Court of Appeals, State of Michigan

ORDER

Cynthia Lee Bourdow v Lake Huron Credit Union

Docket No. 315682

LC No. 12-015018-CH

Stephen L. Borrello
Presiding Judge

William C. Whitbeck

Amy Ronayne Krause
Judges

The Court orders that the motion to dismiss the claim of appeal for lack of jurisdiction is GRANTED because the January 28, 2013 order appealed from is not a final order appealable of right. MCR 7.202(6)(a); MCR 7.203(A). That order is not a final order under MCR 7.202(6)(a)(i) because the counterclaim in this case has not been disposed of in the trial court. Any failure by appellee to appropriately pursue the counterclaim in the trial court cannot reasonably be considered a waiver of its right to raise the present jurisdictional issue given that the issue of this Court's jurisdiction over the claim of appeal did not exist before this appeal was filed. Indeed, appellant is responsible for prematurely filing the claim of appeal without first filing a motion or taking other appropriate action in the trial court to obtain disposition of the counterclaim.

We decline appellant's alternative request to treat the claim of appeal as a granted application for leave to appeal. We see no basis for such exceptional action where appellant may either file a delayed application for leave to appeal the January 28, 2013 order within 21 days of the date of this order, MCR 7.205(F)(5), or take appropriate action in the trial court to obtain disposition of the counterclaim and then file a proper claim of appeal after the counterclaim is disposed of in the trial court.

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

NOV - 5 2013
Date

Chief Clerk