

FLORIDA DISTRICT COURT OF APPEAL, THIRD DISTRICT

Haven Center, Inc. v. Meruelo

22 So. 3d 849 (Fla. 3d DCA 2009) · Decided December 2, 2009

SUMMARY

The Florida District Court of Appeal addresses an appeal from summary judgment on compulsory counterclaims arising from a real estate contract while the plaintiff's related claims remained pending. The court held that the counterclaims were not separately appealable as a final disposition, reversed the judgment to the extent it included the phrase “go hence without day,” and otherwise left the summary judgment intact.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                           |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Florida District Court of Appeal, Third District                                                                                                                                                                                                                                          |
| WRITING FOR THE COURT | Cope; Lagoa; Salter                                                                                                                                                                                                                                                                       |
| JURISDICTION          | Florida                                                                                                                                                                                                                                                                                   |
| DECIDED               | December 2, 2009                                                                                                                                                                                                                                                                          |
| DISPOSITION           | reversed                                                                                                                                                                                                                                                                                  |
| PROCEDURAL POSTURE    | Haven Center appealed a final summary judgment disposing of its counterclaims, although Meruelo's claims for declaratory judgment and specific performance remained pending. The appellate court considered the appealability and finality of the judgment on rehearing or clarification. |
| PRECEDENTIAL VALUE    | Published opinion                                                                                                                                                                                                                                                                         |
| PARTIES               | Haven Center, Inc. v. Homero Meruelo                                                                                                                                                                                                                                                      |

TOPICS

- final judgment rule
- appellate jurisdiction
- summary judgment
- civil procedure

PRACTICE AREAS

- civil procedure
- appellate procedure
- contracts
- real estate

QUESTIONS PRESENTED

1. Whether a judgment adjudicating compulsory counterclaims is appealable before the plaintiff's original claims arising from the same contract and transactions have been fully adjudicated.

2. Whether the trial court's inclusion of the phrase "go hence without day" improperly characterized the judgment on the counterclaims as final.
3. Whether the appellate court should disturb the trial court's summary judgment on the counterclaims.

#### **HOLDINGS**

1. A judgment adjudicating compulsory counterclaims is not appealable until the original claims have been finally disposed of on the merits when the claims and counterclaims arise from the same contract, transactions, and occurrences.
2. The phrase "go hence without day" must be removed because the judgment was not actually final while Meruelo's claims remained pending.

#### **KEY QUOTATIONS**

*"The adjudication of compulsory counterclaims such as these is "not appeal-able until a final disposition of the original cause has obtained on the merits.""* (849)

*"We reverse the judgment to the extent that it includes the phrase "go hence without day" because it is not, in fact, a final judgment"* (849)

#### **FACTUAL BACKGROUND**

Meruelo's claims against Haven Center concerned declaratory judgment and specific performance of a real estate contract. Haven Center's counterclaims arose from the same contract, transactions, and occurrences. The trial court entered summary judgment against Haven Center on its counterclaims, even though Meruelo's claims remained pending, and added language purporting to make the judgment final.

#### **PROCEDURAL HISTORY**

Meruelo sued Haven Center on a real estate contract and asserted claims for declaratory judgment and specific performance. Haven Center brought compulsory counterclaims arising from the same contract, transactions, and occurrences. The trial court entered summary judgment on the counterclaims and included language that Haven Center would "take nothing on its counterclaim and go hence without day," but did not adjudicate Meruelo's claims. The Third District reversed the judgment in part by removing the finality language while leaving the summary judgment on the counterclaims undisturbed.

#### **DISPOSITION**

reversed

#### **REMAND INSTRUCTIONS**

The court removed the phrase "go hence without day" without disturbing the entry of summary judgment on the counterclaim and without prejudice to the parties' right to appeal after all claims and counterclaims have been adjudicated.

## CASES CITED

- Campbell v. Gordon, 674 So. 2d 783, 785 (Fla. 1st DCA 1996)
- Northcutt v. Pathway Financial, 555 So. 2d 368 (Fla. 3d DCA 1989)

## OPINION

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PER CURIAM.

On Motion for Reheating or Clarification PER CURIAM. Following the Court's consideration of the appellee's motion for rehearing or clarification, the Court denies the motion for rehearing, grants in part the motion for clarification, and issues the opinion which follows in place of the opinion filed October 21, 2009. The Haven Center, Inc., appeals a final summary judgment disposing of both its counterclaims against Homero Meruelo, the plaintiff below. That judgment did not, however, include an adjudication of Meruelo's claims against Haven Center for declaratory judgment and specific performance of a real estate contract. Meruelo's claims remain pending, and Haven Center's counterclaims arose out of the same contract, transactions, and occurrences that were involved in Meruelo's claims. The adjudication of compulsory counterclaims such as these is "not appeal-able until a final disposition of the original cause has obtained on the merits." Campbell v. Gordon, 674 So.2d 783, 785 (Fla. 1st DCA 1996); Northcutt v. Pathway Financial, 555 So.2d 368 (Fla. 3d DCA 1989). Meruelo nevertheless encouraged the trial court to add the words of finality, that Haven Center "take nothing on its counterclaim and go hence without day," over Haven Center's objection. We reverse the judgment to the extent that it includes the phrase "go hence without day" because it is not, in fact, a final judgment, but we do so (a) without disturbing the trial court's entry of summary judgment on the counterclaim and (b) without prejudice to the right of the parties to appeal when both the claims and the counterclaims have been fully adjudicated. Clarification granted; Reversed in part.