

COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS

DJ Stephanco Auto Services, LLC, David J. Stephan, John Matt Rembert, and Foundation Builders, LLC v. Alnoor Malick and Shelina Malick; Alnoor Malick and Shelina Malick v. Foundation Builders, LLC

No. 01-12-01086-CV, Court of Appeals for the First District of Texas (May 7, 2015)

SUMMARY

The Texas Court of Appeals reinstated the appeal after a bankruptcy stay and granted motions dismissing the appeals of DJ Stephanco Auto Services, LLC, David J. Stephan, Foundation Builders, LLC, and Alnoor and Shelina Malick. John Matt Rembert's appeal remained pending, and the court stated that the interlocutory order would become final when judgment was issued in the cause.

CASE DETAILS

COURT	Court of Appeals for the First District of Texas
WRITING FOR THE COURT	Per Curiam; Chief Justice Radack; Justice Brown; Justice Lloyd
JURISDICTION	Texas
DECIDED	May 7, 2015
DOCKET	01-12-01086-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Consolidated appeals from the September 10, 2012 final judgment of the 189th District Court of Harris County. During the appeals, one appellant filed a suggestion of bankruptcy, resulting in a stay. Several parties later moved to dismiss their appeals with prejudice based on settlements.
PRECEDENTIAL VALUE	published memorandum order
PARTIES	DJ Stephanco Auto Services, LLC, David J. Stephan, John Matt Rembert, Foundation Builders, LLC, Alnoor Malick, Shelina Malick v. Alnoor Malick, Shelina Malick, Foundation Builders, LLC

TOPICS

appellate procedure

mootness

automatic stay

bankruptcy

civil procedure

PRACTICE AREAS

Appellate procedure

Civil procedure

Bankruptcy

QUESTIONS PRESENTED

1. Whether the appellate court should reinstate the stayed appeals after the bankruptcy-related stay.
2. Whether the appeals of DJ Stephanco Auto Services, David J. Stephan, Foundation Builders, LLC, and Alnoor and Shelina Malick should be dismissed with prejudice based on the parties' settlement and motions to dismiss.
3. Whether pending motions related to DJ Stephanco Auto Services and David J. Stephan's appeal should be dismissed as moot.
4. Whether John Matt Rembert's appeal should remain pending because the motions did not establish that the matters underlying his appeal had been resolved.

HOLDINGS

1. The court reinstated the appeal after the bankruptcy-related stay.
2. The court granted the motions to dismiss with prejudice and dismissed the appeals of DJ Stephanco Auto Services, LLC, David J. Stephan, Foundation Builders, LLC, and Alnoor and Shelina Malick.
3. The court dismissed as moot DJ Stephanco Auto Services and David J. Stephan's pending motions to dismiss, their motion to withdraw a motion to dismiss, and any other pending motions.
4. John Matt Rembert's appeal remained pending because the dismissal motions did not establish that the matters underlying his appeal had been resolved.

KEY QUOTATIONS

“John Matt Rembert’s appeal remains pending.” (at 2)

“This interlocutory order will become final when a judgment is issued in this cause number.” (at 2)

FACTUAL BACKGROUND

The underlying litigation involved a judgment awarding the Malicks damages against John Matt Rembert, David Stephan, and DJ Stephanco Auto Services, LLC, jointly and severally, as well as attorney's fees against Rembert. During the appellate proceedings, DJ Stephanco Auto Services filed a suggestion of bankruptcy, and the bankruptcy court approved a global settlement involving Stephan, the Malicks, and others. The Malicks and Foundation Builders also represented that they had resolved their disputes.

PROCEDURAL HISTORY

The trial court entered final judgment on September 10, 2012. Multiple parties filed notices of appeal. After DJ Stephanco Auto Services filed a suggestion of bankruptcy, the appellate proceedings were stayed. The court reinstated the appeal, granted the parties' settlement-based motions to dismiss specified appeals with prejudice, dismissed related pending motions as moot, and allowed John Matt Rembert's appeal to remain pending.

DISPOSITION

dismissed

OPINION

PER CURIAM.

Opinion issued May 7, 2015 In The Court of Appeals For The First District of Texas NO. 01-12-01086-CV DJ STEPHANCO AUTO SERVICES, LLC, DAVID J. STEPHAN, JOHN MATT REMBERT, AND FOUNDATION BUILDERS, LLC, Appellants V. ALNOOR MALICK AND SHELINA MALICK, Appellees and ALNOOR MALICK AND SHELINA MALICK, Appellants V. FOUNDATION BUILDERS, LLC, Appellee On Appeal from the 189th District Court Harris County, Texas Trial Court Case No. 2009-03407 MEMORANDUM ORDER DJ Stephanco Auto Services, LLC and David Stephan, filed a notice of appeal of the trial court's final judgment signed on September 10, 2012.

Thereafter, John Matt Rembert and Foundation Builders, LLC, filed their notices of appeal of the September 10, 2012 judgment, and Alnoor and Shelina Malick filed a notice of appeal of the judgment as it related to Foundation Builders, LLC. On May 29, 2013, DJ Stephanco Auto Services filed in this Court a suggestion of bankruptcy, staying proceedings in this Court.

See TEX. R. APP. P. 8.2; see also 11 U.S.C. § 362(a). DJ Stephanco Auto Services and Stephan have filed an unopposed motion to dismiss, with prejudice, their appeal. They represent that Stephan, the Malicks, and others, who are not parties to this appeal, have entered into a global settlement of the litigation pending between them; the bankruptcy court has approved the settlement; and, as consideration for the settlement, Stephan has agreed to withdraw this appeal, individually and on behalf of DJ Stephanco Auto Services.

The Malicks and Foundation Builders, representing that they have resolved the disputes between them, also have filed a motion to dismiss, with prejudice, their appeals. Accordingly, we reinstate the appeal. We grant DJ Stephanco Auto Services and Stephan's and the Malicks and Foundation Builders' motions to dismiss their 2 appeals, and dismiss the appeals of DJ Stephanco Auto Services, LLC, David J. Stephan, Foundation Builders, LLC, and Alnoor and Shelina Malick.

Finally, we dismiss as moot DJ Stephanco Auto Services and Stephan's motion to dismiss, filed on August 26, 2014; their motion to withdraw that motion to dismiss, filed on September 10, 2014; and any other pending motions. John Matt Rembert's appeal remains pending.¹ This interlocutory order will become final when a judgment is issued in this cause number. PER CURIAM Panel consists of Chief Justice Radack and Justices Brown and Lloyd.

1 The September 10, 2012 judgment awards the Malicks damages against Rembert, Stephan, and DJ Stephanco Auto Services, jointly and severally; and attorney's fees against Rembert. In their motion to dismiss, the Malicks and Foundation Builders state that the granting of the motions to dismiss "would resolve all matters in the above-styled and number[ed] case." However, the motions do not reflect that matters underlying Rembert's appeal have been resolved.

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