

Opinion issued January 6, 2011.



In The
Court of Appeals
For The
First District of Texas

NO. 01-10-01076-CV

**WELLS FARGO BANK, N.A. AS TRUSTEE FOR THE REGISTERED
HOLDERS OF CREDIT SUISSE FIRST BOSTON MORTGAGE
SECURITIES CORP., COMMERCIAL MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-C6, ACTING BY AND THROUGH
TORCHLIGHT LOAN SERVICES, LLC AS SPECIAL SERVICER,
Appellant**

V.

JRK-VILLAGES AT MEYERLAND, LLC, Appellee

**On Appeal from the 125th District Court ¹
Harris County, Texas
Trial Court Case No. 2010-52279**

¹ Counsel for Appellant: Charles Perry, Jason Thelen, Andrews Kurth LLP
Counsel for Appellee: Millard Johnson, Johnson Deluca Kennedy & Kurisky, P.c.
Trial court Judge: Hon. Kyle Carter

MEMORANDUM OPINION

Wells Fargo Bank, N.A. appeals the trial court's November 19, 2010 amended order appointing a receiver. JRK-Villages at Meyerland, LLC moved to dismiss, asserting this Court lacks jurisdiction over this appeal. We dismiss for want of jurisdiction.

Background

Wells Fargo applied for a receiver alleging that JRK-Villages had defaulted in making payments due under a promissory note. The note is secured by a deed of trust for the property at issue in this appeal, as well as a rent assignment. Wells Fargo sought a receiver on the grounds that the property was "in danger of being lost, removed, or materially injured." The trial court appointed a receiver on October 29, 2010. In the order appointing the receiver, the trial court ordered that a nonjudicial foreclosure should occur in December 2010.

Wells Fargo, dissatisfied with the December 2010 condition, moved to amend the order appointing a receiver. Specifically, Wells Fargo asked for the trial court to delete or, alternatively, amend the portion of the order requiring a sale in December, asserting that it was insufficient time to conduct a proper sale and realize the best price on the property. The trial court granted the motion and issued an amended order. The only change pertinent to this appeal is the change in the

deadline from December 2010 to February 1, 2011. Within 20 days of the amended order, Wells Fargo filed its notice of appeal.

Jurisdiction

“Appellate courts have jurisdiction to consider immediate appeals of interlocutory orders only if a statute expressly provides appellate jurisdiction.” *Benefield v. State*, 266 S.W.3d 25, 29 (Tex. App.—Houston [1st Dist.] 2008, no pet.). Section 51.014(a)(1) authorizes an interlocutory appeal from an order that “appoints a receiver or trustee.” TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(1) (Vernon 2008). Texas courts strictly construe statutes authorizing interlocutory appeals. *Benefield*, 266 S.W.3d at 30.

Wells Fargo is not appealing an order appointing a receiver. Wells Fargo asked for the appointment of a receiver, but appeals a condition the trial court imposed upon the receiver. Section 51.014(a) does not address orders modifying or amending the terms of a receiver’s appointment. Construing section 51.014(a) strictly, as we must, we conclude we lack jurisdiction over this appeal. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(1).

Furthermore, this Court has held that section 51.014(a)(1) requires a party to appeal within 20 days of the original order appointing a receiver. *Sclafani v. Sclafani*, 870 S.W.2d 608, 611 (Tex. App.—Houston [1st Dist.] 1993, writ denied). *Id.* More than 20 days passed from the order appointing a receiver before Wells

Fargo appealed the amended order. Thus, the notice of appeal was untimely. *See* TEX. R. APP. P. 26.1(b) (stating notice of appeal in accelerated case must be filed within 20 days after judgment or order); *id.* 28.1(a) (stating appeals from interlocutory orders, when allowed, are accelerated).

Conclusion

We grant JRK-Villages's motion and dismiss this cause for want of jurisdiction.

Harvey Brown
Justice

Panel consists of Justices Jennings, Higley, and Brown.