

Dismissed; Opinion Filed July 31, 2018.



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-18-00515-CV

BUILD-INFINITY.COM, LLC D/B/A INFINITY CONSTRUCTION, Appellant

V.

SCOTT AND ELIZABETH WOODARD, Appellees

On Appeal from the 101st Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-16-05680

MEMORANDUM OPINION

Before Justices Lang, Myers, and Stoddart
Opinion by Justice Myers

By letter dated June 11, 2018, we questioned our jurisdiction over this appeal as the clerk's record does not reflect a final judgment has been entered. *See Lehman v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001) (subject to few, mostly statutory exceptions, appellate courts have jurisdiction over appeals from judgments and orders that dispose of all parties and claims).

The record reflects appellees sued appellant for breach of contract, breach of warranty, violation of the Deceptive Trade Practices Act, fraud, conversion, failure to provide certain statutory notices under the property code, and attorney's fees. The trial court granted summary judgment on appellees' claims for breach of contract and attorney's fees but denied summary judgment on the rest of the claims. Subsequently, appellees filed a notice non-suiting the remaining claims. The record, however, does not reflect the trial court signed an order dismissing

those claims, and without a dismissal order, the case is not final and appealable. *See Davidoff v. GX Tech. Corp.*, 134 S.W.3d 514, 515 (Tex. App.—Waco 2004, order) (per curiam) (“Because the trial court has not signed an order dismissing GX’s non-suited counterclaims, the record does not contain a final, appealable judgment.”).

In our letter questioning our jurisdiction, we directed appellant to file a letter brief addressing our concerns no later than June 21, 2018 and to have a supplemental clerk’s record filed if the response was based on documents not contained in the clerk’s record. We also cautioned appellant that failure to comply could result in dismissal of the appeal without further notice. *See* TEX. R. APP. P. 42.3(a),(c). To date, appellant has not filed the requested letter brief or had a supplemental clerk’s record filed demonstrating our jurisdiction. Accordingly, we dismiss the appeal. *See id.* 42.3(a),(c).

/Lana Myers/
LANA MYERS
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

BUILD-INFINITY.COM, LLC D/B/A
INFINITY CONSTRUCTION, Appellant

No. 05-18-00515-CV V.

SCOTT AND ELIZABETH WOODARD,
Appellees

On Appeal from the 101st Judicial District
Court, Dallas County, Texas
Trial Court Cause No. DC-16-05680.
Opinion delivered by Justice Myers,
Justices Lang and Stoddart participating.

In accordance with this Court's opinion of this date, we **DISMISS** the appeal.

We **ORDER** appellees Scott and Elizabeth Woodard recover their costs, if any, of this appeal from appellant Build-Infinity.com, LLC d/b/a Infinity Construction.

Judgment entered this 31st day of July, 2018.