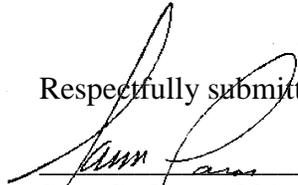
appellate court render judgment in favor of any party. The case was simply remanded to the trial court, where Appellants and Appellees may seek judgment in their favor by way of a jury trial or renewed motions for summary judgment. Accordingly, there is no final appealable order before this Court.

**II. APPELLANTS' PURSUIT OF THIS APPEAL IS NOT REASONABLY WELL-GROUNDED IN FACT, OR LAW.**

Prior to filing this motion, Appellees (collectively, "Ratonel") repeatedly reminded Appellants (collectively, "R&A") of the well-settled law referenced above, and repeatedly requested that they file an application to withdraw their appeal. (See Exhibit 1 hereto.) Notwithstanding these reminders, and without any justification in the face of the authorities cited herein, R&A remain intransigent. (Id.) Ratonel are therefore relegated to filing this motion and requesting the sanctions afforded by S. Ct. Prac. R. 4.03(A).

Indeed, R&A have not only consciously disregarded settled case law, but completely ignored the facts of record. Such behavior is precisely the type addressed by S. Ct. Prac. R. 4.03(A), especially in light of the extensive factual record relied upon by the appellate court -- a record R&A represented as a "scintilla" justifying this Court's "intervention." (See Appellees' Mem. Contra Appellants' Jurisdictional Mem., pp. 1-14, fully incorporated herein by reference thereto.) Put simply, R&As' representations to this Court are not reasonably well-grounded in fact, or law. Consequently, the prattling of the words "good faith" should provide no refuge from sanctions when their actions demonstrate the contrary.

Respectfully submitted,



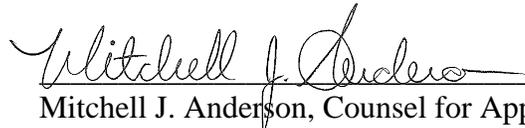
---

Sam G. Caras (0016376)  
David M. Deutsch (0014397)  
Mitchell J. Anderson (0086950)  
130 West Second Street, Suite 310  
Dayton, OH 45402-1534  
Phone: (937) 223-2200  
Fax: (937) 223-8989  
E-Mail: [samcaras@caraslaw.com](mailto:samcaras@caraslaw.com)  
[deutsch.lawyer@gmail.com](mailto:deutsch.lawyer@gmail.com)  
[manderson@caraslaw.com](mailto:manderson@caraslaw.com)

Counsel for Appellees

**CERTIFICATE OF SERVICE**

I certify that a copy of this document was sent by electronic mail to David C. Greer, Esq., James H. Greer, Esq., and Curtis G. Moore, Esq., counsel for Appellants Roetzel & Andress, LPA and Mark A. Ropchock, Esq., 400 PNC Center, 6 N. Main Street, Dayton, OH 45402-1908, this 5<sup>th</sup> day of June, 2015.



---

Mitchell J. Anderson, Counsel for Appellees

---

DAVID M. DEUTSCH CO., L.P.A.  
130 WEST SECOND STREET, SUITE 310  
DAYTON, OHIO 45402-1534

OFFICE: (937) 223-7170

[DEUTSCH.LAWYER@GMAIL.COM](mailto:DEUTSCH.LAWYER@GMAIL.COM)

FAX: (937) 223-7171

---

May 11, 2015

**VIA: E-MAIL ONLY**

David C. Greer, Esq. ([dcg@bgllaw.com](mailto:dcg@bgllaw.com))  
James H. Greer, Esq. ([jhg@bgllaw.com](mailto:jhg@bgllaw.com))  
BIESER, GREER & LANDIS LLP  
400 PNC Center  
6 North Main Street  
Dayton, OH 45402-1908

A large, bold, black-outlined rounded rectangle containing the text "EXHIBIT 1" in a large, bold, black, sans-serif font.

RE: *Lorna B. Ratonel, et al. v. Roetzel & Andress, LPA, et al.*  
Ohio Supreme Court Case No. 2015-0724

Dear David and Jamie:

We received the Notice of Appeal and jurisdictional memorandum you recently submitted to the Ohio Supreme Court.

As you know, the denial of a motion for summary judgment does not constitute a final, appealable order.<sup>1</sup> Accordingly, your clients' appeal is not properly before the Supreme Court.

Moreover, the jurisdictional memorandum:

- (i) impermissibly seeks to raise a new issue (Mr. Ropchock's "withdrawal" from a representation he allegedly "never agreed" to undertake);
- (ii) takes undue license with the facts to suggest that Mr. Ropchock's numerous e-mails and deposition testimony concerning the French Village claims and his malpractice constitute a "scintilla of evidence";

---

<sup>1</sup> See, e.g., Ohio Const. Art. IV, § 3(B)(2); R.C. 2505.03 (A); R.C. 2505.02; R.C. 2505.04; *Hubbell v. City of Xenia*, 2007-Ohio-4839, ¶ 9, 115 Ohio St. 3d 77; *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.*, 44 Ohio St.3d 17, 20, 540 N.E.2d 266 (1989); *General Electric Supply Co. v. Warden Electric, Inc.*, 38 Ohio St.3d 378, 528 N.E.2d 195 (1988); *State ex rel. Overmeyer v. Walinski*, 8 Ohio St.2d 23, 24, 222 N.E.2d 312 (1966).

- (iii) conspicuously omits any reference to the provision in R&A's engagement letter which expressly allowed its terms/the scope of representation to be modified without any further writing;
- (iv) fails to disclose that Mr. Ropchock offered, in writing, to expand the scope of his representation to include claims for French Village via e-mail on April 22, 2009;
- (v) fails to disclose that Mr. Ropchock discussed, developed evidence in support of, and continued his pursuit of the French Village claims until July 2010, when KMK moved for summary judgment on those then-pending claims due to Mr. Ropchock's admitted failure to offer supporting expert testimony; and
- (vi) further fails to disclose that Mr. Ropchock never told Ratonel to protect the French Village claims by retaining other counsel or pursuing the claims "*pro se*," prerequisites to any "withdrawal" from "representation."

In light of the foregoing, please file an application to dismiss the subject appeal by the end of business on Monday, May 18, 2015. If you do not, we will be relegated to move for the relief afforded by S.Ct.Prac.R. 4.03(A).

Of course, if you have any questions concerning this matter, please feel free to give us a call at your convenience.

Yours truly,



David M. Deutsch

cc: Sam G. Caras, Esq. (via e-mail)  
Mitchell J. Anderson, Esq. (via e-mail)  
Curtis G. Moore, Esq. (via e-mail)

---

DAVID M. DEUTSCH CO., L.P.A.  
130 WEST SECOND STREET, SUITE 310  
DAYTON, OHIO 45402-1534

OFFICE: (937) 223-7170

[DEUTSCH.LAWYER@GMAIL.COM](mailto:DEUTSCH.LAWYER@GMAIL.COM)

FAX: (937) 223-7171

---

May 14, 2015

**VIA: E-MAIL ONLY**

David C. Greer, Esq. ([dcg@bgllaw.com](mailto:dcg@bgllaw.com))  
James H. Greer, Esq. ([jhg@bgllaw.com](mailto:jhg@bgllaw.com))  
BIESER, GREER & LANDIS LLP  
400 PNC Center  
6 North Main Street  
Dayton, OH 45402-1908

RE: *Lorna B. Ratonel, et al. v. Roetzel & Andress, LPA, et al.*  
Ohio Supreme Court Case No. 2015-0724

Dear David:

I appreciate your letter of May 13, 2015, as well as your customary sense of humor and mastery of misdirection.

However, an examination of “Section 2, Article IV of the Ohio Constitution” makes clear that the “jurisdiction of the Supreme Court over the Court of Appeals” extends only to “final” judgments or orders. *Humphrys v. Putnam*, 172 Ohio St. 456, 460-61, 178 N.E.2d 506, 510 (1961). Put another way, “the finality of the order goes to the jurisdiction of the reviewing court.” *Id.*; *See also* R.C. 2505.03 (which provides only “final” orders, judgments, or decrees may be appealed, and expressly applies to the “Supreme Court”). The denial of a motion for summary judgment in a case like ours is not a final appealable order. *See, e.g., Hubbell v. City of Xenia*, 2007-Ohio-4839, ¶ 9, 115 Ohio St. 3d 77, and cases cited therein. Therefore the Supreme Court does not have jurisdiction in this case.

You cite three cases to imply jurisdiction for a case involving appeal of the denial of summary judgment. We address that misdirection.

The *Layne* case you cite derived from a final appealable order. The order appealed from the Fifth District Court of Appeals was final and appealable because it effectively determined the action -- the plaintiff lost out on the \$24.00 in statutory interest. *See* R.C. 2505.02.

The *Pinchot* case you cite involved appeal after the Eighth District reversed and ordered judgment in the plaintiff's favor, which disposed of the merits of the action and prevented judgment for Charter One. The *Frank Hoover Supply* case you cite did not involve a question of jurisdiction. Therefore, the case holds no precedential value, in derogation of the well-settled rules defining final appealable orders. Indeed, "R.C. 2505.03 limits the appellate jurisdiction of any court, including the Supreme Court, to the review of final orders, judgments, or decrees." *State ex rel. White v. Cuyahoga Metro Hous. Auth.*, 79 Ohio St.3d 543, 544 (1997).<sup>1</sup>

In our case, the appellate court's denial of R&A's summary judgment motion does not determine the entire action or preclude R&A from obtaining a judgment. Rather, your clients have an opportunity to convince a jury that Mr. Ropchok did not agree to expand the scope of representation to include French Village-related claims against KMK, even though he offered to expand the scope of his representation via e-mail on April 22, 2009, and later: included claims for French Village in the initial Complaint; reviewed e-mails and a comprehensive rent study from experts referencing "MAHRA" and the reduced rents and increased mortgage debt certain to occur as a result of "MAHRA"; deposed Gail Pryse on the topic of reduced rents at French Village; chastised Gail Pryse for not knowing the rents were set to be reduced; drafted a settlement demand including damages for French Village; and conceded his malpractice for failing to retain an expert to support the French Village claims, a failure KMK utilized to obtain summary judgment on the "French Village claims." On this score we note that two out of three appellate judges agree.

Based on the foregoing apparent lack of jurisdictional authority for your clients' appeal, we recognize you were relegated to the creative misapplication of the cases cited in your letter. Accordingly, we renew our request that your clients file an application to dismiss their appeal by or before the end of business on Monday, May 18, 2015. Frankly, we'd like to avoid filing a motion for sanctions against your firm.

At any rate, if you would like to discuss a resolution of the lawsuit, as indicated on page one of your letter, we remain available for that purpose, and trust you and/or Jamie will feel free to give us a call sometime this week or next week.

---

<sup>1</sup> See also *Humphrys v. Putnam*, 172 Ohio St. 456, 461 (1961) (analyzing "Section 2, Article IV of the Ohio Constitution," and holding "it is axiomatic under our system of jurisprudence that orders must be final before they are reviewable" -- at any level.); *State ex rel. Boddie v. Franklin Cty. 911 Admr.*, 135 Ohio St.3d 248, 2013-Ohio-401, ¶ 2 (because appellate court's order did not determine mandamus action or prevent judgment, Supreme Court held: "We thus lack jurisdiction over this appeal and dismiss it."); *State ex rel. Sawicki v. Court of Common Pleas Lucas Cty.*, 121 Ohio St.3d 507, 2009-Ohio-1523, ¶ 11 (refusing to consider denial of motion to intervene in procedendo action for want of final appealable order because appellate court's denial did not dispose of merits of malpractice case or prevent judgment); *State ex rel. Downs v. Panioto*, 107 Ohio St.3d 347, 2006-Ohio-8, ¶ 17; *State ex rel. Keith v. McMonagle*, 103 Ohio St.3d 430, 2004-Ohio-5580, ¶¶ 3-4; *Komorowski v. John P. Hildebrand Co., L.P.A.*, 2015-Ohio-1295, ¶ 21 (8th Dist. Cuyahoga) (citing R.C. 2505.03, court dismissed appeal because "[t]he denial of summary judgment is\*\*\*not a final appealable order.")

Very truly yours,

A handwritten signature in black ink, appearing to read "David M. Deutsch", enclosed within a large, hand-drawn oval.

David M. Deutsch

cc: Sam G. Caras, Esq. (via e-mail)  
Mitchell J. Anderson, Esq. (via e-mail)  
Curtis G. Moore, Esq. (via e-mail)

# SAM G. CARAS CO., L.P.A. ATTORNEYS AT LAW

130 W. Second • Ste. 310 • Dayton, OH • 45402

Tel:(937)223-2200 • Fax: (937)223-8989

www.caraslaw.com

Sam G. Caras | samcaras@caraslaw.com

Mitchell J. Anderson | manderson@caraslaw.com

Gregory M. Gantt | Of Counsel

Scott A. Kramer | Of Counsel

May 21, 2015

Email: [dcb@bgllaw.com](mailto:dcg@bgllaw.com)

David C. Greer, Esq.  
Bieser, Greer & Landis LLP  
400 PNC Center  
6 North Main Street  
Dayton, OH 45402-1908

**RE: Lorna B. Ratonel, et al. v. Roetzel & Andress, LPA, et al.  
Ohio Supreme Court Case No. 2015-0724**

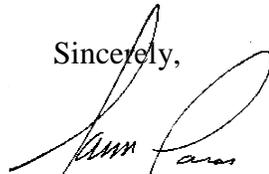
Dear David:

The proposal in your letter of May 20, 2015, that Rule of Practice of the Supreme Court 5.02(A)(3) defines jurisdiction is clearly in error. Indeed, the cases we cited in our last letter hold that the jurisdiction of the Supreme Court may not be expanded by Rule. At any rate, the Rule provides the procedure for appealing a “final appealable order,” which yet requires a question of public or great general interest, **AND**, a final appealable order. The requirement for a final appealable order is not satisfied by the denial of a summary judgment.

We previously supplied you an abundance of cases demonstrating that the denial of a summary judgment is not a final appealable order. You wanted more, so we enclose yet another case demonstrating that denial of a summary judgment is not a final appealable order. Please see *Keefe v. Youngstown Diocese of the Catholic Church*, 82 Ohio St.3d 1215 (1998).

Please notify us of your intention to file an application to withdraw your Notice of Appeal by close of business tomorrow, so that we may proceed without the need to request sanctions for a frivolous appeal.

Sincerely,



Sam G. Caras, Esq.

SGC/djv  
Attachment