

DISMISS and Opinion Filed October 29, 2021



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

No. 05-21-00859-CV

**MARK PAGE, MELISSA PAGE, and
SLINGSHOT VENTURES STORES, LLC, Appellants
V.
3838 OAK LAWN AVE (TX) OWNER, LLC, Appellee**

**On Appeal from the 160th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-20-03633**

MEMORANDUM OPINION

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

This is an appeal from a summary judgment order in favor of appellee on its claims for breach of lease, breach of assignment, and breach of guaranty. The order awarded appellee attorney's fees, expenses, and costs but left the determination of the amount for a subsequent proceeding. Asserting the order is not final and appealable because it does not determine all issues, appellee has filed a motion to dismiss the appeal for want of jurisdiction. *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001) (appeal may generally be taken only from final judgment that disposes of all parties and claims). In their response, appellants assert

that the order disposes of all issues based, in part, on language at the end of the order stating that “[a]ll other relief not expressly provided for herein is DENIED.” The Texas Supreme Court, however, has specifically rejected such language as an indicator of an order’s finality, concluding that when, as here, no conventional trial on the merits has occurred, an order is final for purposes of appeal only if it “actually disposes of every pending claim and party” or “clearly and unequivocally states” it finally disposes of all parties and claims. *Id.* at 203-04, 205. Because the order here leaves the amount of attorney’s fees, expenses, and costs to be determined, it is not final and appealable. *See id.* at 195. Accordingly, we grant appellee’s motion and dismiss the appeal. *See* TEX. R. APP. P. 42.3(a).

/Robbie Partida-Kipness/
ROBBIE PARTIDA-KIPNESS
JUSTICE

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

JUDGMENT

MARK PAGE, MELISSA PAGE,
AND SLINGSHOT VENTURES
STORES, LLC, Appellants

No. 05-21-00859-CV V.

3838 OAK LAWN AVE (TX)
OWNER, LLC, Appellee

On Appeal from the 160th Judicial
District Court, Dallas County, Texas
Trial Court Cause No. DC-20-03633.
Opinion delivered by Justice Partida-
Kipness, Justices Myers and Carlyle
participating.

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

We **ORDER** that appellee 3838 Oak Lawn Ave (TX) Owner, LLC recover its costs, if any, of this appeal from appellants Mark Page, Melissa Page, and Slingshot Ventures Stores, LLC.

Judgment entered October 29, 2021.