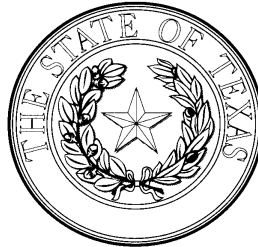


Opinion issued September 17, 2020



In The
Court of Appeals
For The
First District of Texas

NO. 01-19-00802-CV

ABDEL BANDA AND AFRICA MILLS GHANA LIMITED, Appellants
V.
HERBA RICEMILLS, S.L.V., Appellee

On Appeal from the 189th District Court
Harris County, Texas
Trial Court Case No. 2018-60458

MEMORANDUM OPINION

Appellants, Abdel Banda and Africa Mills Ghana Limited, attempt to appeal an order granting appellee's motion for partial summary judgment. Appellee has filed a motion to dismiss the appeal for want of jurisdiction, asserting that the order

is neither a final judgment nor an appealable interlocutory order. We grant the motion and dismiss the appeal.

Background

In September 2018, Herba Ricemills, S.L.V. (“Herba”) sued Africa Mills Ghana Limited and its owner Abdel Banda for allegedly failing to pay for shipments of rice received from Herba. Herba alleged causes of action for conversion, fraud and fraudulent inducement, breach of contract, suit on a sworn account, quantum meruit, unjust enrichment, and piercing the corporate veil.

Herba subsequently moved for partial summary judgment on its breach of contract claim against Africa Mills. The trial court granted the motion in an order entitled “Order Granting Herba’s Motion for Partial Summary Judgment.” The partial summary judgment order requires African Mills to pay Herba “\$880,494.89 plus reasonable and necessary attorneys’ fees.” The order does not purport to be a final judgment, does not contain any finality language, and does not sever any claims into a separate action. Appellants filed a notice of appeal seeking review of what they described as “an Order granting a Partial Summary Judgment in favor of Herba Ricemills, S.L.V. against Defendant[s), Abdel Banda and Africa Mills Ghana Limited.”¹

¹ Contrary to this statement that the order was against both appellants, the order only granted relief against Africa Mills.

Discussion

Absent a statute allowing an interlocutory appeal, a party may only appeal from a final judgment. *See* TEX CIV. PRAC. & REM. CODE § 51.012 (authorizing appeals from final judgments); *CMH Homes v. Perez*, 340 S.W.3d 444, 447 (Tex. 2011) (“Unless a statute authorizes an interlocutory appeal, appellate courts generally only have jurisdiction over appeals from final judgments.”); *see also* TEX CIV. PRAC. & REM. CODE § 51.014 (authorizing appeals from certain interlocutory orders). Herba’s motion to dismiss this appeal for want of jurisdiction asserts that the order is neither a final judgment nor an order from which an interlocutory appeal is authorized. We agree.

The Challenged Order is Not a Final Judgment

When, as here, “there has not been a conventional trial on the merits, an order or judgment is not final for purposes of appeal unless it actually disposes of every pending claim and party or unless it clearly and unequivocally states that it finally disposes of all claims and all parties.” *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 205 (Tex. 2001). The partial summary judgment order that appellants attempt to challenge on appeal does not satisfy either of these finality requirements.

First, the order does not actually dispose of all claims against all parties. *See Lehmann*, 39 S.W.3d at 195, 200. The order applies only to Africa Mills (not co-defendant Abdel Banda) and further proceedings are necessary to determine the

amount of its award of “reasonable and necessary attorneys’ fees.” The record further demonstrates that the trial court has neither adjudicated Herba’s claims against Abdel Banda, nor has it adjudicated Herba’s causes of action for conversion, fraud and fraudulent inducement, and piercing the corporate veil. In sum, the order does not resolve Herba’s other pending causes of action against Africa Mills, or any of its pending claims against co-defendant Abdel Banda.

Second, the order does not contain finality language that can turn an otherwise interlocutory order into a final judgment. *See In re Elizondo*, 544 S.W.3d 824, 828-29 (Tex. 2018). The order does not claim to be anything other than a partial summary judgment order resolving only part of one cause of action against one defendant.

Appellants’ response to the motion to dismiss solely relies upon caselaw recognizing that “orders that resolve certain discrete issues in some probate and receiverships cases” can be deemed final for purposes of appeal without disposing of all pending parties or claims. *Lehmann*, 39 S.W.3d at 195. Although courts have recognized such exceptions to the “one final judgment rule” in probate and receivership cases, this is not a probate or receivership case; rather, this case involves a commercial dispute over the sale of rice. *See, e.g., De Ayala v. Mackie*, 193 S.W.3d 575, 578 (Tex. 2006) (“Probate proceedings are an exception to the ‘one final judgment’ rule.”); *Huston v. FDIC*, 800 S.W.2d 845, 847 (Tex. 1990) (holding that receivership orders can be deemed final when they resolve discrete issues).

Appellants fail to cite any authority extending the exception to the one final judgment rule beyond probate and receivership cases to the order in this case. Moreover, the order in this case does not resolve a “discrete issue.” It resolves part of one claim (breach of contract) against one defendant (Africa Mills) and leaves the amount of attorneys’ fees to be awarded for the claim unresolved. The order does not resolve Herba’s other causes of action against Africa Mills, or any of its claims against co-defendant Abdel Banda.

Accordingly, the order is not a final judgment. Because the order is not a final judgment, we next examine whether an interlocutory appeal of the order is authorized by statute.

An Interlocutory Appeal Is Not Authorized

A party seeking review of a partial summary judgment generally must show that the interlocutory order is appealable under Section 51.014 of the Civil Practice and Remedies Code. *See* TEX CIV. PRAC. & REM. CODE § 51.014(a) (permitting, under certain circumstances, interlocutory appeals from orders disposing of specified claims and issues). We strictly construe statutes authorizing interlocutory appeals because they are a narrow exception to the general rule that interlocutory orders are not immediately appealable. *See CMH Homes*, 340 S.W.3d at 447. Appellants have not argued or otherwise demonstrated that Section 51.014

authorizes an appeal of the interlocutory order in this case. We conclude that there is no statutory provision authorizing an appeal from this interlocutory order.

Conclusion

For the foregoing reasons, the partial summary judgment order appellant seeks to appeal is not a final judgment and an interlocutory appeal of the order is not authorized. *See id.* Accordingly, because the order is not appealable, we grant the motion and dismiss the appeal for lack of jurisdiction. Any other pending motions are dismissed as moot.

PER CURIAM

Panel consists of Justices Kelly, Goodman, and Countiss.