

Dismissed and Memorandum Opinion filed August 11, 2011.



In The

Fourteenth Court of Appeals

NO. 14-11-00455-CV

MILLENNIUM OFFSHORE GROUP, INC., Appellant

V.

SUE ELLEN WHITTINGTON, Appellee

**On Appeal from the 11th District Court
Harris County, Texas
Trial Court Cause No. 2009-63380**

M E M O R A N D U M O P I N I O N

This is an attempted interlocutory appeal of the trial court's order reinstating the intervention of appellee, Sue Ellen Whittington, under section 15.003 of the Texas Civil Practice and Remedies Code governing intervention and joinder of plaintiffs in multiple-party cases. We dismiss for want of appellate jurisdiction.

Background

On October 1, 2009, Millennium Offshore Group, Inc. filed suit against Apache Corporation and ATP Oil and Gas Corporation in the 11th District Court in Harris

County. Millennium alleged that Apache overcharged for compression fees pursuant to a “processing and handling” agreement. Prior to receiving the audit in which it discovered the overcharge, Millennium sold its interest in the line that was overcharged to ATP. Millennium alleged that the overcharge took place before ATP purchased the interest. On February 19, 2010, Apache, after being served with the suit on January 29, 2010, filed an interpleader petition in which Apache admitted the funds were owed and sought to tender the funds into the registry of the court to determine whether they were to be paid to Millennium or ATP.

In the meantime, Whittington entered into a binding settlement agreement with Dwayne Kent Singleton in which Singleton, among other things, assigned to Whittington a “50% interest in the net proceeds” of the funds recovered in the suit between Millennium and ATP. The settlement agreement stems from a suit filed in the 333rd District Court in Harris County, which is related to the probate of the estate of Bernard Joseph Packard. By its terms, the agreement is performable in Harris County. On December 14, 2010, Whittington filed a plea in intervention in the suit between Millennium and ATP alleging that she is entitled, under the settlement agreement, to 50% of the proceeds.

On February 4, 2011, Millennium filed a motion to strike the intervention in which it alleges that Whittington and Singleton have both filed suit against each other for breach of the settlement agreement under which Whittington bases her intervention. While the breach of agreement suit was pending in the 333rd District Court Whittington filed a petition for voluntary bankruptcy, which had the effect of staying all proceedings in that court. On March 7, 2011, the trial court signed an order striking Whittington’s petition in intervention. On April 14, 2011, Whittington filed a motion to reconsider the petition in intervention because her bankruptcy had been dismissed. In the motion, she alleged that the trial court originally struck the intervention because of the pending bankruptcy. On May 2, 2011, the trial court reinstated Whittington’s intervention. This appeal followed.

Texas Civil Practice and Remedies Code Section 15.003

In its first issue, Millennium argues the trial court erred in finding that Whittington independently established venue was proper in Harris County. Section 15.003 provides:

(a) In a suit in which there is more than one plaintiff, whether the plaintiffs are included by joinder, by intervention, because the lawsuit was begun by more than one plaintiff, or otherwise, each plaintiff must, independently of every other plaintiff, establish proper venue. If a plaintiff cannot independently establish proper venue, that plaintiff's part of the suit, including all of that plaintiff's claims and causes of action, must be transferred to a county of proper venue or dismissed, as is appropriate, unless that plaintiff, independently of every other plaintiff, establishes that:

- (1) joinder of that plaintiff or intervention in the suit by that plaintiff is proper under the Texas Rules of Civil Procedure;
- (2) maintaining venue as to that plaintiff in the county of suit does not unfairly prejudice another party to the suit;
- (3) there is an essential need to have that plaintiff's claim tried in the county in which the suit is pending; and
- (4) the county in which the suit is pending is a fair and convenient venue for that plaintiff and all persons against whom the suit is brought.

(b) An interlocutory appeal may be taken of a trial court's determination under Subsection (a) that:

- (1) a plaintiff did or did not independently establish proper venue; or
- (2) a plaintiff that did not independently establish proper venue did or did not establish the items prescribed by Subsections (a)(1)-(4).

Section 15.003 “was designed to preclude the joinder of multiple parties in a forum in which venue over their claims does not lie.” *American Home Products Corp. v. Clark*, 38 S.W.3d 92, 98 (Tex. 2000) (Owen, J., dissenting). No party to this case has challenged venue in Harris County. Neither Millennium nor Whittington filed a motion to transfer venue. While it is true that section 15.003 is a joinder statute, it takes as its starting point a person who is unable to establish proper venue. *Surgitek v. Abel*, 997 S.W.2d 598, 602 (Tex. 1999). Section 15.003 permits an interlocutory appeal by any person seeking intervention or joinder, who is unable to independently establish proper

venue, or a party opposing intervention or joinder of such a person. Tex. Civ. Prac. & Rem. Code Ann. § 15.003(c). Section 15.003(c) does not permit an interlocutory appeal under these circumstances where no party has challenged venue in Harris County. Therefore, the trial court's order reinstating Whittington's intervention is not appealable.

Accordingly, the appeal is dismissed.

PER CURIAM

Panel consists of Justices Brown, Boyce, and McCally.