

[Cite as *E. Liverpool v. Buckeye Water Dist.*, 2008-Ohio-1768.]

STATE OF OHIO, COLUMBIANA COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

THE CITY OF EAST LIVERPOOL,)	
)	CASE NO. 08 CO 12
PLAINTIFF-APPELLEE,)	
)	
- VS -)	OPINION
)	AND
BUCKEYE WATER DISTRICT, et al.,)	JOURNAL ENTRY
)	
DEFENDANTS-APPELLANTS.)	

CHARACTER OF PROCEEDINGS:	Civil Appeal from Common Pleas Court, Case No. 05 CV 502.
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JUDGMENT:	Appeal dismissed for lack of a final order.
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JUDGES:
Hon. Gene Donofrio
Hon. Joseph J. Vukovich
Hon. Mary DeGenaro

Dated: April 2, 2008

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APPEARANCES:

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PER CURIAM:

{¶1} This cause comes on appeal from a February 13, 2008 judgment of the Common Pleas Court granting judgment in favor of the City of East Liverpool, Ohio and against the Buckeye Water District and the Board of Commissioners of Columbiana County in the amount of \$9,714,046.37 plus interest at 8% and the costs of this action. Notice of appeal from that judgment was filed on March 4, 2008.

{¶2} On March 20, 2008 appellants filed a "Notice of Issue of Non-Appealability of Judgment Entry" suggesting that the February 13, 2008 judgment entry was not final since a motion for prejudgment interest remained pending for decision by the trial court.

{¶3} The docket record for underlying Common Pleas Case No. 05 CV 502 reveals that appellee had filed a motion for prejudgment interest on February 27, 2008 and that motion remains pending for determination.

{¶4} There had been a split of authority among appellate districts whether inclusion of Civ.R. 54(B) language made a judgment award immediately reviewable, even when the prejudgment issue had not been settled. In *Miller v. First Internatl. Fid. & Trust Bldg. Ltd.* (2007), 113 Ohio St. 3d 474, 2007-Ohio-2457, a divided Ohio Supreme Court held that it did not matter whether Civ.R. 54(B) language was included in the entry. The Supreme Court held there was no final appealable order until the issue of prejudgment interest has been resolved. The court reasoned: "we conclude that judicial economy would be better served by allowing the trial court to determine whether prejudgment interest should be awarded before an appeal can be filed."

Then, on appeal, all appealable issues will be before the court of appeals." *Miller*, at ¶8.

{¶5} As we are mandated to follow decisions of the Ohio Supreme Court, it is ordered that this appeal is dismissed for lack of a final appealable order.

{¶6} Costs taxed against appellants.

DeGenaro, P.J.

Donofrio, J.

Vukovich, J.