

THIRD DISTRICT COURT OF APPEAL OF FLORIDA

Aqua Bay Luxury Apartments, Inc., etc. v. The Ivory at Bay Harbour, LLC

Aqua Bay · No. 3D23-1013 · Decided March 26, 2025

SUMMARY

The Third District Court of Appeal of Florida reviews an appeal involving tenancies and possession of eleven apartment units. The court dismisses the appeal from several nonfinal orders for lack of jurisdiction, but exercises jurisdiction over the order determining the right to immediate possession of property and affirms the final judgment of removal of tenants.

CASE DETAILS

COURT	Third District Court of Appeal of Florida
WRITING FOR THE COURT	EMAS; MILLER; LOBREE
JURISDICTION	Florida Third District Court of Appeal
DECIDED	March 26, 2025
DOCKET	3D23-1013
DISPOSITION	other
PROCEDURAL POSTURE	Aqua Bay appealed a final judgment of removal of tenants and three nonfinal orders entered in a dispute concerning possession of eleven apartment units.
STANDARD OF REVIEW	The opinion does not expressly state a separate standard of review; it reviews appellate jurisdiction and states that it discerned no error in the trial court's entry of final judgment.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Aqua Bay Luxury Apartments, Inc. v. The Ivory at Bay Harbour, LLC

TOPICS

- appellate jurisdiction
- interlocutory appeal
- landlord tenant
- eviction
- civil procedure

PRACTICE AREAS

- appellate procedure
- landlord-tenant
- real estate

QUESTIONS PRESENTED

1. Whether the Third District had jurisdiction to review the orders denying Aqua Bay's motion to dismiss, ruling on the verified motion to determine rents, and denying the motion to strike the second amended complaint.
2. Whether Florida Rule of Appellate Procedure 9.110(k) provided jurisdiction to review the final judgment of removal as a partial final judgment while multiple interrelated counts remained pending.
3. Whether the order granting final judgment of removal and directing issuance of writs of possession was reviewable as a nonfinal order determining the right to immediate possession of property under Florida Rule of Appellate Procedure 9.130(a)(3)(C)(ii).
4. Whether the trial court erred in entering final judgment on count I of the second amended complaint.

HOLDINGS

1. The court lacked jurisdiction to review the orders denying the motion to dismiss, ruling on the verified motion to determine rents, and denying the motion to strike because those orders were not specifically listed in Florida Rule of Appellate Procedure 9.130(a)(3) and did not provide the basis for the order directing issuance of the writ of possession.
2. Rule 9.110(k) did not provide jurisdiction to review the judgment of removal as a partial final judgment because multiple interrelated counts remained pending below.
3. The court had jurisdiction under Florida Rule of Appellate Procedure 9.130(a)(3)(C)(ii) to review the order granting final judgment of removal and directing issuance of writs of possession because the order determined the right to immediate possession of property.
4. The trial court did not err in entering final judgment on count I of the second amended complaint; the order granting IBH's motion for final judgment of removal of tenants was affirmed.

KEY QUOTATIONS

“We nonetheless have jurisdiction to review the nonfinal order as one determining “the right to immediate possession of property.”” (2)

“Discerning no error in the trial court’s entry of final judgment on count I of the second amended complaint, we affirm the order granting IBH’s motion for final judgment of removal of tenants.” (3)

FACTUAL BACKGROUND

The dispute concerned tenancies and possession of eleven apartment units located in the same building in Bay Harbor Islands. The trial court entered judgment of removal of tenants on count I of IBH's second amended complaint and directed issuance of writs of possession.

PROCEDURAL HISTORY

The Circuit Court for Miami-Dade County entered a final judgment of removal of tenants on count I of IBH's second amended complaint and directed issuance of writs of possession. It also denied Aqua Bay's motion to dismiss, ruled on IBH's verified motion to determine rents, and denied Aqua Bay's motion to strike the second

amended complaint. The Third District dismissed the appeal from the latter three orders for lack of jurisdiction, affirmed the order granting final judgment of removal, and reviewed that order as an appealable nonfinal order determining the right to immediate possession of property.

DISPOSITION

other

CASES CITED

- Dext Med. Indus., CA v. Fitesa Naotecidos S.A., 346 So. 3d 1215, 1217 (Fla. 3d DCA 2022)
- Speedway SuperAmerica, LLC v. Tropic Enters., Inc., 966 So. 2d 1, 2 n.1 (Fla. 2d DCA 2007)
- Almacenes El Globo De Quito, S.A. v. Dalbeta L.C., 181 So. 3d 559, 562 (Fla. 3d DCA 2015)
- Bryant v. Wells Fargo Bank, N.A., 182 So. 3d 927, 929 (Fla. 3d DCA 2016)
- Shir L. Grp., P.A. v. Carnevale, 306 So. 3d 319, 320 (Fla. 3d DCA 2020)

OPINION

Aqua Bay Luxury Apartments, Inc., Etc. v. the Ivory at Bay Harbour, LLC

PER CURIAM.

Third District Court of Appeal State of Florida Opinion filed March 26, 2025. Not final until disposition of timely filed motion for rehearing. _____ No. 3D23-1013 Lower Tribunal No. 22-23449 _____ Aqua Bay Luxury Apartments, Inc., etc., Appellant, vs. The Ivory at Bay Harbour, LLC, Appellee. An Appeal from the Circuit Court for Miami-Dade County, Reemberto Diaz, Judge. Neustein Law Group, P.A., and Nicole R. Moskowitz, for appellant. Forteza Law, PLLC and Gaspar Forteza, for appellee. Before EMAS, MILLER and LOBREE, JJ. PER CURIAM. Aqua Bay Luxury Apartments, Inc. (“Aqua Bay”), appeals four orders entered in this dispute concerning tenancies and possession of eleven apartment units located in the same building in Bay Harbor Islands. Along with an order granting appellee, The Ivory at Bay Harbour, LLC (“IBH”), a final judgment of removal of tenants on count I of its second amended complaint and directing issuance of writs of possession for those apartments, Aqua Bay also appeals nonfinal orders (1) denying its motion to dismiss, (2) on verified motion to determine rents, and (3) denying its motion to strike the second amended complaint. Because the latter three orders are not “specifically listed in [Florida Rule of Appellate Procedure] 9.130(a) (3),” Dext Med. Indus., CA v. Fitesa Naotecidos S.A., 346 So. 3d 1215, 1217 (Fla. 3d DCA 2022), and did not “provide[] the basis for the order directing issuance of the writ of possession,” Speedway SuperAmerica, LLC v. Tropic Enters., Inc., 966 So. 2d 1, 2 n.1 (Fla. 2d DCA 2007), we dismiss Aqua Bay’s appeal from those orders for lack of jurisdiction. As for the order granting final judgment of removal of tenants, Aqua Bay seeks review under rule 9.110(k), characterizing the order as a partial final judgment. Aqua Bay’s reliance on rule 9.110(k) to establish jurisdiction is misplaced, because multiple interrelated counts remain pending below. See Almacenes El Globo

De Quito, S.A. v. Dalbeta L.C., 181 So. 3d 559, 562 (Fla. 3d DCA 2015) (explaining that rule 9.110(k) “provides for appellate jurisdiction to hear a 2 partial final judgment only when the claims adjudicated by that order are separate and independent from the portion of the case still to be adjudicated”). We nonetheless have jurisdiction to review the nonfinal order as one determining “the right to immediate possession of property.” Fla. R. App. P. 9.130(a)(3)(C)(ii); see Bryant v. Wells Fargo Bank, N.A., 182 So. 3d 927, 929 (Fla. 3d DCA 2016) (stating that order granting writ of possession “may be properly viewed as an appealable, non-final order determining ‘the right to immediate possession of property’” (quoting Fla. R. App. P. 9.130(a)(3)(C)(ii)); Shir L. Grp., P.A. v. Carnevale, 306 So. 3d 319, 320 (Fla. 3d DCA 2020) (concluding that this court had jurisdiction under rule 9.130(a)(3)(C)(ii) to review order compelling appellants to convey condominium unit within three days of date of order). Discerning no error in the trial court’s entry of final judgment on count I of the second amended complaint, we affirm the order granting IBH’s motion for final judgment of removal of tenants. Affirmed in part and dismissed in part. 3