

FOURTH COURT OF APPEALS OF TEXAS, SAN ANTONIO

Progreso LLC and Progreso La Michoacana Meat Market San Antonio #10, LLC v. Rosamaria Gonzalez

No. 04-20-00437-CV · No. No. 04-20-00437-CV · Decided September 23, 2020

SUMMARY

The Fourth Court of Appeals of Texas ordered the appellants to show cause why their interlocutory appeal should not be dismissed for lack of jurisdiction. The clerk's record did not contain the order denying the appellants' motion to compel arbitration, and the court suspended all other appellate deadlines pending further order.

CASE DETAILS

COURT	Fourth Court of Appeals of Texas, San Antonio
WRITING FOR THE COURT	Beth Watkins
JURISDICTION	Texas
DECIDED	September 23, 2020
DOCKET	No. 04-20-00437-CV
DISPOSITION	other
PROCEDURAL POSTURE	Appellants filed an interlocutory appeal from an alleged August 17, 2020 order denying their amended motion to compel arbitration. The appellate court's clerk's record did not contain the challenged order or any other order denying arbitration, so the court ordered appellants to show cause why the appeal should not be dismissed for lack of jurisdiction.
PRECEDENTIAL VALUE	Published
PARTIES	Progreso LLC, Progreso La Michoacana Meat Market San Antonio #10, LLC v. Rosamaria Gonzalez

TOPICS

[interlocutory appeal](#)[appellate jurisdiction](#)[arbitration](#)[appellate procedure](#)[civil procedure](#)

PRACTICE AREAS

[civil procedure](#)[arbitration](#)[appellate procedure](#)

QUESTIONS PRESENTED

1. Whether the court had jurisdiction over the purported interlocutory appeal when the appellate record did not contain the order identified in the notice of appeal or any order denying the motion to compel arbitration.
2. Whether appellants should be required to show cause why the appeal should not be dismissed for lack of jurisdiction.

HOLDINGS

1. A party may not appeal an interlocutory order unless an applicable statute authorizes the appeal.
2. An interlocutory appeal from an order denying a motion to compel arbitration may be available under the Texas Arbitration Act or the Federal Arbitration Act in appropriate circumstances, subject to the stated statutory and preemption conditions.

KEY QUOTATIONS

“A party may not appeal an interlocutory order unless authorized by statute.”

“We therefore ORDER appellants to show cause by October 5, 2020 why this appeal should not be dismissed for lack of jurisdiction.”

FACTUAL BACKGROUND

Appellants sought to compel arbitration in the underlying litigation. They identified an August 17, 2020 order on their amended motion to compel arbitration as the order they intended to appeal, but the appellate record contained neither that order nor another order denying arbitration.

PROCEDURAL HISTORY

The case originated in the 73rd Judicial District Court of Bexar County, Texas. Appellants filed a notice of interlocutory appeal on September 8, 2020, and the district clerk filed the clerk’s record on September 18, 2020. Because the record lacked the order identified in the notice of appeal, the court suspended appellate deadlines and ordered appellants to show cause by October 5, 2020 why the appeal should not be dismissed.

DISPOSITION

other

CASES CITED

- Robert B. James, DDS, Inc. v. Elkins, 553 S.W.3d 596, 632 (Tex. App.—San Antonio 2018, pet. denied)
- Ellis v. Schlimmer, 337 S.W.3d 860, 861 (Tex. 2011)

OPINION

PER CURIAM.

Fourth Court of Appeals San Antonio, Texas September 23, 2020 No. 04-20-00437-CV PROGRESO LLC and Progreso La Michoacana Meat Market San Antonio #10, LLC, Appellants v. Rosamaria GONZALEZ, Appellee From the 73rd Judicial District Court, Bexar County, Texas Trial Court No. 2019CI25139 Honorable John D. Gabriel, Jr., Judge Presiding ORDER A party may not appeal an interlocutory order unless authorized by statute.

See Robert B. James, DDS, Inc. v. Elkins, 553 S.W.3d 596, 632 (Tex. App.—San Antonio 2018, pet. denied). On September 8, 2020, appellants filed a notice of interlocutory appeal indicating they wish to appeal “the August 17, 2020 Order on Defendants, Progreso LLC and Progreso La Michoacana Meat Market San Antonio #10, LLC d/b/a La Michoacana Meat Market’s First Amended Motion to Compel Arbitration.” An interlocutory appeal of an order denying a motion to compel arbitration is permissible under some circumstances.

See Ellis v. Schlimmer, 337 S.W.3d 860, 861 (Tex. 2011) (“If a trial court denies a motion to compel arbitration, appellate review may be available under both the [Texas Arbitration Act] and the [Federal Arbitration Act] so long as the [Texas Arbitration Act] is not preempted.”).

On September 18, 2020, the district clerk filed a copy of the clerk’s record. That record does not contain the order listed in the notice of appeal or any other order denying appellants’ motion to compel arbitration. See id. We therefore ORDER appellants to show cause by October 5, 2020 why this appeal should not be dismissed for lack of jurisdiction.

We ORDER all other appellate deadlines suspended pending further order of this court.

Beth Watkins, Justice IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said court on this 23rd day of September, 2020.

Michael A. Cruz, Clerk of Court