

THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY, OHIO

CHRIS ARNDT, INDIVIDUALLY AND ON	:	M E M O R A N D U M
BEHALF OF ALL OTHERS SIMILARLY		O P I N I O N
SITUATED, et al.,	:	
	:	CASE NO. 2009-P-0080
Plaintiffs-Appellants,	:	
	:	
- VS -	:	
	:	
P & M LTD., et al.,	:	
	:	
Defendants-Appellees.		

Civil Appeal from the Portage County Court of Common Pleas, Case No. 2002 CV 0695.

Judgment: Appeal dismissed.

George W. Cochran, Smith, Greenberg & Leightty, P.L.L.C., 2321 Lime Kiln Lane, Ste. C, Louisville, KY 40222 (For Plaintiffs-Appellants).

John T. Murphy, *Colleen R. Del Balso*, and *Richard C.O. Rezie*, Gallagher, Sharp, Fulton & Norman, Sixth Floor, Bulkley Building, 1501 Euclid Avenue, Cleveland, OH 44115 (For Defendants-Appellees).

Stephen D. Dodd, Meyers, Roman, Friedberg & Lewis, 28601 Chagrin Boulevard, #500, Cleveland, OH 44122 (For Defendants-Appellees).

DIANE V. GRENDELL, J.

Pending before this court is a Motion to Dismiss Appeal by Appellees P&M Ltd. (dba P&M Estates), Modern Management Solutions, LLC, Raymond Vehovec, & KMV V

Ltd. For the reasons stated below, we grant the appellees' Motion and this appeal is dismissed.

On December 3, 2009, plaintiffs-appellants, Chris Arndt, et al., filed a Notice of Appeal from a November 23, 2009 Order of the Portage County Court of Common Pleas, denying appellants' proposal "to implement court ruling on class damages," i.e. bifurcate trial, and a December 1, 2009 Order of the Court, denying their motion to continue the trial date or file a notice of voluntary dismissal.

On December 4, 2009, appellees filed their Motion to Dismiss, in which they argue that neither of the appealed Orders constitutes a final order. See, e.g., *KMV V, Ltd. v. DeBolt*, 11th Dist. No. 2009-P-0045, 2009-Ohio-4454, at ¶3; *Finley v. First Realty Property Mgt., Ltd.*, 9th Dist. No. 23355, 2007-Ohio-2888, at ¶12 (motion to bifurcate); cf. *Mennonite Mut. Ins. Co. v. Hoyt Plumbing Inc.*, 5th Dist. No. 07CA0058, 2008-Ohio-22, at ¶32 (motion to dismiss).

On December 8, 2009, the trial court dismissed the underlying case with prejudice pursuant to Civ.R. 41(B)(1) and (3).

On December 21, 2009, appellants filed another Notice of Appeal, Court of Appeals No. 2009-P-0088, from the trial court's December 8, 2009 Judgment Entry, as well as from the previous November 23 and December 1, 2009, Orders of the Court.

We agree that the November 23 and December 1, 2009 Orders of the Court do not constitute final orders. Accordingly, the appellees' Motion to Dismiss Appeal No. 2009-P-0080 is granted. These two Orders will be considered as part of Appeal No. 2009-P-0088. The present appeal is hereby dismissed.

MARY JANE TRAPP, P.J.,

TIMOTHY P. CANNON, J.,

concur.