

Summary of SC91132, *Dennis Buemi, et al. v. Arthur Kerckhoff, Jr., et al.*

Proceedings originating in the St. Louis County circuit court, Judge Barbara Wallace
Argued and submitted Feb. 8, 2011; opinion issued Aug. 2, 2011

Attorneys: The Kerckhoffs were represented by John A. Kilo and H. Clay Billingsley of Kilo, Flynn, Billingsley, Trame & Brown PC in St. Louis, (314) 647-8910; the Buemis and most of the homeowners were represented by Jason M. Rugo, Roger W. Pecha and Sarah J. Swoboda of Jenkins & Kling PC in St. Louis, (314) 721-2525; another homeowner was represented by Canice Timothy Rice Jr., a solo practitioner in St. Louis, (314) 241-8000; Fischer & Frichtel was represented by Joseph V. Keady Jr. of Stinson, Morrison, Hecker LLP in St. Louis, (314) 863-9388; and PF Development was represented by Jackson D. Glisson III and Daniel P. Schoenekase of Greensfelder Hemker & Gale PC in St. Louis, (314) 241-9090.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: Related defendant homebuilders appeal a trial court’s ruling imposing sanctions on them for acting in bad faith during and following a court-ordered mediation. In a 4-3 decision written by Judge Patricia Breckenridge, the Supreme Court of Missouri dismisses the appeal for lack of a final judgment as required by state statute. Because the trial court’s order imposing sanctions did not dispose of a “claim for relief,” its certification of that order as final and appealable under Rule 74.01(b) has no effect. For an order disposing of fewer than all the issues in a case to be appealable under this rule, it must dispose of a “distinct judicial unit,” which must be a substantive claim for relief that can be severed from the other claims for relief in a case. A motion for sanctions is not a “claim for relief” as that term is used in the rule.

Judge Laura Denvir Stith dissents. She would hold that the Court has jurisdiction over the appeal. She would find that the judgment below, overruling the homeowners’ motion to enforce settlement but granting its related motion for sanctions for bad faith in settlement negotiations, properly was certified under Rule 74.01(b). The issues in that judgment are a separate claim constituting a distinct judicial unit, the resolution of which involves issues entirely separate from those remaining in the court below. She also would hold that the trial court’s imposition of sanctions against the family defendants for allegedly acting in bad faith in signing a settlement agreement should be reversed.

Facts: Dennis Buemi and other homeowners in the Pevely Farms subdivision in St. Louis County sued certain homebuilders – including Arthur Kerckhoff Jr., Arthur Kerckhoff III, Arthur Kerckhoff IV and the Arthur Kerckhoff Trust (the Kerckhoffs), PF Development LLC and Fischer & Frichtel Inc. – alleging the subdivision water system did not provide an adequate water supply for the entire development, despite their representation to the contrary. In July 2008, the circuit court referred the case to mediation. A representative group of the homeowners, two of the Kerckhoff defendants and the other defendants met to mediate the case. At the close of mediation, the parties present had not agreed to all the terms that had been reduced to writing. On a pre-printed form titled “mediated settlement agreement,” the mediator wrote, “Case settled in principle – proposed settlement to be reduced to writing by 12-31-08. ... Plaintiffs to

recommend settlement to property owners.” Arthur Kerckhoff IV did not attend the mediation or sign the form. Ultimately, the parties were unable to agree to terms in a written settlement agreement. The homeowners and PF Development filed motions to enforce settlement. During a hearing, the mediator testified that the parties did not reach settlement. At the hearing’s conclusion, the court indicated it would entertain motions for sanctions regarding the costs the parties incurred during mediation and associated with responding to the Kerckhoffs’ failure to settle. The homeowners, PF Development and Fischer & Frichtel filed motions for sanctions seeking awards of attorney’s fees, alleging the Kerckhoffs acted in bad faith by signing the mediation form and not advising the other defendants and the homeowners that they did not consider themselves legally bound. The Kerckhoffs also filed a motion for sanctions, alleging the motions to enforce were frivolous. The circuit court overruled the Kerckhoffs’ motion for sanctions as well as the motions to enforce settlement, but it granted the motions for sanctions filed by the other defendants and the homeowners. It found that the parties had reached a settlement in principal but that, due to the failure to attach the previously developed term sheets to the settlement, the court was unable to enforce the agreement. The court further found that the Kerckhoffs acted in bad faith by executing the mediated settlement agreement form with the intent that it was not binding on them; concealing this intent; and eventually submitting a settlement proposal that varied significantly from the terms agreed to at the mediation. The court ordered the Kerckhoffs to pay attorney’s fees totaling \$122,425 to the various parties. The court subsequently certified its ruling imposing sanctions as final and appealable pursuant to Rule 74.01(b). The Kerckhoffs appeal.

APPEAL DISMISSED.

Court en banc holds: The trial court’s order imposing sanctions is not a final, appealable judgment. Although none of the parties questions whether the court properly certified its order for immediate appeal pursuant to Rule 74.01(b), this Court must determine that issue on its own. The right of appeal derives purely from statute, and other than statutorily recognized exceptions not applicable here, section 512.020, RSMo Supp. 2010, requires that there be a final judgment before a case may be appealed. Generally, a judgment is final when it resolves all issues in a case, leaving nothing for future determination. An interlocutory order, on the other hand, is not final; it decides some issue during the pendency of a suit, but it does not resolve the entire controversy. It is undisputed here that the trial court’s order imposing sanctions is interlocutory; the underlying claims for damages and injunctive relief still are pending. Rule 74.01(b) permits interlocutory appeals in cases involving multiple claims or parties, essentially allowing an unrelated substantive claim for relief to be severed from other claims for relief, made final and appealed on its own. A motion for sanctions, however, is not a “claim for relief” as that term is used in Rule 74.01(b). Accordingly, a ruling imposing sanctions cannot be a “distinct judicial unit” subject to appeal under Rule 74.01(b). When determining if a judgment disposes of a “distinct judicial unit,” the focus is on whether the trial court’s order disposes of a substantive claim for relief. This analysis of Rule 74.01(b) is consistent with federal court opinions interpreting Federal Rule of Civil Procedure 54(b), on which Rule 74.01(b) was modeled. Although the trial court here combined its ruling as to the motions for sanctions with that for the motions to enforce settlement, those motions were filed as separate documents and at different times. As such, the ruling as to the motions to enforce settlement does not make the ruling as to the motions for sanctions appealable. Even if the motions to enforce settlement were at issue, no

case holds that an order overruling a motion to enforce settlement may be appealed immediately. The trial court's certification of its order as final and appealable under Rule 74.01(b) has no effect.

Dissenting opinion by Judge Stith: The author would hold that the Court has jurisdiction over the appeal because the judgment below, overruling the homeowners' motion to enforce settlement but granting their related motion for sanctions for bad faith in settlement negotiations, properly was certified under Rule 74.01(b). The issues in that judgment are a separate claim constituting a "distinct judicial unit," the resolution of which involves issues entirely separate from those remaining in trial below.

The author further would hold that the trial court's imposition of sanctions against the Kerckhoffs for allegedly acting in bad faith in signing a settlement agreement they did not believe was binding should be reversed. Rule 17.06 requires a written agreement setting forth the terms of settlement and executed by the parties. Here, none of the requirements of Rule 17.06 was satisfied by the document in question. No terms were included or attached, no agreed consideration was stated in or attached to the form, and the handwritten notation by the mediator stated that the agreement "in principle" still had to be submitted to the plaintiffs for approval. It would not have been reasonable to believe it to be binding. Further, the homeowners are incorrect in suggesting that the Kerckhoffs had an obligation to inform opposing counsel whether they believed a settlement was likely; opposing parties do not have an obligation to inform each other of their beliefs regarding the likelihood of settlement any more than they have such an obligation as to other matters of trial strategy and preparation.