Cite as 2012 Ark. 56

SUPREME COURT OF ARKANSAS

No. 11-226

CRAFTON, TULL, SPARKS & ASSOCIATES

APPELLANT

V.

RUSKIN HEIGHTS, LLC; WILLIAM B. BENTON, JR.; J. KEVIN ADAMS; EDWARD A. LABRY, III; JOHN G. BRITTINGHAM; CARLEN G. HOOKER; EDWARD F. DAVIS; KIRK W. VAN VEEN; DAVID RUFF; METROPOLITAN NATIONAL BANK

APPELLEES

Opinion Delivered February 9, 2012

APPEAL FROM THE WASHINGTON COUNTY CIRCUIT COURT,
[NO. CIV2009-2582-4]
HON. MARY ANN GUNN, JUDGE

DISMISSED WITHOUT PREJUDICE.

JIM GUNTER, Associate Justice

Appellant Crafton, Tull, Sparks & Associates (CTSA) appeals from a November 29, 2010 order of the Washington County Circuit Court finding that CTSA's lien was second in priority to Appellee Metropolitan National Bank's lien on certain property. We dismiss the appeal for lack of a final order.

On September 17, 2007, Metropolitan and Ruskin Heights, LLC, executed a promissory note and loan agreement for $8,606,250 to finance construction of a residential subdivision on real property located in Washington County. As security for the note, Ruskin Heights executed a mortgage on the real property in favor of Metropolitan. In addition, William B. Benton, Jr.; J. Kevin Adams; Edward A. Labry, III; John G. Brittingham; Carlen

G. Hooker; Edward F. Davis; and Dirk W. Van Veen executed personal guarantees. On August 3, 2009, Metropolitan filed a foreclosure complaint alleging breach of note and breach of guaranties against Ruskin Heights, LLC; William B. Benton, Jr.; J. Kevin Adams; Edward A. Labry, III; John G. Brittingham; Carlen G. Hooker; Edward F. Davis; Dirk W. Van Veen; and David Ruff in his capacity as Tax Collector for Washington County.

On November 2, 2009, CTSA filed a complaint asserting a materialman's lien against Ruskin Heights. Thereafter, on December 7, 2009, the circuit court granted CTSA's motion for consolidation and joinder of the two complaints. Also in December 2009, the circuit court granted Northwest Excavation, a Division of Nabholz Construction Company ("Nabholz"), leave to file a foreclosure complaint in intervention against Ruskin Heights and any and all claims it may have against other parties.

On December 14, 2009, CTSA filed an amended complaint against Ruskin Heights and Metropolitan. CTSA requested monetary judgment against Ruskin Heights and that CTSA's lien be declared superior to any claims of Ruskin Heights or Metropolitan. On December 23, 2009, CTSA filed a second amended complaint against Ruskin Heights and Metropolitan, incorporating the previous amended complaint's allegations and adding a claim for breach of contract against William B. Benton, Jr.; J. Kevin Adams; Edward A. Labry, III; John G. Brittingham; Carlen G. Hooker; Edward F. Davis; and Dirk W. Van Veen. CTSA requested (1) that its lien and that Nabholz's lien be declared superior to any lien or claims by Metropolitan and Ruskin Heights and (2) that CTSA be awarded a monetary judgment against Ruskin Heights, Benton, Adams, Labry, Brittingham, Hooker, Davis, and Van Veen.

On February 3, 2010, CTSA filed a motion to dismiss its complaint for breach of contract against Benton, Adams, Labry, Brittingham, Hooker, Davis, and Van Veen. On September 10, 2010, CTSA filed a motion for summary judgment as to its claims against Ruskin Heights and Metropolitan, which it amended on September 24, 2010. In addition, Metropolitan filed a cross-motion for summary judgment against CTSA on September 10, 2010. Later, on September 17, 2010, Metropolitan filed a motion for partial summary judgment against Ruskin Heights and Nabholz.

On October 8, 2010, the court held a hearing. David Ruff appeared before the court and was excused from the hearing on the basis that he did not oppose Metropolitan's lien taking priority over the payment of taxes. Attorneys for Ruskin Heights, LLC, advised the court that it did not oppose the motions for summary judgment, and its counsel were excused from the hearing. Metropolitan, CTSA, and Nabholz made various arguments to the circuit court regarding their individually filed motions for summary judgment. At the conclusion of the hearing, the court declined to rule on the motions. Another hearing was held on October 19, 2010, where the parties presented more argument. The court denied motions for summary judgment as to Metropolitan and Nabholz. The court reserved its decision on the summary-judgment motions as to Metropolitan and CTSA. The court held a final hearing on October 26, 2010, in which it ruled from the bench that CTSA had an engineering and architectural lien against the property at issue; that CTSA's lien did not have priority over Metropolitan's mortgage lien, regardless of the fact that Metropolitan's lien was not recorded until after CTSA's had been filed; and that CTSA's lien did not relate back.

On November 29, 2010, the circuit court entered a Partial Judgment and Decree, in which it specifically reserved its decision regarding Metropolitan's claims against Benton, Adams, Labry, Brittingham, Davis, and Van Veen. The court found that Nabholz's claims against Metropolitan were dismissed with prejudice, Nabholz's claims against Ruskin Heights were dismissed without prejudice, and Nabholz's lien had been released. With regard to Metropolitan's claims against Ruskin Heights, the court found that Ruskin Heights had defaulted and owed Metropolitan damages; that Metropolitan's mortgage lien was valid and enforceable; that Metropolitan had first priority as to any lien claim by Nabholz or CTSA; and that CTSA had a second lien on the property. CTSA filed a notice of appeal from the order on December 10, 2010.

Thereafter, on December 13, 2010, the circuit court entered an order granting Metropolitan's motion for summary judgment against CTSA and denying CTSA's motion for summary judgment against Metropolitan. On April 4, 2011, the circuit court entered an order dismissing with prejudice any claims between Metropolitan and John G. Brittingham, as those two parties had reached a settlement. On June 9, 2011, the circuit court entered a judgment in favor of Metropolitan against Edward A. Labry for $1,500,000. Also on June 9, 2011, the circuit court entered an order dismissing with prejudice the following parties: William B. Benton, Jr.; Kevin Adams; Edward Davis; and Dirk W. Van Veen.

Although neither party raises the issue, the question of whether an order is final and subject to appeal is a jurisdictional question which the court will raise sua sponte. *Moses v. Hanna's Candle Co.*, 353 Ark. 101, 103, 110 S.W.3d 725, 726 (2003). Rule 2(a)(1) of the

Arkansas Rules of Appellate Procedure–Civil provides that an appeal may be taken only from a final judgment or decree entered by the trial court. *Searcy County Counsel for Ethical Gov't v. Hinchey*, 2011 Ark. 533. Under Arkansas Rule of Civil Procedure 54(b), an order that fails to adjudicate all of the claims as to all of the parties, whether presented as claims, counterclaims, cross-claims, or third-party claims, is not final for purposes of appeal. *Dodge v. Lee*, 350 Ark. 480, 88 S.W.3d 843 (2002) (citing *City of Corning v. Cochran*, 350 Ark. 12, 84 S.W.3d 439 (2002); *Office of Child Support Enforcement v. Willis*, 341 Ark. 378, 17 S.W.3d 85 (2000)). Although Rule 54(b) provides a method by which the circuit court may direct entry of final judgment as to fewer than all of the claims or parties, where there is no attempt to comply with Rule 54(b), the order is not final, and we must dismiss the appeal. *Harrill & Sutter, PLLC v. Farrar*, 2011 Ark. 181. Specifically, this court has held that a summary-judgment order is not a final, appealable order where the order does not dispose of the complaints against all of the defendants. *Vimy Ridge Mun. Water Improvement Dist. No. 139 v. Ryles*, 369 Ark. 217, 253 S.W.3d 436 (2007).

In the present case, we have identified several outstanding issues that require us to dismiss CTSA's appeal for lack of a final order. First, Nabholz's complaint in intervention and any relevant pleadings are not included in the record, making it impossible for this court to determine if all the claims and parties pertaining to that complaint have been settled. This court has rejected an appeal on Rule 54(b) grounds where there was a pending claim by an intervenor when (1) the record did not reflect what happened to the claim, and (2) the trial court's Rule 54(b) order omitted any reference to or consideration of the intervenor's claim.

S. County, Inc. v. First W. Loan Co., 311 Ark. 501, 845 S.W.2d 3 (1993). Second, the record contains no final disposition as to Metropolitan's claims against Carlen G. Hooker and David Ruff. Finally, the status of CTSA's breach-of-contract claims against the individual defendants and its monetary-judgment claim against Ruskin Heights is unclear. Although the record indicates that CTSA wished to voluntarily dismiss its claims against Benton, Adams, Labry, Brittingham, Hooker, Davis, and Van Veen, those claims remain pending until the circuit court enters an order disposing of them.[1] *See Office of Child Support Enforcement v. Willis*, 341 Ark. 378, 17 S.W.3d 85 (2000); *but see Driggers v. Locke*, 323 Ark. 63, 913 S.W.2d 269 (1996); *Haile v. Ark. Power & Light Co.*, 322 Ark. 29, 907 S.W.2d 122 (1995). Further, although the June 9, 2011 judgment finding Edward A. Labry liable to Metropolitan for $1,500,000 stated that "[a]ll other claims are dismissed with prejudice," we have repeatedly held that it is not enough to dismiss some of the parties or to dispose of some of the claims; to be final and appealable, an order must cover all of the parties and all of the claims. *Bayird v. Floyd*, 2009 Ark. 455, 344 S.W.3d 80; *Williamson v. Misemer*, 316 Ark. 192, 871 S.W.2d 396 (1994); *Smith v. Leonard*, 310 Ark. 782, 840 S.W.2d 167 (1992). Although the June 9 judgment refers to "all claims," it does not operate to dismiss all parties.

Because we conclude that there is not a final order in this case nor a Rule 54(b)

[1]Even if this court considers the orders entered on April 4, 2011, and June 9, 2011, in which the court dismissed with prejudice John G. Brittingham; Edward A. Labry; William B. Benton, Jr.; Kevin Adams; Edward Davis; and Dirk W. Van Veen as dismissing those defendants not just as to Metropolitan's claims but also as to CTSA's claims, there is still no final disposition with regard to CTSA's claims against Carlen G. Hooker.

certification, we do not have jurisdiction to hear this case and must dismiss this appeal without prejudice so that the circuit court may enter an appropriate order.

Dismissed without prejudice.