

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

945

CA 11-01736

PRESENT: CENTRA, J.P., PERADOTTO, CARNI, LINDLEY, AND SCONIERS, JJ.

LEE FANG, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

HOME DEPOT USA, INC. AND SUPERIOR
HEATING CO., LLC, DEFENDANTS-RESPONDENTS.

LEE FANG, PLAINTIFF-APPELLANT PRO SE.

SMITH, SOVIK, KENDRICK & SUGNET, P.C., SYRACUSE (KRISTIN L. NORFLEET
OF COUNSEL), FOR DEFENDANT-RESPONDENT HOME DEPOT USA, INC.

LAW OFFICE OF RALPH C. LORIGO, WEST SENECA (RALPH C. LORIGO OF
COUNSEL), FOR DEFENDANT-RESPONDENT SUPERIOR HEATING CO., LLC.

Appeal from an order of the Erie County Court (Michael L. D'Amico, J.), dated May 11, 2011. The order affirmed an oral decision of the Tonawanda City Court (Mark E. Saltarelli, J.), which dismissed plaintiff's small claims action.

It is hereby ORDERED that said appeal is unanimously dismissed without costs.

Memorandum: Plaintiff commenced this small claims action in City Court seeking damages for defendants' negligent installation and repair of an HVAC unit in plaintiff's house. After trial, City Court orally dismissed the claim from the bench. Plaintiff took an appeal to County Court despite the absence of an appealable paper, and that court issued an order affirming the "judgment" of City Court that dismissed plaintiff's claim. This appeal must be dismissed (*see* CPLR 5703 [b]; *Shapiro v Tony's Culver Atl., Inc.*, 90 AD3d 1501, 1502; *Kuhn v Kuhn*, 129 AD2d 967, 967). An appeal may be taken to this Court as of right "from an order of a county court . . . which determines an appeal from a judgment of a lower court" (CPLR 5703 [b]; *see Ellingsworth v City of Watertown*, 113 AD2d 1013, 1014; *see also Pigler v Adam, Meldrum & Anderson Co.*, 195 AD2d 1011, 1011). No appeal lies, however, from an oral decision (*see* UCCA 1702; *Kuhn*, 129 AD2d at 967). Indeed, we note that the Uniform City Court Act contemplates the entry of a judgment in a small claims action for purposes of review and enforcement (*see* UCCA 1805 [a]; *see generally* UCCA art 18), and the entry of a judgment or final order in City Court is a necessary predicate to the appellate jurisdiction of both County Court and this Court (*see* UCCA 1702; CPLR 5703 [b]). The entry of an appealable paper also is essential to the finality of such cases because such

entry limits the time within which an appeal may be taken in the first instance (*see* UCCA 1703; CPLR 5513 [a]). Thus, it is incumbent upon a court to ensure that a small claims action is terminated by the entry of a judgment or final order. Here, neither a judgment nor final order from City Court is contained in the record on appeal, and nothing in the record establishes that a judgment or final order was ever filed in City Court.

Entered: October 5, 2012

Frances E. Cafarell
Clerk of the Court