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DISTRICT IV

May 27, 2010

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You are hereby notified that the Court has entered the following order:

2010AP1291

Sean Dilweg v. Wells Fargo Bank (L.C. # 2010CV1576)

No. 2010AP1291

Before Dykman, P.J.

Auerlius Capital Management, LP, Fir Tree, Inc., King Street Capital, L.P., King Street Capital Master Fund, Ltd., Monarch Alternative Capital LP, and Stonehill Capital Management LLC (collectively the "RMBS Policyholders") have filed three documents with the court. The first is entitled "Preliminary Emergency Petition for Leave to Appeal"; the second is entitled "RMBS Policyholders' Emergency Motion for Injunction Pending Appeal"; and the third is a brief in support of the motion for an injunction. The RMBS Policyholders seek to enjoin "the consummation of the CDS Settlement and the distribution of settlement funds from the General Account pending appeal of the Circuit Court's ruling denying the RMBS Policyholders' Emergency Motion to Modify Order for Temporary Injunctive Relief."

The circuit court does not appear to have yet entered a written order or judgment in this case, at least not on the matter from which the petitioners seek leave to appeal.¹ The RMBS policyholders state that the circuit court declined to issue an injunction because it concluded that it did not have jurisdiction to review "the CDS Settlement." The brief in support of the motion for an injunction states that the circuit court has not issued its final judgment but indicated, apparently on May 25, that it would be issuing findings of fact and conclusions of law "in several days." The RMBS policyholders say that they will appeal when a judgment is entered, if it is, in fact, a final judgment. If it is not a final judgment, the RMBS policyholders ask to be allowed to

¹ The appendix submitted by the petitioners contains the circuit court's March 24, 2010, order for temporary injunctive relief. No appeal has been taken from this order.

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file an amended and more comprehensive petition for leave to appeal. In the meantime, however, they ask us to enjoin “the CDS Settlement,” something that the circuit court concluded it lacked jurisdiction to do.

At this point, there is nothing pending in this court and we do not have jurisdiction to enjoin anything in this case. A petition for leave to appeal may be brought after the entry of a non-final order or judgment. WIS. STAT. RULE 809.50 (2007-08).² “An order is ‘entered’ when it is filed in the office of the clerk of the circuit court.” *State v. Wolverton*, 193 Wis. 2d 234, 259, 533 N.W.2d 167 (1995). Because the circuit court has not yet entered an order, the petition for leave to appeal is premature, as is the request for relief pending appeal. Further, as the RMBS policyholders state, they cannot file a notice of appeal until a final order or judgment has been entered. See *Ramsthal Advertising Agency v. Energy Miser, Inc.*, 90 Wis. 2d 74, 75, 279 N.W.2d 491 (Ct. App. 1979) (to be appealable, an order must be in writing and filed).

Once the circuit court enters an order or judgment in this case, the RMBS policyholders may file a petition for leave to appeal, a notice of appeal, or both, if they are uncertain whether the order or judgment is final. At that point, they may renew their request for relief pending appeal.

Therefore,

² All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

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IT IS ORDERED that the emergency motion for injunction pending appeal is denied at this time.

David R. Schanker
Clerk of Court of Appeals