



**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-22-00004-CV

ROBERT ESCALANTE AND TIFFANY ESCALANTE, Appellants

v.

LJ F, INCORPORATED, Appellee

On Appeal from County Court at Law No. 1
Tarrant County, Texas
Trial Court No. 2021-005743-1

Before Sudderth, C.J.; Kerr and Walker, JJ.
Memorandum Opinion by Justice Walker

MEMORANDUM OPINION

Appellants Robert and Tiffany Escalante seek to appeal the trial court's final judgment for Appellee L J F, Incorporated (LJF), that enforced a Rule 11 settlement agreement entered into by the parties. In response, LJF filed a motion to dismiss the appeal on the grounds that the parties had waived all rights to appeal the judgment. We will dismiss the appeal.

This forcible detainer case made its way to the trial court by way of an appeal of a justice court decision.¹ At trial, the parties agreed to and read into the record a settlement agreement under Rule 11 of the Texas Rules of Civil Procedure. *See* Tex. R. Civ. P. 11. Among other terms, the parties agreed that the Escalantes would either purchase or vacate the property in question by December 1, 2021; if neither occurred, LJF would be entitled to an "agreed judgment for possession of the property" on December 2, 2021. They also agreed that there would be no "appeals to the Court of Appeals by anyone as a result of any judgment or following any judgment entered as a result of [the] agreement."

On December 10, 2021, the trial court entered a final judgment pursuant to the agreement, ordering that LJF was entitled to possession of the property. The judgment stated that "[the Escalantes] have failed to comply with [the] agreement as

¹*See* Tex. Civ. Prac. & Rem. Code Ann. § 51.001(a) ("In a case tried in justice court in which the judgment or amount in controversy exceeds \$250, exclusive of costs, or in which the appeal is expressly provided by law, a party to a final judgment may appeal to the county court.").

they have failed and refused to either purchase the subject property or vacate it by December 1, 2021. Therefore, pursuant to [the] agreement, [LJF] is entitled to entry of this judgment.” The Escalantes appealed.

LJF moved to dismiss the appeal, arguing that the Escalantes had waived any right to appellate review of the final judgment. LJF’s motion complies with the service and form requirements of Rules 9.5 and 10.1 of the Texas Rules of Appellate Procedure. *See* Tex. R. App. P. 9.5 (requiring that all filed documents be served on all other parties and that they include signed certificates of service); 10.1 (outlining information that must be included in motions and requiring that civil motions contain a certificate of conference).² Despite being provided more than ten days to respond to the motion, the Escalantes failed to do so. *See* Tex. R. App. P. 10.3 (requiring that a court wait ten days after a motion is filed before determining a motion).

A Rule 11 agreement is valid if “made in open court and entered of record.” Tex. R. Civ. P. 11. A trial court has a ministerial duty to enforce a valid Rule 11 agreement in strict accordance with the agreement of the parties. *Fed. Lanes, Inc. v. City of Hous.*, 905 S.W.2d 686, 690 (Tex. App.—Houston [1st Dist.] 1995, writ denied); *see Scott-Richter v. Taffarello*, 186 S.W.3d 182, 189 (Tex. App.—Fort Worth 2006, pet. denied). If the parties agree to waive their right to appeal, an appellee is entitled to

²LJF’s attorney certified in the certificate of conference that he “attempted to confer with Appellants regarding this motion (via email) but ha[d] not received a response.”

have the appeal dismissed. *Raffaelli v. Raffaelli*, 946 S.W.2d 139, 142 (Tex. App.—Texarkana 1997, no writ); see *Connor v. Connor*, No. 01-17-00268-CV, 2018 WL 3542911, at *1 (Tex. App.—Houston [1st Dist.] July 24, 2018, pet. denied) (per curium) (mem. op.); *Aguilar v. Abraham*, 588 S.W.2d 599, 601 (Tex. App.—El Paso 1979, writ ref'd n.r.e.).

Here, the parties entered into a valid Rule 11 agreement by reading the terms of the agreement into the record in open court. See Tex. R. Civ. P. 11; *Kanan v. Plantation Homeowner's Ass'n*, 407 S.W.3d 320, 328 (Tex. App.—Corpus Christi–Edinburg 2013, no pet.) (holding that an agreement orally dictated to a court reporter in open court satisfied Rule 11 requirements). As part of that agreement, they validly waived any right to appeal “any judgment . . . entered as a result of [the] agreement.” Because the Escalantes seek to appeal the trial court’s judgment that was entered in accordance with and for the purpose of enforcing the agreement, LJF is entitled to a dismissal.

Accordingly, we dismiss the appeal.

/s/ Brian Walker

Brian Walker
Justice

Delivered: May 26, 2022