Court of Appeals, State of Michigan

ORDER

Donald McCole v Industrial Finishing Technologies Inc

Docket No. 294362

LC No. 07-001065-NO

William C. Whitbeck
Presiding Judge

Peter D. O'Connell

Donald S. Owens
Judges

The Court orders that the motion to dismiss is DENIED because appellee has not established that this Court lacks jurisdiction over the claim of appeal. Contrary to appellee's implicit premise, the holding in *Wickings v Arctic Enterprises*, 244 Mich App 125, 135; 624 NW2d 197 (2000), that an order dismissing a case without prejudice for lack of progress is not a final order is inapplicable because that holding was premised on the fact that such an order does not adjudicate the merits of the claims. In contrast, the order granting appellee's motion for summary disposition in this case did constitute an adjudication of the merits of appellants' claims against appellee despite the language of that order stating that the claims were dismissed without prejudice. Similarly, because that summary disposition order constituted the trial court's resolution of a disputed motion, the principle that a stipulated order to dismiss the remaining claims in a case does not constitute a final order, *Detroit v Michigan*, 262 Mich App 542, 545; 686 NW2d 514 (2004), is inapposite.

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

JAN 14 2010
Date

Sandra Schultz Mengel
Chief Clerk