

COURT OF APPEALS OF TEXAS, FOURTEENTH DISTRICT

Christina De La Torre v. AAG Properties, Inc.

No. 14-15-00874-CV (Tex. App.—Houston [14th Dist.] Dec. 22, 2015) (mem. op.) · No. No. 14-15-00874-CV ·
Decided December 22, 2015

SUMMARY

The Fourteenth Court of Appeals denied Christina De La Torre’s application for a permissive interlocutory appeal and dismissed the appeal. The court held that the trial court’s order permitting the appeal did not state the reasons for denying De La Torre’s no-evidence and traditional summary-judgment motion, and therefore did not demonstrate that the trial court had ruled on the substantive controlling legal issues. The court concluded that no legal issue was properly presented for appellate review under Texas Civil Practice and Remedies Code section 51.014(d).

CASE DETAILS

COURT	Court of Appeals of Texas, Fourteenth District
WRITING FOR THE COURT	Justice Boyce; Justice Busby; Justice Brown
JURISDICTION	Texas
DECIDED	December 22, 2015
DOCKET	No. 14-15-00874-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appellant petitioned for permission to take a permissive interlocutory appeal from an order denying her no-evidence and traditional motions for summary judgment. The court denied the application and dismissed the appeal.
STANDARD OF REVIEW	The court reviewed whether the statutory and procedural prerequisites for a permissive interlocutory appeal were satisfied, including whether the trial court had made a substantive ruling on the controlling legal issues.
PRECEDENTIAL VALUE	Published memorandum opinion; precedential status is not independently verifiable from the provided text.
PARTIES	Christina De La Torre v. AAG Properties, Inc.

TOPICS

interlocutory appeal

appellate jurisdiction

summary judgment

appellate procedure

civil procedure

PRACTICE AREAS

civil procedure

appellate procedure

real estate

employment law

QUESTIONS PRESENTED

1. Whether the court of appeals could accept a permissive interlocutory appeal from the denial of De La Torre's summary-judgment motion when the trial court's permission order identified controlling questions of law but did not state its reasons for denying summary judgment.
2. Whether the trial court must first make a substantive ruling on the controlling legal issues before a permissive interlocutory appeal may proceed.

HOLDINGS

1. A permissive interlocutory appeal is improper when the trial court has not first ruled on the substantive controlling legal issues identified in its permission order.

KEY QUOTATIONS

“(d) On a party’s motion or on its own initiative, a trial court in a civil action may, by written order, permit an appeal from an order that is not otherwise appealable if:” (at 2)

“Section 51.014(d) is not intended to relieve the trial court of its role in deciding substantive issues of law properly presented to it.” (at 3)

FACTUAL BACKGROUND

AAG Properties, a real estate investment company, employed Christina De La Torre as a licensed real estate agent for approximately two months without a written employment agreement. After De La Torre stopped working for AAG, AAG sued her over disputed commissions. De La Torre moved for both no-evidence and traditional summary judgment on AAG's claims.

PROCEDURAL HISTORY

AAG Properties sued De La Torre over disputed commissions after her employment ended. The 125th District Court of Harris County denied De La Torre's summary-judgment motion on September 29, 2015, and later permitted an interlocutory appeal. De La Torre petitioned the Fourteenth Court of Appeals for permission to appeal, but the appellate court concluded that the trial court had not ruled on the substantive controlling questions of law identified in its permission order.

DISPOSITION

dismissed

CASES CITED

- CMH Homes v. Perez, 340 S.W.3d 444, 447 (Tex. 2011)
- Tex. A & M Univ. Sys. v. Koseoglu, 233 S.W.3d 835, 840 (Tex. 2007)
- Hebert v. JTT Constr., 438 S.W.3d 139, 140 (Tex. App.—Houston [14th Dist.] 2014, no pet.)
- Humphreys v. Caldwell, 888 S.W.2d 469, 470 (Tex. 1994) (orig. proceeding) (per curiam)
- Gulf Coast Asphalt Co. v. Lloyd, 457 S.W.3d 539, 543-44 (Tex. App.—Houston [14th Dist.] 2015, no pet.)
- Borowski v. Ayers, 432 S.W.3d 344, 347 (Tex. App.—Waco 2013, no pet.)
- Double Diamond Del., Inc. v. Walkinshaw, No. 05-13-00893, 2013 WL 5538814, at *2 (Tex. App.—Dallas Oct. 7, 2013, no pet.) (mem. op.)
- Gulley v. State Farm Lloyds, 350 S.W.3d 204, 208 (Tex. App.—San Antonio 2011, no pet.)
- Bank N.Y. Mellon v. Guzman, 390 S.W.3d 593, 597 (Tex. App.—Dallas 2012, no pet.)

OPINION

PER CURIAM.

Application Denied, Appeal Dismissed, and Memorandum Opinion filed December 22, 2015. In The Fourteenth Court of Appeals NO. 14-15-00874-CV CHRISTINA DE LA TORRE, Appellant V. AAG PROPERTIES, INC., Appellee On Appeal from the 125th District Court Harris County, Texas Trial Court Cause No. 2014-05829 MEMORANDUM OPINION Appellant Christina De La Torre petitions this court to accept a permissive interlocutory appeal of the September 29, 2015 order denying her motion for no- evidence and traditional summary judgment in favor of appellee AAG Properties, Inc. See Tex. Civ.

Prac. & Rem. Code Ann. § 51.014(d) (West 2015). AAG is a real estate investment company involved in the purchase, lease, and sale of real estate. De La Torre is a licensed real estate agent who was employed by AAG for two months without a written employment agreement. AAG sued De La Torre for disputed commissions after she was no longer working for AGG. De La Torre filed a no-evidence and traditional motion for summary judgment on AAG's claims against her.

The trial court signed an order denying De La Torre's motion for summary judgment on September 29, 2015, and an order granting De La Torre permission to appeal the interlocutory summary judgment order on October 8, 2015. Appellate courts do not have jurisdiction over interlocutory appeals in the absence of a statutory provision permitting such an appeal. CMH Homes v. Perez, 340 S.W.3d 444, 447 (Tex.

2011); Tex. A & M Univ. Sys. v. Koseoglu, 233 S.W.3d 835, 840 (Tex. 2007); Hebert v. JTT Constr., 438 S.W.3d 139, 140 (Tex. App.— Houston [14th Dist.] 2014, no pet.). An order denying a summary judgment is generally not appealable because it is an interlocutory order, not a final judgment. Humphreys v. Caldwell, 888 S.W.2d 469, 470 (Tex. 1994) (orig. proceeding) (per curiam).

Section 51.04(d) provides for the interlocutory appeal of interlocutory orders under the following circumstances: (d) On a party's motion or on its own initiative, a trial court in a civil action may, by written order, permit an appeal from an order that is not otherwise appealable if: 2 (1) the order to be appealed involves a controlling question of law as to which there is a substantial ground for difference of opinion; and (2) an immediate appeal from the order may materially advance the ultimate termination of the litigation.

Tex. Civ. Prac. & Rem. Code Ann. § 51.014(d). In its order permitting an appeal from an interlocutory order under section 51.014, a trial court must (1) identify the controlling question of law as to which there is a substantial ground for difference of opinion; and (2) state why an immediate appeal may materially advance the ultimate termination of the litigation.

Tex. R. Civ. P. 168; *Gulf Coast Asphalt Co. v. Lloyd*, 457 S.W.3d 539, 543–44 (Tex. App.—Houston [14th Dist.] 2015, no pet.). When the trial court has permitted an appeal from an interlocutory order that would not otherwise be appealable, the party seeking to appeal must petition the court of appeals for permission to appeal. Tex. R. App. P. 28.3(a).

The trial court must first make a substantive ruling on the controlling legal issue being appealed. *Borowski v. Ayers*, 432 S.W.3d 344, 347 (Tex. App.—Waco 2013, no pet.); *Double Diamond Del., Inc. v. Walkinshaw*, No. 05-13-00893, 2013 WL 5538814, at *2 (Tex. App.—Dallas Oct. 7, 2013, no pet.) (mem. op.). “Section 51.014(d) is not intended to relieve the trial court of its role in deciding substantive issues of law properly presented to it.” *Gulley v. State Farm Lloyds*, 350 S.W.3d 204, 208 (Tex.

App.—San Antonio 2011, no pet.). 3 The trial court's order permitting an interlocutory appeal of the denial of De La Torre's summary judgment motion sets forth the controlling questions of law to be decided and states the reasons that immediate appeal from the order will materially advance the ultimate termination of the litigation, but it does not state the reason for denying De La Torre's no-evidence and traditional motion for summary judgment.

Therefore, the record does not show that the trial court ruled on the substantive controlling issues of law that it identified. Instead, the trial court submitted the issues for this court to decide, which is not a proper use of the permissive interlocutory appeal procedure. See *Bank N.Y. Mellon v. Guzman*, 390 S.W.3d 593, 597 (Tex. App.—Dallas 2012, no pet.).

In the absence of a trial court ruling on the purported substantive controlling legal issues, De La Torre has not presented any legal issues for this court to decide. Accordingly, we deny De La Torre's application for permissive interlocutory appeal and dismiss the appeal. PER CURIAM Panel consists of Justices Boyce, Busby, and Brown. 4

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