

ARKANSAS COURT OF APPEALS

EN BANC
No. CA08-1488

BANK OF THE OZARKS

APPELLANT

V.

JIM WOOD CO., INC. and CAPITAL
DIRTWORKS, LLC

APPELLEES

Opinion Delivered JUNE 3, 2009

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[NO. CV2008-1312]

HONORABLE LEON JOHNSON,
SPECIAL JUDGE

DISMISSED

PER CURIAM

Appellant Bank of the Ozarks appeals from an order dismissing its complaint against appellee Jim Wood Co., Inc. Because the order did not dispose of the Bank's claims against a separate defendant, appellee Capital Dirtworks, Inc., we must dismiss the appeal for lack of a final order.

Jim Wood Co., Inc. was the prime contractor on a construction project. In May 2007, Wood subcontracted part of the job to Capital Dirtworks. Capital obtained working funds via a loan from the Bank of the Ozarks. As security for the loan, Capital assigned the Bank monies due on the subcontract. Additionally, Wood signed a joint check agreement, consenting to make the Bank and Capital joint payees on all monthly progress payments arising out of the subcontract.

After the project was completed, the Bank sued Capital for approximately \$145,000

past due on the loan. The Bank also sued Wood for breach of the joint check agreement, claiming that Wood insisted on including other subcontractors and suppliers as joint payees on the remaining payment checks. Capital answered the complaint, and Wood filed a motion to dismiss. On August 1, 2008, the circuit court granted Wood's motion to dismiss. Thereafter, Capital filed for bankruptcy. The Bank obtained a relief from the automatic stay, then filed a notice of appeal from the order that dismissed its complaint against Wood.

The finality problem arises because the Bank's claim against Capital has not been adjudicated, non-suited, or otherwise resolved by the circuit court. Under Ark. R. Civ. P. 54(b), an order that fails to adjudicate all of the claims as to all of the parties is not final for purposes of appeal. Although the circuit court may direct entry of a final judgment as to fewer than all of the parties by executing a Rule 54(b) certificate, that was not done here. In the absence of a final order, we must dismiss the appeal for lack of jurisdiction. *See generally Hodges v. Huckabee*, 333 Ark. 247, 968 S.W.2d 619 (1998).

We also note that the Bank has placed some documents in its addendum that are not included in the record on appeal. We do not consider documents in an appellant's addendum that are not contained in the record. *Union Pac. R.R. v. Barber*, 356 Ark. 268, 149 S.W.3d 325 (2004); *Barnett v. Monumental Gen. Ins. Co.*, 354 Ark. 692, 128 S.W.3d 803 (2003); *Clark v. Pine Bluff Civ. Serv. Comm'n*, 353 Ark. 810, 120 S.W.3d 541 (2003). Therefore, if the Bank wishes to have this court consider the documents in a future appeal, the Bank must supplement the record accordingly.

Dismissed without prejudice.