

SUPREME COURT OF ALABAMA

Banyan Corp. v. Leithead

41 So. 3d 51 (Ala. 2009) · No. 1071078 · Decided December 11, 2009

SUMMARY

The Alabama Supreme Court dismissed Banyan Corporation's appeal from a partial summary judgment in favor of W. Bruce Leithead III. The court held that the trial court's Rule 54(b) certification was ineffective because the order did not fully dispose of any substantive claim or fully resolve the claims against any party. The court therefore concluded that the order was not final and appealable.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Cobb, C.J.; Woodall, J.; Smith, J.; Parker, J.; Shaw, J.
JURISDICTION	Alabama
DECIDED	December 11, 2009
DOCKET	1071078
DISPOSITION	dismissed
PROCEDURAL POSTURE	Banyan appealed a trial court order granting Leithead partial summary judgment on alternative grounds and purporting to certify the order as final under Alabama Rule of Civil Procedure 54(b).
STANDARD OF REVIEW	The court independently determined whether it had appellate jurisdiction and whether the appealed order was a final judgment; an order that is not final must be dismissed ex mero motu.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Alabama
PARTIES	Banyan Corporation v. W. Bruce Leithead III

TOPICS

- final judgment rule
- appellate jurisdiction
- appellate procedure
- corporate veil piercing
- contracts

PRACTICE AREAS

- Appellate procedure
- Civil procedure
- Contracts
- Corporate law
- Employment law

QUESTIONS PRESENTED

1. Whether the trial court's partial summary judgment order was a final, appealable judgment under Alabama Rule of Civil Procedure 54(b).
2. Whether the Supreme Court of Alabama had jurisdiction to review the trial court's determinations concerning corporate-veil piercing and Banyan's status as a party to the employment contract.

HOLDINGS

1. A Rule 54(b) certification is ineffective unless the order completely adjudicates at least one claim or fully disposes of the claims as they relate to at least one party. Because the trial court's order did neither, it was not a final judgment and was not appealable.
2. The court could not reach the merits because the appealed order was nonfinal and the court lacked appellate jurisdiction.

KEY QUOTATIONS

"In the present case, it is undisputed that the order from which this appeal was taken did not completely dispose of any of the substantive claims in this case, nor did the order fully dispose of the claims as they relate to at least one party." (54)

"Accordingly, the trial court erred in certifying its partial summary judgment on the breach-of-contract claim as final pursuant to Rule 54(b), Ala. R. Civ. P." (54)

"APPEAL DISMISSED." (54)

FACTUAL BACKGROUND

Leithead claimed that DoubleCase breached his employment contract by denying him benefits, compensation, and stock options. He sought partial summary judgment, arguing that DoubleCase was Banyan's mere instrumentality or alter ego and that Banyan was alternatively a direct party to the employment contract. The trial court accepted both alternative theories for purposes of partial summary judgment but left unresolved whether either corporation actually breached the contract and what damages, if any, resulted.

PROCEDURAL HISTORY

Leithead sued Banyan and its wholly owned subsidiary, DoubleCase Corporation, asserting negligence, breach of an employment contract, fraudulent misrepresentation, and fraudulent suppression. The trial court granted partial summary judgment determining that DoubleCase was Banyan's alter ego and that Banyan was a party to the employment contract, but expressly left the breach and damages issues unresolved. The trial court certified the order under Rule 54(b), and Banyan appealed. The Supreme Court of Alabama dismissed the appeal for lack of a final judgment.

DISPOSITION

dismissed

CASES CITED

- North Alabama Electric Cooperative v. New Hope Telephone Cooperative, 7 So. 3d 342, 344-45 (Ala. 2008)
- Powell v. Republic National Life Insurance Co., 293 Ala. 101, 102, 300 So. 2d 359, 360 (1974)
- McGowin Investment Co. v. Johnstone, 291 Ala. 714, 715, 287 So. 2d 835, 836 (1973)
- Grantham v. Vanderzyl, 802 So. 2d 1077, 1079-80 (Ala. 2001)
- Haynes v. Alfa Financial Corp., 730 So. 2d 178, 181 (Ala. 1999)
- Tanner v. Alabama Power Co., 617 So. 2d 656, 656 (Ala. 1993)

OPINION

PER CURIAM.

41 So.3d 51 (2009) BANYAN CORPORATION v. W. Bruce LEITHEAD III. 1071078. Supreme Court of Alabama. December 11, 2009. *52 George M. Vaughn of Weaver Tidmore, LLC, Birmingham, for appellant. K.W. Michael Chambers, Michael E. Turner, and Anthony L. Watkins, Jr., of Cabaniss, Johnston, Gardner, Dumas & O'Neal LLP, Birmingham, for appellee. PER CURIAM. Banyan Corporation appeals from the trial court's order entering a partial summary judgment in favor of W. Bruce Leithead III.

We dismiss the appeal. Leithead filed his complaint on January 9, 2004, asserting against Banyan and DoubleCase Corporation, a wholly owned subsidiary of Banyan, claims of negligence and breach of his employment contract with DoubleCase. Leithead alleged that Banyan had denied him certain benefits, compensation, and stock options to which he says he was entitled under the employment contract.

On March 15, 2004, Leithead filed an amended complaint, asserting additional claims of fraudulent misrepresentation and fraudulent suppression against Banyan and DoubleCase. On October 26, 2007, Leithead filed a motion for a partial summary judgment on his breach-of-contract claim.

In his motion, Leithead argued that the corporate veil should be pierced as to DoubleCase and that Banyan should be held liable for DoubleCase's breach of Leithead's employment contract. Leithead alleged that Banyan controlled DoubleCase to the extent that DoubleCase became a mere instrumentality or alter ego of Banyan and, alternatively, that Banyan was a party to and breached Leithead's employment contract.

In its order, the trial court stated that it was granting Leithead's motion for a partial summary judgment on both alternative grounds: "1. With respect to the equitable doctrine of 'piercing the corporate veil,' the court finds overwhelming, undisputed evidence that there was little or no effort on the part of either Banyan Corporation or DoubleCase Corporation to maintain separate corporate formalities.

To the contrary, the evidence is undisputed that DoubleCase had no independent, formal management or financial structure, and that the principals of Banyan operated DoubleCase out of their back pocket. The evidentiary record is replete with circumstance after circumstance in which Banyan completely disregarded the existence of DoubleCase as a separate corporate entity.

As a result of the domination and control of DoubleCase by Banyan, combined with the total lack of effort on the part of these companies to maintain even a modicum of corporate formality, DoubleCase existed in name only. When viewed in the light most favorable to [Banyan and DoubleCase], the overwhelming evidence is that DoubleCase was the mere instrumentality and/or alter ego of Banyan.

"The court finds that there exist no genuine issues of material fact, and that [Leithead] is entitled to judgment as matter of law on his equitable claim. [Leithead's] Motion for Partial Summary Judgment is due to be, and it hereby is, GRANTED. It is the judgment of this court that no corporate shield exists between Defendants Banyan Corporation and DoubleCase Corporation.

As DoubleCase Corporation is the mere instrumentality and/or alter ego of Banyan Corporation, any liability for a breach of duty or obligation on the part of DoubleCase shall be borne by Banyan. "2. With respect to [Leithead's] contention that Defendant Banyan Corporation was a direct party to the contract *53 made the basis of [Leithead's] suit, the court finds that by [Banyan's and DoubleCase's] testimony, and as signified on the face of the document itself, Defendant Banyan intentionally made itself a party to the contract.

Banyan acknowledged the existence of the contract and its obligations thereunder in its 10-K filings. When viewed in the light most favorable to [Banyan], the court finds that there exist no genuine issues of material fact, and that as a matter of law, [Leithead's] Motion for Partial Summary Judgment is due to be, and it hereby is, GRANTED. Banyan Corporation is adjudged to be a signatory and party to the contract made the basis of this suit.

As such, Banyan Corporation shall be liable for any breach of said contract as may be determined by the jury. "3. With respect to [Leithead's] allegations concerning [Banyan's and DoubleCase's] breach of contract and the damages resulting therefrom, the court finds that there exist genuine issues of material fact which render summary judgment inappropriate.

[Leithead's] Motion for Partial Summary Judgment with respect to [Banyan's and DoubleCase's] breach of contract is hereby DENIED. "4. Based upon the foregoing, the court finds that the Motion for Summary Judgment by Defendant Banyan Corporation is due to be, and it hereby is, DENIED. "5.

The Court expressly directs entry of this judgment pursuant to A[la]. R. Civ. P. Rule 54(b), as the Court has determined that there is no just reason for delay in the entry of a final judgment as to the issues addressed in paragraphs 1. and 2. above."

The trial court's order does not ultimately dispose of the breach-of-contract claim. Banyan appeals. On appeal, Banyan argues that there are genuine issues of material fact concerning the trial court's decision that the corporate veil as to DoubleCase be pierced, thereby holding Banyan liable for any damages Leithead suffered as a result of DoubleCase's breach of his employment contract and, alternatively, that Banyan was a party to Leithead's employment contract and thus is liable for any breach of that contract.

Before we can address Banyan's arguments, however, it is necessary to determine whether this Court has jurisdiction to hear Banyan's appeal. In our recent case of *North Alabama Electric Cooperative v. New Hope Telephone Cooperative*, 7 So.3d 342, 344-45 (Ala.2008), this Court stated: "It is incumbent upon this Court to ensure that it has jurisdiction to hear the appeal. ""As this court has said many times previously, a final judgment is necessary to give jurisdiction to this court on an appeal, and it cannot be waived by the parties...." "".... ""When it is determined that an order appealed from is not a final judgment, it is the duty of the Court to dismiss the appeal ex mero motu.'

"*Powell v. Republic Nat'l Life Ins. Co.*, 293 Ala. 101, 102, 300 So.2d 359, 360 (1974) (quoting *McGowin Investment Co. v. Johnstone*, 291 Ala. 714, 715, 287 So.2d 835, 836 (1973)). ""Ordinarily, an appeal can be brought only from a final judgment. Ala.Code 1975, § 12-22-2. If a case involves multiple claims or multiple parties, an order is generally not final unless it disposes of all claims as to all parties.

Rule 54(b), Ala. R. Civ. P. *54 However, when an action contains more than one claim for relief, Rule 54(b) allows the court to direct the entry of a final judgment as to one or more of the claims, if it makes the express determination that there is no just reason for delay.' "*Grantham v. Vanderzyl*, 802 So.2d 1077, 1079-80 (Ala.2001)." Further, in *Haynes v. Alfa Financial Corp.*, 730 So.2d 178, 181 (Ala.1999), this Court held: "Pursuant to Rule 54(b), [Ala.

R. Civ. P.,] a trial court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties.' But Rule 54(b) makes an order final and therefore appealable only where the trial court "has completely disposed of one of a number of claims, or one of multiple parties.'" *Tanner v. Alabama Power Co.*, 617 So.2d 656, 656 (Ala.1993) (quoting Committee Comments on the 1973 adoption of Rule 54(b)) (emphasis added in *Tanner*).

In other words, for a Rule 54(b) certification of finality to be effective, it must fully adjudicate at least one claim or fully dispose of the claims as they relate to at least one party." In the present case, it is undisputed that the order from which this appeal was taken did not completely dispose of any of the substantive claims in this case, nor did the order fully dispose of the claims as they relate to at least one party.

The trial court determined only that DoubleCase was Banyan's mere instrumentality or alter ego and that, as a result, any liability attributable to DoubleCase would also be borne by Banyan and that Banyan was a party to Leithead's employment contract with DoubleCase.

The trial court's decision, however, does not determine whether DoubleCase or Banyan is liable for the alleged breach of contract. Accordingly, the trial court erred in certifying its partial summary judgment on the breach-of-contract claim as final pursuant to Rule 54(b), Ala. R. Civ. P. "When it is determined that an order appealed from is not a final judgment, it is the duty of the Court to dismiss the appeal ex mero motu."

Powell v. Republic Nat'l Life Ins. Co., 293 Ala. 101, 102, 300 So.2d 359, 360 (1974). APPEAL DISMISSED. COBB, C.J., and WOODALL, SMITH, PARKER, and SHAW, JJ., concur.