



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-15-00749-CV

Antonio **JIMENEZ** and Mary Louise Jimenez,
Appellants

v.

Carlos **GONGORA**,
Appellee

From the 45th Judicial District Court, Bexar County, Texas
Trial Court No. 2015-CI-02692
Honorable Stephani A. Walsh, Judge Presiding

PER CURIAM

Sitting: Sandee Bryan Marion, Chief Justice
Luz Elena D. Chapa, Justice
Jason Pulliam, Justice

Delivered and Filed: February 17, 2016

DISMISSED FOR LACK OF JURISDICTION

Antonio and Mary Louise Jimenez sued Carlos Gongora for fraud and breach of contract. Gongora filed a counter-claim alleging the Jimenezes' suit lacked merit and was filed for purposes of harassment. Gongora moved for summary judgment on the Jimenezes' claims. After the trial court granted Gongora's motion and ordered that the Jimenezes take nothing on their claims, the Jimenezes filed a notice of appeal. Gongora moved to dismiss the appeal for lack of jurisdiction arguing the trial court's order is interlocutory and not appealable.

A summary judgment order is final for purposes of appeal only if it either “actually disposes of all claims and parties then before the court, . . . or it states with unmistakable clarity that it is a final judgment as to all claims and all parties.” *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 192-93 (Tex. 2001). The order appealed in this case does neither. If a summary judgment order does not dispose of all issues and all parties, it is interlocutory and not appealable absent a severance. *Mafrige v. Ross*, 866 S.W.2d 590, 591 (Tex. 1993). The record does not contain a signed order from the trial court severing the Jimenezes’ claims against Gongora.

On January 4, 2016, we ordered a response due from the Jimenezes. We also ordered the Jimenezes to file a copy of any request for a supplemental clerk’s record with this court. The Jimenezes did not file a copy of any request for a supplemental clerk’s record. In their response, the Jimenezes advised the court they filed a motion for summary judgment on Gongora’s counter-claim and requested that we await the trial court’s order or abate the appeal. We have been advised the trial court denied the Jimenezes’ motion for summary judgment on Gongora’s counter-claim. Therefore, we must dismiss the appeal for lack of jurisdiction.

PER CURIAM