

## ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA10-858

THE PRIDEMEN TEAM, INC.

APPELLANT

V.

BRIAN NEWTON and REBECCA  
NEWTON

APPELLEES

**Opinion Delivered** February 16, 2011

APPEAL FROM THE SALINE  
COUNTY CIRCUIT COURT  
[NO. CV-10-4-2]

HONORABLE GARY ARNOLD,  
JUDGE

DISMISSED

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### CLIFF HOOFMAN, Judge

Appellant The Pridemen Team, Inc. appeals from an order denying its motion for attorneys' fees. Pridemen was one of five defendants sued by Brian and Rebecca Newton in a lawsuit involving the inspection and purchase of the Newtons' home. The appellees' claims against Pridemen were dismissed in a June 8, 2010 order that granted Pridemen's motion for summary judgment and motion for judgment on the pleadings with respect to the complaint and counterclaim and denied Pridemen's motion for attorneys' fees. Claims against other parties remain.

We must dismiss this appeal because not all of the claims against all of the parties have been resolved, and there has been no proper certification pursuant to Ark. R. Civ. P. 54(b)

that would render the order herein final and appealable.<sup>1</sup>

Arkansas Rule of Civil Procedure 54(b) provides in part that “[w]hen more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination, supported by specific factual findings, that there is no just reason for delay and upon an express direction for the entry of judgment.” If the court makes such a determination, it must execute a certificate in compliance with the requirements of Rule 54(b) including setting forth the factual findings upon which the determination to enter the judgment as final is based.

Other than the mandatory language for the certificate set out in Rule 54(b)(1), the certificate in this case includes two findings, stated as follows:

- 1) The findings of numbered paragraphs two (2) through six (6) of the foregoing Order are incorporated herein by reference and form the basis of the Order.
- 2) The rulings of this court, as set forth in the foregoing Order, should constitute and be entered as a final judgment between Plaintiffs and The Pridemen Team, Inc. with respect to the issues presented in this litigation.

The incorporated paragraphs state that the statute of limitations in the parties’ contract is

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<sup>1</sup>It is of no consequence to Pridemen that the matter of attorneys’ fees is ordinarily viewed by this court as a collateral issue. Without a final order, no appeal may be entertained, even on a collateral issue such as attorneys’ fees. *Dodge v. Lee*, 350 Ark. 480, 486–87, 88 S.W.3d 843, 847 (2002).

enforceable; that the Newtons filed their complaint after the expiration of the statute of limitations; that Pridemen's motion for summary judgment and motion for judgment on the pleadings are granted on statute-of-limitations grounds; and that Pridemen's request for attorneys' fees is denied despite the fact that Pridemen is the prevailing party and the court is aware of the mandatory attorneys' fees provisions of the contract.

In order to determine that there is no just reason for delay, the trial court must find that a likelihood of hardship or injustice will occur unless there is an immediate appeal, and the court must set forth facts to support its conclusion. *Follett v. Fitzsimmons*, 100 Ark. App. 347, 349, 268 S.W.3d 902, 904 (2007). That factual underpinnings supporting a Rule 54(b) certification may exist in the record is not enough; they must be set out in the trial court's order. *Id.* at 350, 268 S.W.3d at 904–05. The certificate here lacks express findings that there is no just reason for delay; thus, it does not meet the requirements of Rule 54(b).

Due to lack of a final order, we must dismiss the appeal without prejudice.

GLOVER and ABRAMSON, JJ., agree.