

Not for publication
Judge Josephine Linker Hart

DIVISION III

CA07-303

December 5, 2007

IAN SNYDER, et al.
APPELLANTS

AN APPEAL FROM VAN BUREN COUNTY
CIRCUIT COURT
[No. CV-06-97]

v.

FAIRFIELD BAY COMMUNITY
CLUB, INC., et al.
APPELLEES

HONORABLE CHARLES CLAWSON,
CIRCUIT JUDGE

DISMISSED

Appellants Ian Snyder, president of the Cliffside Condominium Association, and Donald Dickey, president of the Tennis Chalet Condominium Association, filed this declaratory-judgment action against appellees Fairfield Bay Community Club, Inc., its board of directors (“the club”), and Bayview Properties Limited Partnership. The circuit court granted summary judgment to the club. We must dismiss this appeal from that judgment for lack of a final, appealable order.

The club gave Bayview an option to purchase real property for the construction of a hotel. In their complaint, appellants challenged the board’s actions as ultra vires and alleged that the hotel would significantly alter the club’s character and adversely affect nearby property owners. The club responded that the contract could not be challenged as ultra vires because Bayview, a third party, had acquired a legally enforceable right to build the hotel.

Bayview did not file an answer. After the club moved for summary judgment, appellants amended their complaint to aver that Bayview had been dissolved. Again, Bayview did not respond. After a hearing, the trial court granted the club's motion for summary judgment, holding that the board's actions could not be challenged as ultra vires. Appellants then filed this appeal.

In order to discourage piecemeal litigation, an appeal may be taken only from a final judgment or decree, with certain limited exceptions. *See* Ark. R. App. P.–Civil 2(a); Ark. R. Civ. P. 54(b). The issue of finality is a jurisdictional one that this court is required to raise on its own, even if the parties do not. *See Strack v. Capital Servs. Group, Inc.*, 87 Ark. App. 202, 189 S.W.3d 484 (2004). Under Rule 54(b), an order is not final if it adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties. *Wilson v. Weiss*, 368 Ark. 300, ___ S.W.3d ___ (2006). This is true even when the remaining defendant has not responded to the complaint. *Id.*

Here, although the club has been dismissed by way of summary judgment, Bayview has not. An order granting summary judgment to some but less than all defendants is not a final, appealable order. *Chapman v. Wal-Mart Stores, Inc.*, 351 Ark. 1, 89 S.W.3d 906 (2002). Rule 54(b) allows a trial court, when it finds no just reason for delaying an appeal, to direct entry of a final judgment as to fewer than all the claims or parties by executing a certification of final judgment as it appears in Rule 54(b)(1). The circuit court, however, did not enter such a certificate in this case. Thus, until Bayview is actually dismissed, the action against it is not final, and we have no choice but to dismiss this appeal without prejudice.

Appeal dismissed.

GLADWIN and GRIFFEN, JJ., agree.