

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 CA 2133

SONOMA ALLEY, L.L.C.

VERSUS

DOYLE RESTAURANT GROUP FRANCHISE COMPANY, L.L.C., DOYLE
RESTAURANT GROUP, INC., JASON DOYLE

Judgment Rendered: February 10, 2012

JMM

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APPEALED FROM THE NINETEENTH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
DOCKET NUMBER C590704, DIVISION "D"

THE HONORABLE JANICE CLARK, JUDGE

* * * * *

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Group, Inc., Jason Doyle

BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

EGJ *Gaidry, J concurs*
Hughes, J, concurs.

McDONALD, J.

Plaintiff-appellant, Sonoma Alley, LLC appeals the trial court's judgment, in the amount of \$22,000.00, in its favor. Because this appeal is taken from a judgment, not designated as final, we dismiss the appeal.

Sonoma Alley, LLC, filed a suit against three defendants, Doyle Restaurant Group Franchise Company, LLC, Doyle Restaurant Group Inc., and Jason Doyle. On June 18, 2010, plaintiff obtained a preliminary default against all three defendants. On July 21, 2010, the trial court issued a judgment in the amount of \$22,000.00, against Doyle Restaurant Group Franchise Company, LLC, and Doyle Restaurant Group Inc. This appeal by Sonoma Alley, LLC, followed in which it complains that the trial court erred in failing to award the full amount of the franchise fee, \$55,000.00.

DISCUSSION

The initial issue that we must address in this appeal is whether the trial court's judgment of July 10, 2010 is a final appealable judgment. In addressing whether the judgment is a judgment from which immediate review by appeal is allowed, we must first determine what issues were resolved by the judgment. *Best Fishing, Inc. v. Rancatore*, 96-2254, p. 4 (La. App. 1st Cir. 12/29/97), 706 So.2d 161, 163. In other words, was it a partial judgment which decided less than all of the issues presented? *Id.*

In this case, the trial court rendered judgment against defendants, Doyle Restaurant Group Franchise Company, LLC, and Doyle Restaurant Group Inc. in the amount of \$22,000.00, after striking though "Jason Doyle." Therefore, since no judgment appears to have been rendered against Jason Doyle, it appears that the matter is still pending against Jason Doyle, making the judgment rendered a partial judgment from which we must determine whether Sonoma Alley, LLC may appeal.

Louisiana Code of Civil Procedure Article 2083 defines, in pertinent part, appealable judgments as final judgments. A final judgment is one that determines the merits in whole or in part. La. C.C.P. art. 1841. The judgment signed by the trial court was not a final judgment because it adjudicated “fewer than all claims or the rights and liabilities of fewer than all the parties” and it was not “designated as a final judgment by the court after an express determination that there is no just reason for delay.” La. C.C.P. art. 1915(B)(1) and (2).

Additionally, La. C.C.P. art. 1911 states that an appeal may not be taken from a partial judgment until the judgment has been designated a final judgment in accordance with La. C.C.P. art. 1915(B), which states in pertinent part:

B. (1) When a court renders a partial judgment or partial summary judgment or sustains an exception in part, as to *one or more but less than all the claims, demands, issues, or theories, whether in an original demand, reconventional demand, cross-claim, third party claim, or intervention, the judgment shall not constitute a final judgment unless it is designated as a final judgment by the court after an express determination that there is no just reason for delay.*

(2) In the absence of such a determination and designation, *any order or decision which adjudicates fewer than all claims or the rights and liabilities of fewer than all parties, shall not terminate the action as to any of the claims or parties and shall not constitute a final judgment for the purpose of an immediate appeal.* Any such order or decision issued may be revised at any time prior to rendition of the judgment adjudicating all the claims and the rights and liabilities of all the parties. [Emphasis added.]

The trial court’s judgment only adjudicated the claims against Doyle Restaurant Group Franchise Company, LLC, and Doyle Restaurant Group Inc. Judgment was not rendered against Jason Doyle; thus, the judgment signed by the trial court was not a final judgment because it adjudicated “fewer than all claims or the rights and liabilities of fewer than all the parties.” Furthermore, the judgment was not “designated as a final judgment by the court after an express determination that there is no just reason for delay.” La. C.C.P. art. 1915(B)(1).

Louisiana Code of Civil Procedure Article 1911 states that an appeal may not be taken from a partial judgment until the judgment has been designated a final

judgment in accordance with La. C.C.P. art 1915(B). Therefore, under La. C.C.P. art. 1915(B), this matter is not one from which immediate review by appeal is allowed because the judgment is a partial judgment. *Richardson v. Tessier*, 07-0374, p. 3 (La. App. 1st Cir. 11/2/07), 977 So.2d 55, 56.

An appellate court may dismiss, at any time an appeal where there is no right to appeal. La. C.C.P. art. 2162. Since, Sonoma Alley, LLC has no right to appeal this judgment, we will dismiss the appeal.

For the foregoing reasons, Sonoma Alley, LLC's appeal is dismissed.

APPEAL DISMISSED