

DISMISS and Opinion Filed August 4, 2021



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

No. 05-21-00468-CV

**VERTICAL HOLDINGS, LLC AND VANGUARD FINANCIAL TRUST,
Appellants**

V.

LOCATORX, INC., Appellee

**On Appeal from the 101st Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-20-04237**

MEMORANDUM OPINION

Before Justices Myers, Partida-Kipness, and Garcia
Opinion by Justice Myers

We questioned our jurisdiction over this appeal because there did not appear to be a final judgment or other appealable interlocutory order. *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001) (generally appellate courts have jurisdiction over final judgments or certain interlocutory orders permitted by statute); TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a) (listing appealable interlocutory orders). We instructed appellant to file a letter brief with an opportunity for appellee to respond.

The underlying lawsuit involves a dispute regarding a subscription agreement. Appellants asserted claims against appellee for declaratory judgment, breach of contract, and attorney's fees. Appellee asserted counterclaims for declaratory judgment, breach of contract, fraudulent inducement, fraud, and attorney's fees. Both parties filed motions for summary judgment. Additionally, appellant Vertical Holdings, LLC sought dismissal of appellee's counterclaims pursuant to the Texas Citizens' Participation Act. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 27.003.

In the notice of appeal, appellants state they are appealing the following trial court orders: (1) January 7, 2021 order granting appellee's cross-motion for summary judgment on appellant Vertical Holdings' claims;¹ (2) March 17, 2021 order granting appellee's motion for summary judgment on its counterclaim for declaratory judgment and awarding attorney's fees; and (3) June 2, 2021 order denying appellants' motion for summary judgment and granting appellee's cross-motion for summary judgment on each of appellants' claims against appellee with appellee's attorney's fees to be determined. Appellants noted in their notice of appeal that they questioned whether the June 2nd order is final in light of the issue of appellee's attorney's fees to be determined and because another order signed on

¹ The cross-motion for summary judgment was filed prior to appellants' amended petition that added Vanguard Financial Trust as a party. Subsequent to the filing of the cross-motion but prior to the order granting it, appellee asserted its counterclaims.

the same date denied appellant Vertical Holding's TCPA motion to dismiss appellee's counterclaims.²

In their letter brief, appellants acknowledge that claims remain pending. They explain they filed the notice of appeal out of an abundance of caution because the trial court canceled the trial setting with the designation "Case Closed" and indicated on the docket sheet that a total judgment of \$0.00 was awarded to appellee. *See Lehmann*, 39 S.W.3d 191, 196 ("A party who is uncertain whether a judgment is final must err on the side of appealing or risk losing the right to appeal.").

Regardless of the trial court's administrative notations, appellee's counterclaims for fraudulent inducement, fraud, and breach of contract and claim for attorney's fees remain pending. Accordingly, we dismiss the appeal for want of jurisdiction. *See* TEX. R. APP. P. 42.3(a).

/Lana Myers//
LANA MYERS
JUSTICE

²By separate appeal docketed as appellate cause number 05-21-00469-CV, appellants appeal from the trial court's order denying their TCPA motion to dismiss. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(12).



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

JUDGMENT

VERTICAL HOLDINGS, LLC AND
VANGUARD FINANCIAL TRUST,
Appellants

No. 05-21-00468-CV V.

LOCATORX, INC., Appellee

On Appeal from the 101st Judicial
District Court, Dallas County, Texas
Trial Court Cause No. DC-20-04237.
Opinion delivered by Justice Myers.
Justices Partida-Kipness and Garcia
participating.

In accordance with this Court's opinion of this date, the appeal is
DISMISSED.

It is **ORDERED** that appellee LOCATORX, INC. recover its costs of this
appeal from appellants VERTICAL HOLDINGS, LLC AND VANGUARD
FINANCIAL TRUST.

Judgment entered this 4th day of August, 2021.