

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

MERIT FOODS, INC.,
Plaintiff/Appellant,

v.

ATLANTIS DINING GROUP, LLC; MICHAEL APERGIS, A MARRIED MAN,
Defendants/Appellees.

SYSCO FOOD SERVICE,
Plaintiff/Appellant,

v.

SOCO, LLC AND RENDEZ-VOUS RESTAURANTS, LLC
Defendants/Appellees.

Nos. 2 CA-CV 2015-0155 and 2 CA-CV 2015-0189 (Consolidated)
Filed March 4, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pima County
Nos. C20144685 and C20153022
The Honorable Charles V. Harrington, Judge
The Honorable Sarah R. Simmons, Judge

APPEAL DISMISSED

MERIT FOODS, INC. v. ATLANTIS DINING GRP., LLC
Decision of the Court

COUNSEL

Robert S. Wolkin, Tucson
Counsel for Plaintiffs/Appellants

MEMORANDUM DECISION

Presiding Judge Howard authored the decision of the Court, in which Judge Espinosa and Judge Staring concurred.

H O W A R D, Presiding Judge:

¶1 In this consolidated appeal, Merit Foods, Inc. appeals from the trial court's order dismissing its case based on lack of subject matter jurisdiction. Sysco Food Service appeals from a separate trial court's order transferring its case to justice court because the trial court lacked subject matter jurisdiction. Because this court lacks jurisdiction over both cases, we dismiss the appeal.

Factual and Procedural Background

¶2 Merit Foods sued various defendants in superior court alleging an unpaid debt of \$3,985.34. The trial court dismissed for lack of subject-matter jurisdiction because the amount of the claim was under \$10,000. A.R.S. § 22-201(B) ("Justices of the peace have exclusive original jurisdiction of all civil actions when the amount involved . . . is ten thousand dollars or less."). The trial court then denied Merit Foods's motion for reconsideration.

¶3 Sysco Food Service also sued various defendants in superior court alleging an unpaid debt of \$3,953.22. A different trial judge transferred the case to justice court for further proceedings because the amount of the claim was under \$10,000, *id.*, and denied the subsequent motion for reconsideration. This consolidated appeal followed.

MERIT FOODS, INC. v. ATLANTIS DINING GRP., LLC
Decision of the Court

Discussion

¶4 Even if this court’s jurisdiction is unchallenged, we have an independent duty to examine it in every appeal. *See Baker v. Bradley*, 231 Ariz. 475, ¶ 8, 296 P.3d 1011, 1014 (App. 2013); *see also Grand v. Nacchio*, 214 Ariz. 9, ¶ 12, 147 P.3d 763, 769 (App. 2006). Appellate jurisdiction is circumscribed by statute, and we cannot act where jurisdiction is lacking. *See Baker*, 231 Ariz. 475, ¶ 8, 296 P.3d at 1015; *see also State v. Bayardi*, 230 Ariz. 195, ¶ 6, 281 P.3d 1063, 1065 (App. 2012) (“If we decide a case beyond our statutory jurisdiction, the decision is of no force and effect.”).

¶5 Section 12-2101, A.R.S., states “[a]n appeal may be taken to the court of appeals from . . . a final judgment entered in an action . . . commenced in a superior court.” “Generally, this court’s jurisdiction is limited to appeals from final judgments which dispose of all claims and parties.” *Madrid v. Avalon Care Ctr.-Chandler, L.L.C.*, 236 Ariz. 221, ¶ 3, 338 P.3d 328, 330 (App. 2014), *quoting Baker*, 231 Ariz. 475, ¶ 9, 296 P.3d at 1015. Pursuant to Rule 54(c), Ariz. R. Civ. P., “[a] judgment shall not be final unless the court states that no further matters remain pending and that the judgment is entered pursuant to Rule 54(c).”

¶6 Appellants claim we have jurisdiction over this appeal pursuant to § 12-2101(A)(1), A.R.S. But the judgment entered in Merit Foods’s case does not contain Rule 54(c) language and is therefore not a final judgment. And the order in the Sysco Food Service case does not dismiss the case but rather transfers it to the justice court for further proceedings. Because that order does not dispose of all claims and parties, but merely transfers the case, it is not a final judgment. *See Madrid*, 236 Ariz. 221, ¶ 6, 338 P.3d at 331 (order sending case to arbitration not a final judgment).

Disposition

¶7 Because neither portion of the consolidated appeal stems from a final judgment, we dismiss the appeal.