Cite as 2010 Ark. App. 709

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA10-85

PO-BOY LAND COMPANY, INC.; F. KRAMER DARRAGH III; GARY FUTRELL; JOHN HEARNSBERGER; DENNIS HUFFMAN; EMON MAHONEY; BEN O'DELL; RANDY WILBOURN; JULIA P. MOBLEY; and WOODY FUTRELL
APPELLANTS

V.

KENNETH R. MULLINS; JAMES F. STINSON; and SAM TYSON
APPELLEES

Opinion Delivered OCTOBER 27, 2010

APPEAL FROM THE HEMPSTEAD COUNTY CIRCUIT COURT, [NO. CV2006-74-1]

HONORABLE JOHN S. PATTERSON, JUDGE

DISMISSED WITHOUT PREJUDICE

JOHN B. ROBBINS, Judge

Po-Boy Land Company, Inc., a hunting club in Hempstead County, and several of its officers, directors, and shareholders appeal from an order of partial summary judgment. They contend that the circuit court erred in dissolving the club and in ruling that the club wrongfully terminated the memberships of appellees Kenneth Mullins, James Stinson, and Sam Tyson. As explained below, we dismiss the appeal without prejudice.

The Po-Boy Land Company was incorporated in 1993 as a hunting club. Appellees Mullins, Stinson, and Tyson bought shares in the corporation in the mid-1990s and became members. In 2004, Stinson and Tyson notified the club that they had each received an outside

offer to purchase one share of the club's stock for $212,000. The club's board of directors exercised a right of first refusal and decided to buy each man's share at the stated price. The board then voted to finance the purchase by levying an assessment on the other outstanding shares. Mullins, who owned a single share, and Stinson, who owned two shares in addition to the one he was selling, objected that the club had no authority to impose the assessment.

Thereafter, Mullins and Stinson refused to pay the assessment, and Tyson changed his mind about selling his share. The club consequently terminated their memberships and offered them $93,100 for each of their shares, citing Mullins's and Stinson's failure to pay the assessment and all three appellees' alleged conduct unbecoming a member. This led to appellees' suing the club and its remaining directors and shareholders for, among other things, compensatory and punitive damages and dissolution of the corporation. The club and the other defendants counterclaimed against Mullins for breach of fiduciary duty.

Both sides filed motions for summary judgment. On October 1, 2009, the court entered a partial-summary-judgment order, ruling that the club's assessment was improper; that appellees' memberships were wrongfully terminated; and that the club's board of directors had acted in an oppressive manner, necessitating the dissolution of the corporation and the appointment of a receiver to sell its assets. *See* Ark. Code Ann. §§ 4-27-1430 and 1432 (Repl. 2001). The court also dismissed the club's counterclaim against Mullins but did not rule on appellees' claim for damages.

It is from this order of partial summary judgment that appellants appeal. The order, however, disposes of fewer than all claims as to all parties. It therefore lacks finality and is not an appealable order. *See Brasfield v. Murray*, 96 Ark. App. 207, 239 S.W.3d 551 (2006). Such an order may be rendered appealable, however, if a circuit court makes an express determination, supported by specific factual findings, that there is no just reason for delaying the appeal. Ark. R. Civ. P. 54(b)(1) (2010). The circuit court in this case, apparently realizing that all causes of action had not been resolved, attached the following Rule 54(b) certificate to its order:

> With respect to the issues determined by the above judgment, this Court finds that there is no genuine issue of material fact, and in connection therewith makes the following findings:
>
> That the assessments made by Po-Boy Land Company, Inc., were improper; that the expulsion of plaintiffs Kenneth R. Mullins and James Stinson as directors and stockholders of the corporation for failure to pay assessments and for improper conduct were improper and of no effect as a matter of law; that the actions of the defendants against the plaintiffs were oppressive as a matter of law within the meaning of ACA 4-26-1108 [sic]. Don Worthey is appointed receiver to liquidate the corporation. Po-Boy Land Company, Inc., is hereby dissolved and its assets sold by the receiver for cash in keeping with the provisions hereinabove.
>
> The Second Amended Counterclaim, filed herein by the defendant[s], counterclaimants against the plaintiff, counterdefendant Kenneth R. Mullins[,] is dismissed.

Unfortunately, the certificate does not comply with Rule 54(b)(1). It addresses the factual basis of the court's partial-summary-judgment ruling but does not contain specific factual findings as to why there is no just reason to delay the appeal. The certificate is therefore insufficient to confer jurisdiction on this court. *See Carter v. Simmons First Nat'l*

Corp., 2010 Ark. App. 576; *Rutledge v. Christ Is The Answer Fellowship, Inc.*, 82 Ark. App. 221, 105 S.W.3d 816 (2003); *Stouffer v. Kralicek Realty Co.*, 81 Ark. App. 89, 98 S.W.3d 475 (2003).

Neither does Ark. R. App. P.–Civ. 2(a)(7) (2010), which permits an interlocutory appeal from an order appointing a receiver, confer appellate jurisdiction in this case. An appeal taken pursuant to appellate Rules 2(a)(6) or (7) requires the appellant to file its record within thirty days from the entry of the order appointing the receiver. Ark. R. App. P.–Civ. 5(a) (2010); *Murphy v. Michelle Smith Designs*, 100 Ark. App. 384, 269 S.W.3d 390 (2007); *Johnson v. Langley*, 93 Ark. App. 214, 218 S.W.3d 363 (2005). That was not done here.

We therefore dismiss the appeal without prejudice. We also take this opportunity to mention a defect in appellants' addendum. The parties' motions for summary judgment incorporated excerpts from several depositions, and appellants placed those excerpts in their addendum. Arkansas Supreme Court Rule 4-2(a)(8)(A)(i) (2010) provides that, if a transcript of a deposition is an exhibit to a motion, the material parts of the transcript shall be abstracted and not included in the addendum. If appellants decide to refile their appeal, they must abstract the deposition excerpts rather than placing them in the addendum. We also suggest that appellants, in the event they refile a notice of appeal, read the revised Ark. R. App. P.–Civ. 3(e) governing the content of notices of appeal, effective July 1, 2010. *See In re: Arkansas Rules of the Supreme Court and Court of Appeals; Rules of Appellate Procedure–Civil; and Rules of Civil Procedure*, 2010 Ark. 288 (per curiam).

Dismissed without prejudice.

HART and GRUBER, JJ., agree.