

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

TRACIE M. HUNTER,	:	APPEAL NO. C-160776
	:	TRIAL NO. A-1304940
Plaintiff-Appellant,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
SUR LA MONT CONDOMINIUM	:	
OWNERS ASSOCIATION, INC.,	:	
	:	
Defendant-Appellee/Third-	:	
Party Plaintiff-Appellee,	:	
and	:	
JOHN DOE 1,	:	
and	:	
JOHN DOE 2,	:	
	:	
Defendants,	:	
vs.	:	
TRACIE M. HUNTER,	:	
	:	
Counterclaim Defendant-	:	
Appellant,	:	
and	:	
	:	
MORTGAGE ELECTRONIC	:	
REGISTRATIONS SYSTEMS, INC. c/o	:	
FLEET MORTGAGE CORP., successor	:	
in interest to THE PROVIDENT BANK,	:	
CAVALRY SPV I LLC,	:	
and	:	
OHIO DEPARTMENT OF JOB AND	:	



*Walling*, 7th Dist. Mahoning No. 01-C.A.-62, 2002-Ohio-3852, ¶ 18; see *Partners for Payment Relief DE, L.L.C. v. Jarvis*, 4th Dist. Scioto No. 15CA3723, 2016-Ohio-7562, ¶ 8.

Furthermore, when an order provides for relief that is conditioned upon a future event, then that order is not final. See *Goering v. Schille*, 1st Dist. Hamilton Nos. C-110525 and C-110604, 2012-Ohio-3330, ¶ 8 (an entry of the trial court that is contingent upon whether a defendant redeemed his property at some time in the future is not a final, appealable order); *Bennett v. Cardarelli*, 9th Dist. Summit No. 16685, 1994 WL 518353, \*1 (Sept. 14, 1994) (a conditional order is not a final, appealable order).

In this case, the entry from which Hunter appeals omits the amount due to the first lienholder, Mortgage Electronic Resources Systems, Inc. Moreover, the entry provides for foreclosure in three days, upon the condition that Hunter has not exercised her right to redeem. Therefore, the entry as it relates to Sur La Mont's foreclosure claim is not final. However, because this action involves multiple claims, and the trial court included a Civ.R. 54(B) certification in its entry, the issue becomes whether this court has jurisdiction to entertain that portion of the order granting summary judgment to Sur La Mont on Hunter's claims for breach of contract, discharge of lien, and fraud, and on Sur La Mont's breach-of-contract counterclaim.

The inclusion of Civ.R. 54(B) language in an entry does not “transform a final order into a final appealable order.” *Wisintainer v. Elcen Power Strut Co.*, 67 Ohio St.3d 352, 354, 617 N.E.2d 1136 (1993). The “ ‘ paramount consideration’ ” in a Civ.R. 54(B) analysis is whether a piecemeal appeal “serves the interests of sound judicial economy *at the trial level.*” (Emphasis in original.) *Mackey v. Pilarczyk*, 1st

Dist. Hamilton No. C-940845, 1995 WL 566639, \*1 (Sept. 27, 1995), quoting *Wisintainer* at 355. When reviewing a trial court’s determination under Civ.R. 54(B), “[a]n appellate court should not substitute its judgment for that of the trial court where some competent and credible evidence supports the trial court’s factual findings.” *Wisintainer* at 355. Thus, “where the record indicates that the interests of sound judicial administration could be served by a finding of ‘no just reason for delay,’ the trial court’s certification determination must stand.” *Id.*

In this instance, we determine that judicial economy would be best served by awaiting a final order in the foreclosure claim and disallowing a piecemeal appeal given the overlap among the claims involved. Sur La Mont’s breach-of-contract counterclaim seeks damages against Hunter for unpaid condominium-assessment fees, but also damages with respect to the lien, which forms the basis of the foreclosure action. Sur La Mont also seeks attorney’s fees with respect to its breach-of-contract counterclaim, which includes a request for attorney’s fees with respect to the foreclosure action. Hunter’s complaint likewise involves the validity of the lien, which she alleged Sur La Mont wrongfully filed. Therefore, we determine that Hunter’s claims and Sur La Mont’s counterclaims are intertwined such that a piecemeal appeal would not serve the interest of judicial economy. *See Deutsche Bank Natl. Trust Co. v. Germano*, 11th Dist. Portage No. 2010-P-0081, 2011-Ohio-3122, ¶ 8 (“courts of appeals have rejected trial courts’ invocation of Rule 54(B), particularly when there is much overlap between the claims adjudicated and the claims that remain pending \* \* \*.”); *Harness v. Jamison & Assoc., Inc.*, 1st Dist. Hamilton No. C-960735, 1997 WL 346053, \*1 (June 25, 1997). Therefore, we find no

**OHIO FIRST DISTRICT COURT OF APPEALS**

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competent, credible evidence in the record supporting the trial court's Civ.R. 54(B) determination.

In conclusion, the entry from which Hunter appeals is not a final, appealable order. Consequently, we dismiss Hunter's appeal.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**CUNNINGHAM, P.J., MILLER and DETERS, JJ.**

To the clerk:

Enter upon the journal of the court on September 8, 2017

per order of the court \_\_\_\_\_.  
Presiding Judge