

Court of Appeals, State of Michigan

ORDER

William Howe v Paul Shaheen

Docket No. 300504

LC No. 09-010581-CH

Patrick M. Meter
Presiding Judge

William C. Whitbeck

Stephen L. Borrello
Judges

The Court orders that the motion to dismiss the claim of appeal is GRANTED. The September 14, 2010 order dismissing without prejudice the remaining claims in this case on stipulation of appellants and defendant/counter-plaintiff Tamarack Trail Estates Condominium Association cannot be considered a final order under MCR 7.202(6)(a)(i) under the rationale of *Detroit v Michigan*, 262 Mich App 542, 545; 686 NW2d 514 (2004). In this regard, the language of that order cannot reasonably be read as precluding relitigation of those claims after the three-year moratorium provided for by the order. We further note that the language of the order purporting to declare it a final order is not determinative. *Faircloth v Family Independence Agency*, 232 Mich App 391, 400-401; 591 NW2d 314 (1998). At this time, appellants may seek to appeal any of the earlier lower court orders that they apparently actually seek to challenge by filing a delayed application for leave to appeal under MCR 7.205(F).

The claim of cross appeal is also DISMISSED. Because appellants did not have an actual appeal of right, it follows that the filing of their claim of appeal did not provide a right to file a cross appeal. MCR 7.207(A)(1).



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JAN 05 2011

Date

Sandra Schultz Mengel
Chief Clerk