

**UNITED STATES COURT OF APPEALS
TENTH CIRCUIT**

SAMUEL K. LIPARI,)	
)	
	Plaintiff,)
)	
vs.)	Case No. 08-3287
)	(Appeal from Kansas District
)	Case No. 07-CV-02146)
U.S. BANCORP, and)	
)	
U.S. BANK NATIONAL ASSOCIATION,)	
)	
Defendants.)	

MEMORANDUM CONCERNING APPELLATE COURT JURISDICTION

Appellees/Defendants U.S. Bancorp and U.S. Bank NA, through counsel Shughart Thomson & Kilroy, P.C., file this Memorandum concerning appellate jurisdiction. This Court lacks appellate jurisdiction because no final Order or Judgment has been entered by the Kansas District Court.

On September 4, 2008 the District Court dismissed all of plaintiff's claims, except for his claim for misappropriation of trade secrets. Subsequent to that Order, the plaintiff filed a unilateral Stipulation for Dismissal With Prejudice on October 15, 2008 wherein he sought to dismiss, with prejudice, the misappropriation of trade secrets claim. On October 21, 2008, the Appellees/Defendants filed a Response to and Conditional Joinder in Plaintiff's Stipulation for Dismissal. In this response, a copy of which was attached to appellant's memorandum addressing the Court's jurisdiction, the appellees/defendants consented to Mr. Lipari's dismissal but suggested the final judgment include a determination of the proper amount of attorneys' fees the court had previously awarded to the defendants due to the plaintiff's numerous indiscretions. The District Court has yet to enter any final order dismissing appellant's remaining claim or

determining the attorneys' fees, and no final judgment has been entered by the District Court Clerk.

In order for this Court to have jurisdiction, there must be a final order dismissing all claims. *See* 28 U.S.C. § 1291; *U.S. v. Brown*, 348 F.3d at 1206 (only final orders are appealable as of right and an order is not final until it disposes of all remaining claims). Although Mr. Lipari has sought to voluntarily dismiss his trade secrets claim with prejudice in order to obtain this Court's review of the District Court's dismissal of his four other claims, Rule 41(a)(1)(A) clearly provides that, after a defendant has filed an answer, dismissal may only be obtained upon Order of the Court or stipulation signed by all the parties. The Court has not dismissed plaintiff's trade secret claim and no final judgment yet exists.

Because there is no final order or judgment adjudicating his last remaining claim, this Court lacks appellate jurisdiction and the appeal should be dismissed. *See Silicon NH, Inc. v. Genesis Microchip, Inc.*, 395 F.3d 1358, 1363 (Fed. Cir. 2005) (recognizing that, even if the parties settled the remaining claims and stipulate to dismissal, "[T]he trial court must dismiss, with or without prejudice, all of the claims as a predicate to a final judgment before appellate jurisdiction may lie to challenge any matter relating to the settlement.").

WHEREFORE, for the above stated reasons, Appellees/Defendants request this Court dismiss this appeal and grant what other relief to which they are justly entitled.

Respectfully submitted,

s/ Jay E. Heidrick

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