

EN BANC

CA06-1198

September 12, 2007

JAMES AND HOLLY KNOX
APPELLANTS

AN APPEAL FROM FAULKNER COUNTY
CIRCUIT COURT
[NO. CV04-165]

v.

REGIONS BANK
APPELLEE

HONORABLE CHARLES CLAWSON,
CIRCUIT JUDGE

DISMISSED

Appellants James and Holly Knox appeal from a summary-judgment order that dismissed their claims against appellee Regions Bank for breach of fiduciary duty, breach of contract, interference with contractual relations, and conspiracy. Because the order did not dispose of appellants' claim against Regions for outrage, it is not a final order, and we therefore dismiss the appeal.

Appellants contracted with Michael Stewart, d/b/a Stewart Construction, to build a home and obtained a construction loan from Regions Bank. They would later sue Regions and Stewart, alleging that Regions paid the loan proceeds to Stewart before construction was complete and that Stewart abandoned the project. Their complaint and amended complaints sought damages from Regions for breach of fiduciary duty, breach of contract, interference

with contractual relations, civil conspiracy, and outrage. They also pled several causes of action against Stewart. Regions and Stewart each filed counterclaims against appellants.

At the time the trial court entered the summary-judgment order that is the subject of this appeal, it had resolved Regions's counterclaim. But, it had not yet resolved appellants' claims against Stewart or Stewart's counterclaim. We have twice re-invested the trial court with jurisdiction to allow dismissal of those claims. However, appellants' outrage claim against Regions has not been adjudicated or otherwise disposed of.¹

The question of whether an order is final and subject to appeal is a jurisdictional question, which we will raise on our own even if the parties do not. *Strack v. Cap. Servs. Group, Inc.*, 87 Ark. App. 202, 189 S.W.3d 484 (2004). An order is not final if it adjudicates fewer than all of the claims or the rights and liabilities of fewer than all the parties. Ark. R. Civ. P. 54(b); *see also Hambay v. Williams*, 335 Ark. 352, 980 S.W.2d 263 (1998); *Strack, supra*. Where an order adjudicates fewer than all counts of a multi-count complaint, it is not a final order. *Hambay, supra*; *Strack, supra*.

In the present case, appellants asserted multiple counts against Regions, and all were resolved by summary judgment save one. Because one count remains pending, the summary-

¹ Appellants' claim for outrage is not artfully pled, but their first amended complaint clearly seeks damages for that tort. Regions briefly addressed the outrage cause of action in its motion for summary judgment, and the trial court, at one point, expressed an intention to grant summary judgment to Regions on all of appellants' claims. Nevertheless, no order has been entered disposing of the outrage cause of action.

judgment order is not final and appealable. We therefore dismiss this appeal without prejudice to re-file upon entry of a final order and a notice of appeal from the final order.

Dismissed without prejudice.