

B.G. MART, INC.

NO. 16-CA-675

VERSUS

FIFTH CIRCUIT

JACOBSEN SPECIALTY SERVICES, INC.,
AND GEORGE JACOBSEN, JR.

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 758-482, DIVISION "B"
HONORABLE CORNELIUS E. REGAN, JUDGE PRESIDING

February 08, 2017

MARC E. JOHNSON
JUDGE

Panel composed of Marc E. Johnson,
Robert M. Murphy, and Hans J. Liljeberg

APPEAL DISMISSED

MEJ

RMM

HJL

COUNSEL FOR PLAINTIFF/APPELLANT,
B.G. MART, INC.

Connie P. Trieu

COUNSEL FOR DEFENDANT/APPELLEE,
JACOBSEN SPECIALTY SERVICES, INC., AND GEORGE JACOBSEN, JR.

Roy M. Bowes

Joshua P. Mathews

JOHNSON, J.

Plaintiff appeals the trial court's sustaining of Defendants' exception of no cause of action. For the following reasons, we dismiss the appeal for lack of jurisdiction.

On March 2, 2016, Plaintiff, B.G. Mart, Inc. ("B.G."), filed a petition for damages against Jacobsen Specialty Services, Inc. and its owner, George Jacobsen, Jr., for breach of contract. B.G. alleged that it contracted with Defendants for the purchase and installation of two fuel tanks and dispenser accessories, and that Defendants defectively installed the tanks and dispenser accessories. B.G. sought damages for defects in the workmanship under La. C.C. art. 2769. After filing an answer, Defendant George Jacobsen, Jr. filed an exception of no cause of action and/or no right of action, claiming that the contract at issue was between B.G. and Jacobsen Specialty and that he was not a party to the contract. B.G. opposed the exception claiming that Mr. Jacobsen, a shareholder in Jacobsen Specialty committed fraud and acted as an alter ego to the corporation and, thus, could be held personally liable.

On July 26, 2016, the trial court sustained Mr. Jacobsen's exception of no cause of action and ordered B.G. to amend its petition within 15 days. Instead of amending its petition, B.G. filed a motion for appeal, which was granted on September 15, 2016. On appeal, B.G. contends that Mr. Jacobsen is personally liable for the improper installation of the fuel tanks because he personally guaranteed performance as an agent of the corporation. B.G. argues that the trial court erred in granting the exception before adequate discovery had been completed to show there is a basis for piercing the corporate veil or that Mr. Jacobsen committed fraud.

We note a jurisdictional defect that precludes us from considering this appeal. Only final judgments, judgments reformed in accordance with a remittitur

or additur, and interlocutory judgments expressly provided by law are appealable. La. C.C.P. art. 2083. The judgment appealed from in this case is none of these: it does not determine the merits of the case and the law does not expressly provide that the judgment is appealable. A ruling maintaining an exception of no cause of action and granting time to amend the petition is not a final judgment or an appealable interlocutory judgment. *Taylor v. Leger Construction, LLC*, 10-29 (La. App. 3 Cir. 3/17/10); 33 So.3d 435, 437-38; *Hughes v. Energy & Marine Underwriters, Inc.*, 07-490 (La. App. 5 Cir. 3/11/08); 978 So.2d 566, 567-68, *writ denied*, 08-957 (La. 8/29/08); 989 So.2d 100; *McKenzie v. Marino*, 554 So.2d 803, 805 (La. App. 5th Cir. 1989); *Succession of Agamy v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 487 So.2d 579, 580 (La. App. 4th Cir. 1986). In this instance, a final appealable judgment will result only when a judgment is entered expressly dismissing B.G.'s claims against Mr. Jacobsen.

Accordingly, we dismiss B.G.'s appeal at its cost.

APPEAL DISMISSED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
ROBERT M. MURPHY
STEPHEN J. WINDHORST
HANS J. LILJEBERG

JUDGES



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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **FEBRUARY 8, 2017** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CHERYL Q. LANDRIEU
CLERK OF COURT

16-CA-675

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE CORNELIUS E. REGAN (DISTRICT JUDGE)
NO ATTORNEYS WERE ENOTIFIED

MAILED

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