

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON

B & C CONSTRUCTION CO., INC. v. BANCORP SOUTH BANK, ET AL.

**Direct Appeal from the Chancery Court for Shelby County
No. CH-080426-2 Arnold B. Goldin, Chancellor**

No. W2011-01804-COA-R3-CV - Filed November 10, 2011

Appellant appealed a non-final judgment and therefore, we dismiss this appeal for lack of jurisdiction.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

DAVID R. FARMER, J., HOLLY M. KIRBY, J., and J. STEVEN STAFFORD, J.

Adam M. Nahmias, Memphis, Tennessee, for the appellant, B & C Construction Co., Inc.

W. Rowlett Scott, Memphis, Tennessee, for the appellee, BancorpSouth Bank.

MEMORANDUM OPINION¹

Pursuant to the mandates of Rule 13(b) of the Tennessee Rules of Appellate Procedure, we reviewed the appellate record for this appeal to determine if the Court has subject matter jurisdiction to hear this matter. After this review, it appeared to the Court that the order appealed is not a final judgment. Although the trial court certified the order appealed as a final judgment pursuant to Rule 54.02 of the Tennessee Rules of Civil Procedure, the order also recites:

¹Rule 10 of the Rules of the Court of Appeals of Tennessee provides:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

All matters between plaintiff B&C and BancorpSouth set out in paragraph 18 of the complaint, all matters between plaintiff B&C and the defendants other than BancorpSouth, and all matters pertaining to BancorpSouth's cross-claim and third party complaint remain pending and are reserved.

Because there is a claim pending between Appellant B & C Construction Co., Inc. and Appellee BancorpSouth, the order was improvidently certified as a final judgment. By Order entered on October 18, 2011, the Court directed appellant, B & C Construction Co., Inc. to either obtain entry of a final judgment or else show cause why this appeal should not be dismissed for failure to appeal an appealable order or judgment. Appellant filed a response to our Order on November 1, 2011, in which Appellant agreed that the order appealed was improvidently designated as a final judgment.

Rule 3 of the Tennessee Rules of Appellate Procedure provides that if multiple parties or multiple claims are involved in an action, any order that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not final or appealable. Except where otherwise provided, this Court only has subject matter jurisdiction over final orders. *See Bayberry Assoc. v. Jones*, 783 S.W.2d 553 (Tenn. 1990).

For the foregoing reasons, we dismiss this appeal without prejudice to the filing of a new appeal once a final judgment has been entered. The case is remanded to the trial court for further proceedings consistent with this opinion. Should a new appeal be filed, the Clerk of this Court shall, upon request of either party, consolidate the record in this appeal with the record filed in the new appeal. Costs of this appeal are taxed to Appellant B & C Construction Co., Inc. and its surety for which execution may issue if necessary.

PER CURIAM