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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2022

1210003

Lord Genesh, Inc.; Bay Inn & Suites, LLC, of Foley; and Rasik Patel

v.

Valley National Bank

**Appeal from Tallapoosa Circuit Court
(CV-20-900008)**

BRYAN, Justice.

Lord Genesh, Inc. ("Lord Genesh"); Bay Inn & Suites, LLC, of Foley ("Bay Inn"); and Rasik Patel (hereinafter referred to collectively as "the

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defendants") appeal from a summary judgment of the Tallapoosa Circuit Court entered in favor of Valley National Bank ("Valley National"). For the reasons explained below, we dismiss the appeal.

Background

In 2007, Patel, as president of Lord Genesh, executed a mortgage instrument granting an interest in certain real property ("the property") as security for a promissory note with a "maximum obligation limit" of \$340,000 ("the 2007 mortgage instrument") in favor of Valley National's predecessor in interest, Aliant Bank ("Aliant"). In October 2011, Patel, as president of Lord Genesh, executed a promissory note evidencing a debt owed to Aliant, in the principal sum of \$313,000, plus interest ("the 2011 promissory note"). The 2011 promissory note recited that it was secured by the 2007 mortgage instrument.

In June 2014, Lord Genesh, Patel, and Bay Inn entered into a forbearance agreement with Aliant to restructure Lord Genesh's debt ("the 2014 forbearance agreement"). As evidence of the restructured debt, Patel executed a promissory note on behalf of Lord Genesh, reciting a principal sum of \$304,000, plus interest ("the 2014 promissory note"), which was secured by the 2007 mortgage instrument. Under the terms

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of the 2014 forbearance agreement, Patel and Bay Inn jointly and severally guaranteed repayment of Lord Genesh's debt to Aliant, which was payable at full maturity on June 4, 2019. Additionally, a provision of the 2014 forbearance agreement stated, in pertinent part: "The proper venue for any civil litigation between the parties shall be the Circuit Court of Tallapoosa County, Alabama." Patel and Bay Inn also entered into separate agreements with Aliant respectively acknowledging their guarantees of Lord Genesh's debt ("the 2014 guaranty agreements").

Lord Genesh's debt matured on June 4, 2019, and Lord Genesh defaulted on its loan-repayment obligation. Valley National obtained an appraisal of the property that valued the property at \$90,000 as of June 6, 2019. Valley National subsequently demanded payment and eventually conducted a foreclosure sale concerning the property in December 2019, at which Valley National was the highest bidder with a credit bid of \$73,000.

In January 2020, Valley National initiated this action asserting counts of breach of contract against, respectively, Lord Genesh, as the borrower, and Patel and Bay Inn, as the guarantors, to recover additional sums that Valley National alleged the defendants owed by virtue of the

various agreements described above. Against the defendants collectively, the complaint also included counts alleging unjust enrichment, money had and received, and account stated.

On March 30, 2020, the defendants filed a motion for a change of venue, asking the circuit court to transfer the action to the Baldwin Circuit Court because the principal places of businesses of both Lord Genesh and Bay Inn were located in Baldwin County. Valley National filed a response in opposition to the motion, asserting the applicability of the forum-selection clause set out in the 2014 forbearance agreement. The defendants thereafter filed an answer in response to Valley National's complaint "without waiving change of venue."

In December 2020, Valley National filed a motion for a summary judgment regarding all of its claims against the defendants. Lord Genesh filed a response to the summary-judgment motion.¹ Valley National

¹Bay Inn & Suites of Loxley, LLC, filed a suggestion of bankruptcy in the circuit court, stating that it had commenced bankruptcy proceedings in a Florida federal court and that an automatic stay had therefore been imposed on this action pursuant to 11 U.S.C. § 362(a). Valley National submitted a response, noting that Bay Inn & Suites of Loxley, LLC, was a separate entity from Bay Inn, the relevant defendant in this action. The record contains no further filings regarding this issue, and, as explained below, the circuit court eventually entered a summary

thereafter filed a reply in support of its summary-judgment motion. In April 2021, the defendants filed a motion to set aside the foreclosure sale; Valley National filed a response to the motion.

After conducting a hearing at which it orally stated that the defendants' motion for a change of venue was due to be denied, the circuit court entered an order on April 30, 2021, granting Valley National's summary-judgment motion. In its order, the circuit court determined that Valley National was entitled to a summary judgment on its respective breach-of-contract claims against the defendants. Specifically, the circuit court reasoned that all the elements of such a claim had been satisfied regarding the 2014 promissory note and the 2014 guaranty agreements. Because the circuit court entered a summary judgment in favor of Valley National on its breach-of-contract claims, the circuit court determined that it did not need to "reach the question of whether the [d]efendants are entitled to prevail on" Valley National's remaining claims. The circuit court's order further stated the following:

"The summary judgment record clearly and unambiguously quantifies certain categories of damages to

judgment against all the defendants, including Bay Inn. Thus, there appears to be no bankruptcy issue pertaining to Bay Inn.

which [Valley National] is entitled under the subject agreements. The unpaid principal balance on the 2014 Note is \$171,716.75. Accrued and unpaid interest as of December 8, 2020, is \$52,138.05, with interest continuing to accrue until judgment is entered.

"Finally, [Valley National] has incurred additional costs related to the property, including \$1,230.00 for an environmental report and \$1,700.00 for an appraisal. Each of the foregoing amounts (which presently total \$226,784.80) are properly awarded to [Valley National] as contractual damages to which it is entitled from the [d]efendants, jointly and severally, pursuant to Counts I - II of the complaint.

"....

"For the reasons set forth above, [Valley National]'s motion for summary judgment ... is GRANTED. [Valley National] has established its entitlement to a judgment in the amount of \$226,784.80, as of the date of filing -- December 20, 2020, as well as an additional award of interest and other charges since the just-referenced date (until entry of final judgment) and of costs and fees, including attorneys' fees. [Valley National] is ORDERED to file and serve its proof of the amount and reasonableness of such additional sums not later than May 14, 2021. The [d]efendants are ORDERED to file and serve any response not later than May 28, 2021. The Court will take the matter under submission on May 31, 2021, and enter a supplemental order and final judgment thereafter."

(Capitalization in original.)

On May 14, 2021, Valley National filed a "notice of additional interest, fees, and costs," asserting, among other things, that additional costs had accrued for interest and attorney fees and that Valley National

had sold the property for \$93,070.09. On May 28, 2021, the defendants filed a motion to set aside the circuit court's April 30, 2021, order granting Valley National's summary-judgment motion. In summary, the defendants asserted that Valley National had undervalued the property at the time of foreclosure. The defendants requested a hearing "to determine the truth of the value of the property and to determine if [Valley National] violated Alabama law by over appraising the property initially and by falsely obtaining a limited appraisal for foreclosure purposes." Valley National filed a response to the defendants' motion.

On October 4, 2021, the defendants filed a notice of appeal to this Court. The next day, Valley National filed a motion for the entry of "a final judgment in the amount of \$195,524.35, with daily per-diem interest accruing at the rate of \$39.32 until judgment is entered, jointly and severally, against" the defendants. The next day, on October 6, 2021, the circuit court entered an order stating, in relevant part:

"This case is before the Court on [Valley National]'s motion for entry of final judgment in accordance with Rule 54(b) of the Alabama Rules of Civil Procedure. Having previously [entered] the order granting summary judgment ..., and having considered all of the subsequent evidence, together with the submissions of the parties, the Court finds that there is no just reason for delay of the entry of final judgment on behalf of Valley National ... and directs the Clerk

of the Court to enter final judgment in favor of Valley National ... in the amount of \$195,524.35 ..., jointly and severally against [the defendants], with interest to accrue as provided in Ala. Code [1975,] § 8-8-10(a) until the judgment is satisfied."

The circuit court did not rule on the defendants' motion to set aside its April 30, 2021, order.

Analysis

On appeal, the defendants argue that the circuit court should have granted their motion for a change of venue and that the circuit court erred by granting Valley National's summary-judgment motion. Among other things, Valley National argues that the defendants' notice of appeal was untimely filed. We address Valley National's timeliness argument first.

Valley National's timeliness argument is predicated on an implicit premise that the circuit court's April 30, 2021, order was a final judgment. However, as noted above, that order expressly stated that the circuit court had still not yet determined the proper amount of "an additional award of interest and other charges" and specifically directed the parties to provide further evidence and argument as to that issue, after which the circuit court intended to enter a final judgment.

In Ex parte Bessemer Board of Education, 68 So. 3d 782, 788 n.5

(Ala. 2011), this Court explained the following:

"To constitute a final judgment:

"'All matters should be decided; damages should be assessed with specificity leaving the parties with nothing to determine on their own. A judgment for damages to be final must, therefore, be for a sum certain determinable without resort to extraneous facts. Gandy v. Hagler, [245 Ala. 167, 16 So. 2d 305 (1944)]; Drane v. King, 21 Ala. 556 [(1852)]("Without resort to any extraneous fact, we can ascertain the precise amount of this recovery. It is therefore certain; for 'id certum est quod certum reddi potest' [that is certain which may be rendered certain].").'

"Jewell v. Jackson & Whitsitt Cotton Co., 331 So. 2d 623, 625 (Ala. 1976); see also Certain Underwriters at Lloyd's, London v. Southern Natural Gas Co., 939 So. 2d 21, 27-28 (Ala. 2006)(holding that a judgment is not final when the amount of damages has not been fixed).

"In the present case, the trial court's April 23, 2005, order does not specifically establish the amount due under the statute, and it explicitly states that 'if the parties are unable to agree on the calculation of the exact amount, and the amount of interest, the Court will resolve that dispute on appropriate motion'; thus, it leaves the parties with something to determine on their own and leaves open the possibility of further action by the trial court. Furthermore, the order awarded prejudgment interest but did not set the amount of interest or the specific date from which the interest was awarded. See Cinerama, Inc. v. Sweet Music, S.A., 482 F.2d 66, 69 (2d Cir. 1973)(holding that a judgment that determined part of the damages (the principal amount) but

did not determine the amount of prejudgment interest was not a final judgment)(cited with approval in Precision American Corp. v. Leasing Serv. Corp., 505 So. 2d 380, 381-82 (Ala. 1987)). Therefore, the trial court's April 23, 2005, order did not constitute a final judgment."

Similarly, in this case, the circuit court's April 30, 2021, order did not finally resolve the amount of damages awarded to Valley National, specifically reserving the amount of "an additional award of interest and other charges" for further consideration at a later date and directing the parties to submit additional evidence and argument to aid in its consideration.

The circuit court did not purport to enter a final judgment determining the total amount of damages until October 6, 2021, pursuant to a motion filed by Valley National. By that time, however, the defendants had already filed their notice of appeal on October 4, 2021. Consequently, the circuit court lacked jurisdiction to adjudicate the remaining damages in its October 6, 2021, order, as a result of the defendants' prematurely filed notice of appeal; that order was, therefore, void. See Harden v. Laney, 118 So. 3d 186, 187 (Ala. 2013)("The timely filing of a notice of appeal invokes the jurisdiction of an appellate court and divests the trial court of jurisdiction to act except in matters entirely

collateral to the appeal."); and Foster v. Greer & Sons, Inc., 446 So. 2d 605, 608 (Ala. 1984)("The rule has been stated many times that when an appeal is taken the trial court may proceed only in matters entirely collateral to that part of the case which has been taken up by the appeal, but can do nothing in respect to any matter or question which is involved in the appeal, and which may be adjudged by the appellate court. Reeves v. State, 419 So. 2d 217 (Ala. 1982); Osborn v. Riley, 331 So. 2d 268 (Ala. 1976); Barran v. Roden, 263 Ala. 305, 82 So. 2d 398 (1955). This is an application of the general rule that jurisdiction of a case can be in only one court at a time."), overruled on other grounds by Ex parte Andrews, 520 So. 2d 507 (Ala. 1987).

"[J]urisdictional matters, such as whether an order is final so as to support an appeal, are of such importance that an appellate court may take notice of them ex mero motu." Fuller v. Birmingham-Jefferson Cnty. Transit Auth., 147 So. 3d 907, 911 (Ala. 2013). "Without a final judgment, this Court is without jurisdiction to hear an appeal." Ex parte

Wharfhouse Rest. & Oyster Bar, Inc., 796 So. 2d 316, 320 (Ala. 2001).

Consequently, this Court must dismiss this appeal.²

Conclusion

The circuit court's April 30, 2021, order is not a final judgment. The circuit court purported to enter a final judgment on October 6, 2021. However, the circuit court's October 6, 2021, order was void because the defendants had prematurely filed a notice of appeal to this Court on October 4, 2021, thereby divesting the circuit court of jurisdiction to rule on the matters raised in the appeal. Because no final judgment has been entered in this action, this appeal must be dismissed.

APPEAL DISMISSED.

Parker, C.J., and Shaw, Mendheim, and Mitchell, JJ., concur.

²On June 30, 2022, this Court remanded this case for a 14-day period for the entry of a final judgment pursuant to the procedure set out in Foster v. Greer & Sons, Inc., 446 So. 2d 605 (Ala. 1984). However, this Court did not receive a supplemental record on appeal reflecting a final judgment of the circuit court within the allotted period.