

Cite as 2010 Ark. App. 760

ARKANSAS COURT OF APPEALS

DIVISION I

No. CA09-1160

PROGRESSIVE SOUTHEAST
ARKANSAS HOUSING
DEVELOPMENT CORPORATION
APPELLANT

V.

BARBARA ABRAHAM
APPELLEE

Opinion Delivered November 10, 2010

APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT,
[NO. CV-2004-499-2]

HONORABLE JODI DENNIS, JUDGE

APPEAL DISMISSED

DAVID M. GLOVER, Judge

Progressive Southeast Arkansas Housing Development Corporation appeals from a judgment entered against it by the Jefferson County Circuit Court in favor of appellee Barbara Abraham. It also appeals from the trial court's award of attorney's fees to Abraham. We dismiss because this case is not final for purposes of appeal.

Appellant is a nonprofit corporation that develops and sells HUD-compliant housing to low- and moderate-income individuals. Appellee bought a new home from appellant in Pine Bluff in 2003. After taking possession, appellee experienced problems with the house and appellant made some minor repairs. Appellee sued appellant in 2004, alleging that the house was not in compliance with applicable building codes; that it had failed inspections on numerous occasions; that it had never had a final inspection by the City of Pine Bluff; that

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the electrical system was faulty; that the foundation was cracked; that appellant was aware of the problems at the time of the sale; that appellant had obtained a certificate of occupancy even though it was not entitled to one; that the city had rescinded the certificate of occupancy; that appellant had breached the implied warranty of habitability; that appellant was negligent in the construction of the house; that appellant had fraudulently induced her to enter into the contract; and that she was entitled to rescind her contract. Appellant filed an answer raising the affirmative defenses of statute of limitations, estoppel, and waiver. It also filed a counterclaim against appellee for fraud, defamation, and wrongful institution of legal proceedings.

Appellee filed an amended complaint in 2007, adding James Black and Larry Amos, who managed appellant, as defendants. She alleged breach of the warranty of habitability, negligence in the construction of the house, negligent supervision of the subcontractors, and fraudulent inducement; she requested rescission and punitive damages. Appellee later took a nonsuit as to Amos. She moved for summary judgment on the counterclaim, which the court granted.

In August 2008, the court set the case for jury trial on February 11, 2009. On February 6, 2009, appellant and Black moved for a continuance, stating that they had also filed a motion for summary judgment and an amended answer. In their amended answer, appellant and Black alleged that appellee had failed to mitigate her damages; that she had committed waste of the real property, which would preclude rescission; and that she had unclean hands. On February 9, 2009, appellant and Black filed their motion for partial summary judgment

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on the fraud and negligence claims, arguing that they were immune from suit in tort under the charitable-immunity doctrine. Appellee moved to strike the amended answer and to dismiss the summary-judgment motion as untimely, noting the number of months that the case had been set for trial. The court struck appellant's motion for summary judgment and its amended answer.

The case was tried on April 2 and 3, 2009. The jury found that appellant had breached the implied warranty of habitability and that appellee was entitled to rescind the contract. Appellant orally moved for judgment notwithstanding the verdict, which the court denied. On May 11, 2009, the trial court entered an order directing rescission and awarding judgment to appellee against appellant, stating:

That the plaintiff have judgment against Progressive Southeast Arkansas Housing Development Corporation in the amount of all mortgage payments paid plus the balance due of said mortgage, said amount to bear interest at five percent (5%) above the Federal Reserve Discount Rate or ten percent (10%), per annum, whichever is less, from the date hereof.

On May 20, 2009, appellee moved for attorney's fees. On May 26, 2009, appellant moved for a new trial under Arkansas Rule of Civil Procedure 59(a)(1), (5), and (8). It argued that the trial court had communicated its opinion about the merits of appellant's defense to the jury and had committed error in assessing the amount of appellee's recovery. It contended that the trial court's calculation of damages reflected the original price of the home and should have deducted the rent she had received (\$21,000) and the cost of restoring the home to its pre-contract value (\$19,900). Appellant argued that the most that appellee could recover was \$39,000. The trial court did not rule on the motion for new trial, which was deemed denied

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on June 25, 2009. Ark. R. Civ. P. 59(b) (2010). In its schedule of assets, appellant claimed exemptions to execution. Appellee moved for contempt and a determination of the validity of those exemptions. Appellant filed a timely notice of appeal from the May 11, 2009 judgment.

Appellee defaulted on her mortgage, and on December 16, 2009, Simmons First National Bank, which held the deed of trust securing the debt, sold the property to Wells Fargo Bank, NA, in exchange for \$77,636.49; the trustee's deed was filed on December 30, 2009. On January 12, 2010, appellant filed a notice that appellee had disposed of the property subject to rescission. Appellant argued that, by allowing the transfer of the property to Wells Fargo, appellee had elected a remedy (damages) and had waived the remedy of rescission, which was no longer available. In response, appellee stated that she had not made an election of remedies; that she had chosen which cause of action to pursue (breach of warranty); had pursued it; and had received a judgment against appellant, which it did not satisfy.

The court held a hearing on January 25, 2010, on appellee's motions for attorney's fees and contempt and appellant's claim of exemption from execution. Appellant argued that appellee had allowed the property to go into foreclosure and had waived rescission because the parties could not be returned to the status quo. The court did not rule on this issue but commented that "the fact that Progressive did not take steps to secure its interest in that piece of property is not the plaintiff's problem." On February 5, 2010, the court denied the motion for contempt and awarded appellee attorney's fees of \$14,052.69. It also found that appellant's property was not exempt from execution and that it was not entitled to the charitable-

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immunity doctrine because the judgment against appellant was based solely in contract, not tort.

We can find no order disposing of appellee's claim against Black in the record. Even if neither party raises the issue of jurisdiction on appeal, the appellate court is obligated to raise the issue sua sponte. *Ellis v. Arkansas State Highway Comm'n*, 2010 Ark. 196, ___ S.W.3d ___. With exceptions not applicable here, an appeal may be taken only from a final judgment or decree entered by the trial court. Ark. R. App. P.–Civ. 2(a)(1) (2010). An order is not final when it adjudicates fewer than all of the claims or the rights and liabilities of fewer than all of the parties. *Farrell v. Farrell*, 359 Ark. 1, 193 S.W.3d 734 (2004). Even though an issue on which a court renders a decision might be an important one, an appeal will be premature if the decision does not, from a practical standpoint, conclude the merits of the case. *Id.* For an order to be final and appealable, it must dismiss the parties from the court, discharge them from the action, or conclude their rights to the subject matter in controversy. *Bayird v. Floyd*, 2009 Ark. 455, ___ S.W.3d ___. It is not enough to dismiss some of the parties; the order must cover all parties and all claims in order to be final and appealable. *Id.* Absent a certificate from the circuit court directing that the judgment is final, an order that fails to adjudicate all of the claims as to all of the parties is not final for purposes of appeal. Ark. R. Civ. P. 54(b)(2). Here, the record does not reflect a Rule 54(b) certificate.

There is another problem with the judgment. An order is not final and appealable merely because it settles the issue as a matter of law; to be final, the order must also put the court's directive into execution, ending the litigation or a separable branch of it. *Morton v.*

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Morton, 61 Ark. App. 161, 965 S.W.2d 809 (1998). A money judgment must contain a specific dollar amount in order to be executed. *Hernandez v. Hernandez*, 371 Ark. 323, 265 S.W.3d 746 (2007). The amount of the judgment must be computed, as near as may be, in dollars and cents, so as to be enforced by execution or some other appropriate manner. *Allen v. Allen*, 99 Ark. App. 292, 259 S.W.3d 480 (2007). Thus, a judgment simply setting out the formula by which damages may be calculated is not final. *Id.* It is not possible to execute on the judgment awarding appellee the sum of the mortgage payments paid and the balance due on the mortgage.

Because it is not apparent that there is a final order, this court has no jurisdiction to hear the appeal. Accordingly, we dismiss this appeal without prejudice to refile it at a later date.

Appeal dismissed.

VAUGHT, C.J., and BAKER, J., agree.