MONTOUR OIL SERVICE COMPANY, Plaintiff	:	IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA
vs.	:	NO. 03-01,820
CLIFFORD BUTTON and JOYCE BUTTON, t/d/b/a TUSSEYVILLE GREENHOUSE, Defendant	:	CIVIL ACTION - LAW 1925(a) OPINION

Date: April 30, 2004

OPINION IN SUPPORT OF THE ORDER OF FEBRUARY 4, 2004 IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE

Defendants have appealed this Court's Memorandum Opinion and Order dated February 4, 2004. In that Memorandum Opinion and Order, the Court granted Plaintiff's Preliminary Objections filed December 3, 2003. The Preliminary Objections were in response to a document filed by the Defendants on November 21, 2003 entitled "Defendant's Response." The Court determined that the document was Defendants' Answer and New Matter to Plaintiff's Complaint.

In Defendants' New Matter, they raised the matter of appropriate venue in paragraphs eleven through fifteen. This was impermissible as Defendants waived any challenge to venue by failing to raise it by preliminary objection. Pa.R.C.P. 1006(e); ***PECO Energy Co. v. Philadelphia Suburban Water Co.***, 802 A.2d 666, 668 (Pa. Super. 2002); ***McLain v. Arrington Trucking Co.***, 536 A.2d 1388, 1389 (Pa. Super. 1988). The Court dismissed with prejudice the claim in New Matter raising the issue of venue.

Defendants filed their Notice of Appeal on March 2, 2004.[1] On March 18, 2004, this Court issued an Order in compliance with Pa.R.A.P. 1925(a) directing Defendants to file a Concise Statement of Matters Complained of on Appeal within fourteen days of the Order. Defendants filed their Statement of Matters on April 2, 2004 raising nine issues.

Upon reviewing the Statement of Matters, the Court concludes that the appeal should be dismissed. The issue addressing the February 4, 2004 Memorandum Opinion and Order is number six. It states that the "Court erred in granting the second Preliminary Objections of Plaintiff." (underline in original) The February 4, 2004 Order is not a final order. "Generally, only final orders are appealable." ***Levy v. Lenenberg***, 795 A.2d 419, 421 (Pa. Super. 2001). An order is a final order if: (1) it disposes of all claims and of all parties; or (2) is expressly defined as a final order by statute; or (3) it is entered as a final order pursuant to Pa.R.A.P. 341(c). Pa.R.A.P. 341(b)(3). The February 4, 2004 Order did not dispose of all the claims or all of the parties. In fact it disposed of none of the claims or the parties. The Order granting the Preliminary Objection of Plaintiff is not expressly defined as a final order by statute. The February 2, 2004 Order was not entered pursuant to Pa.R.A.P. 341(c).

The February 4, 2004 Order dismissing the Defendants' claim of improper venue is also not appealable as an interlocutory order. "Interlocutory orders are appealable only in accordance with Pa.R.A.P. 311 or 312." ***Levy***, 795 A.2d at 421. The February 4, 2004 Order does not meet the requirements of Pa.R.A.P. 311 or 312. As such, it cannot be appealed as an interlocutory order.

[1] Defendants initially appealed to the Commonwealth Court. By Order dated March 9, 2004, the Commonwealth Court determined that it did not have jurisdiction over the appeal and *sua sponte* transferred the appeal to the Superior Court.

The remaining issues raised by the Statement of Matters are also not appropriate for appeal. The Court did not have an opportunity to address these issues. Appellate review on these issues would be inappropriate at this stage in the proceedings.

Accordingly, the Superior Court should deny the appeal and affirm the February 4, 2004 Memorandum Opinion and Order of this Court.

BY THE COURT,

William S. Kieser, Judge

cc: Superior Court (Original +1)
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