



In The

Eleventh Court of Appeals

No. 11-19-00046-CV

BURGERS & FRIES, INC. AND RICK DAFFRON, Appellants

V.

FIRST DATA GLOBAL LEASING ET AL., Appellees

**On Appeal from the County Court at Law
Taylor County, Texas
Trial Court Cause No. 23411**

MEMORANDUM OPINION

Appellants, Burgers & Fries, Inc. and Rick Daffron, filed a notice of appeal on February 6, 2019, from a September 2018 order in which the trial court dismissed Appellants' claims against First Data Global Leasing, First Data Merchant Services LLC, and First Data Corporation (collectively, First Data). We previously abated this appeal pursuant to TEX. R. APP. P. 27.2 to permit the trial court to enter a final order or judgment over which this court has jurisdiction. We noted in the

March 7, 2019 abatement order that, in addition to First Data, Appellants had also sued CP-TOPS, LLC (who had already been nonsuited when this appeal was filed), David Scott, and Lease Finance Group, LLC. We pointed out that the documents on file in this court at that time did not reflect that Appellants' claims against Scott and Lease Finance had been disposed of or severed. We informed the parties that, if a final, appealable order or judgment was not entered by May 6, 2019, this court might dismiss the appeal. *See* TEX. R. APP. P. 42.3. Because a final, appealable order has not yet been entered, we dismiss this appeal.

After this appeal was abated, the trial court severed Appellants' claim against Scott. Thereafter, on May 6, 2019, Appellants filed a motion for nonsuit in the trial court. In the motion, Appellants asked for a nonsuit of their cause of action against "First Data Global Leasing, LLC" and prayed that their "cause of action be dismissed without prejudice only against the Defendant, First Data Global Leasing." On May 7, 2019, the trial court granted Appellants' motion for nonsuit and dismissed Appellants' "claims against First Data Global Leasing LLC" without prejudice.

It appears that Appellants may have inadvertently nonsuited "First Data Global Leasing, LLC" instead of "Lease Finance Group, LLC." Appellants' claims against Lease Finance Group, LLC have not yet been disposed of and remain pending below. Thus, Appellants have not yet obtained a final, appealable order.

Unless specifically authorized by statute, appeals may be taken only from final judgments. *Tex. A & M Univ. Sys. v. Koseoglu*, 233 S.W.3d 835, 840–41 (Tex. 2007); *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). We determine whether a judgment is a final, appealable judgment based on the language in the judgment and the record of the case. *Lehmann*, 39 S.W.3d at 195. A judgment is final and appealable if it disposes of all parties and all claims in the case. *Id.* Because all parties and all claims have not been disposed of and because Appellants have not

obtained a final, appealable judgment as directed by this court in the abatement order, we now reinstate the appeal and dismiss it for want of jurisdiction.

This appeal is dismissed for want of jurisdiction.

PER CURIAM

May 16, 2019

Panel consists of: Bailey, C.J.,
Stretcher, J., and Wright, S.C.J.¹

Willson, J., not participating.

¹Jim R. Wright, Senior Chief Justice (Retired), Court of Appeals, 11th District of Texas at Eastland, sitting by assignment.