



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-24-00236-CV

**JOHNNY AGUINAGA, DFW PROPERTIES, LLC, WESTMORELAND
JAT/DFW PROPERTIES, LLC, AND RISK FREE INVESTMENTS, LLC,
Appellants**

V.

**JAT PROJECT HOLDINGS TEXAS, LLC, JAT REAL PROPERTY
HOLDINGS TEXAS, LLC, AND JOHN THALER, Appellees**

**On Appeal from the 193rd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-23-20319**

MEMORANDUM OPINION

Before Justices Smith, Kennedy, and Lewis
Opinion by Justice Lewis

Johnny Aguinaga, DFW Properties, LLC, Westmoreland JAT/DFW Properties, LLC, and Risk Free Investments (together, Aguinaga) appeal from an agreed judgment entered by the trial court in favor of Appellees JAT Project Holdings Texas, LLC, JAT Real Property Holdings Texas, LLC, and John Thaler (together, JAT). We construe Aguinaga's brief to raise a single issue on appeal: whether the trial court erred by entering the agreed judgment where Aguinaga withdrew its consent to an underlying Rule 11 settlement agreement and where JAT

did not plead and prove breach of that agreement. We sustain Aguinaga's issue, reverse the trial court judgment, and remand for further proceedings.

BACKGROUND

Aguinaga is a developer and operator of a construction business. Aguinaga contracted with JAT to develop townhomes in West Dallas. Essentially, JAT provided the financing while Aguinaga provided the construction services. A dispute arose over the project, and JAT filed suit in 2018. Therein, JAT claimed that Aguinaga had requested payment and was paid for certain construction services for the townhome project, had not provided those services, and instead used the money to fund other projects and pay personal expenses. Thus, according to JAT, Aguinaga had taken JAT's money by false pretenses. JAT brought claims for conversion, breach of fiduciary duty, fraud, negligent misrepresentation, and breach of contract. Over the next few years, additional claims and parties were added to the suit.

In July 2023, JAT and Aguinaga entered into a Rule 11 agreement to attempt to settle their dispute. Therein, Aguinaga agreed to pay JAT about \$810,000 to settle the suit. Aguinaga also agreed to transfer two real properties to JAT, which were to be sold to fund the settlement payment. The agreement also required the parties to execute an agreed judgment, to be held in trust by JAT until the settlement payment was made in full. JAT filed the Rule 11 agreement with the trial court.

About two months later, JAT filed a motion to enforce the Rule 11 agreement. Therein, JAT asserted Aguinaga had not paid the settlement in full and had failed to

deliver one of the real properties “free and clear.” Aguinaga filed an objection and response to JAT’s motion to enforce. Therein, Aguinaga asserted that it did not willingly consent to the Rule 11 agreement and that the motion was procedurally improper because JAT had not properly pleaded or proved breach of the agreement. Aguinaga asserted other defensive matters, such as the claim’s timeliness, factual insufficiency, impossibility, and mutual mistake.

The trial court held a hearing on JAT’s motion to enforce. The same day, JAT filed the agreed judgment it was holding in trust. The court initially suggested it could not enforce a Rule 11 agreement without an amended petition asserting breach of contract, followed by a summary judgment motion. Ultimately, the court signed the agreed judgment, awarding JAT approximately \$1.3 million dollars. The court also severed the claims between JAT and Aguinaga to create finality. The trial court denied Aguinaga’s subsequent motion for new trial, and this appeal followed.

JURISDICTION

Before reaching the substantive issues, we must address this Court’s jurisdiction. *See Tex. Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004) (courts must address questions of subject-matter jurisdiction at the “earliest opportunity” to do so).

After Aguinaga filed its notice of appeal, we noticed the judgment did not appear to dispose of all parties and claims. We questioned our jurisdiction and requested letter briefs from the parties on the issue. Aguinaga asserted this Court

has jurisdiction, in part, due to the severance of the claims between Aguinaga and JAT. In response, JAT asserted this Court lacked jurisdiction because Aguinaga failed to file a separate notice of appeal after the trial court severed this case from the remaining case involving certain intervenors.

A. Appeals in severed cases

Subject to mostly statutory exceptions, an appeal may only be taken from a final judgment. *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). When, as here, no conventional trial on the merits has occurred, an order or judgment is final for purposes of appeal only if it actually disposes of every pending claim and party or it clearly and unequivocally states it finally disposes of all claims and parties. *See id.* at 205.

However, the trial judge may sign an order severing a party, cause of action, or issue, thereby rendering an otherwise interlocutory judgment final. *Espalin v. Children's Med. Ctr. of Dallas*, 27 S.W.3d 675, 680 (Tex. App.—Dallas 2000, no pet.) (citing *Martinez v. Humble Sand & Gravel, Inc.*, 875 S.W.2d 311, 312 (Tex. 1994)). An order granting a severance is effective when signed, regardless of whether the district clerk creates a separate physical file with a different cause number. *Id.* (citing *McRoberts v. Ryals*, 863 S.W.2d 450, 452–53 (Tex. 1993)). Following such a severance, the judgment becomes final and may be appealed without a separate physical file or different number. *Id.* (citing *Martinez*, 875 S.W.2d at 313; *McRoberts*, 863 S.W.2d at 453). The appellate timetable runs from the

signing date of whatever order makes the severed judgment final and appealable. *Tanner v. Karnavas*, 86 S.W.3d 737, 743 (Tex. App.—Dallas 2002, pet. denied) (citing *Farmer v. Ben E. Keith Co.*, 907 S.W.2d 495, 496 (Tex. 1995) (per curiam); *Martinez*, 875 S.W.2d at 313–14).

Rule 27 provides that “a prematurely filed notice of appeal is effective and deemed filed on the day of, but after, the event that begins the period for perfecting the appeal.” TEX. R. APP. P. 27.1(a). Thus, a document filed in an attempt to appeal an interlocutory order that later becomes final serves to appeal the final judgment. *Espalin*, 27 S.W.3d at 681 (citing TEX. R. APP. P. 27.1(a); *Aguirre v. Texas Dep’t of Protective & Regulatory Serv.*, 917 S.W.2d 462, 465 (Tex. App.—Austin 1996, no writ)).

The supreme court has rejected constructions of severances that would have the effect of depriving or deceiving a party out of the right to appeal. *Tanner*, 86 S.W.3d at 744 (quoting *Martinez*, 875 S.W.2d at 313). Thus, the court has held that a motion for new trial or attempt to invoke appellate jurisdiction timely filed in the wrong cause number will not defeat appellate jurisdiction. *Id.* (citations omitted). Courts of appeal have jurisdiction if the appellant makes a bona fide attempt to invoke appellate jurisdiction. *Id.* (citing *Espalin*, 27 S.W.3d at 681).

In *Espalin*, we held that the plaintiff’s notice of appeal, listing the defendants and judgments appealed from, was a bona fide attempt to appeal a partial summary judgment in favor of one of multiple defendants, giving us jurisdiction. *Espalin*, 27

S.W.3d at 681–82. This was true even though the notice of appeal was prematurely filed and bore the parent cause number, rather than the severed cause number. *Id.* Once the summary judgment on the severed cause became final, the notice of appeal was deemed filed on the day of, but after, the severance. *Id.* In doing so we rejected the defendant’s argument that the plaintiff was required to file a separate notice of appeal in the severed cause. *Id.* (citing TEX. R. APP. P. 27.1(a); *Aguirre*, 917 S.W.2d at 465; *McRoberts*, 863 S.W.2d at 454–55; *Mueller v. Saravia*, 826 S.W.2d 608, 609 (Tex. 1992) (attempt to perfect appeal was “bona fide” even though motion for new trial which extended time for filing appeal was filed under parent cause number)).

B. Application

Here, the trial court signed the Agreed Final Judgment on October 31, 2023 in the original cause (DC-18-16184). This judgment did not dispose of the claims involving certain intervenors. Aguinaga filed its notice of appeal on November 2, 2023, stating its desire to appeal the October 31st judgment. We docketed the appeal as Cause No. 05-23-01123-CV. On November 30, 2023, the trial court signed an order severing the case between Aguinaga and JAT into a separate case and directed that the Agreed Final Judgment “shall be entered as a final, appealable judgment for all purposes” in the severed cause. The same day, Aguinaga filed motion for new trial in the original cause (DC-18-16184).

The next day, December 1, 2023, the severed case was opened as a new case (DC-23-20319). After we questioned our jurisdiction, Aguinaga filed a notice of

appeal in the severed case on February 27, 2024. We docketed the severed case as Cause No. 05-24-00236-CV and later consolidated the first appeal into the second.

As in *Espalin*, Aguinaga's first notice of appeal was premature because there was no final judgment. *Espalin*, 27 S.W.3d at 681. However, once the trial court severed the case, the notice of appeal was effective and deemed filed on the day of but after the severance which made the October 31st judgment final. Aguinaga's notice of appeal indicated the parent case cause number and described the judgment it was attempting to appeal. *See id.* This was a bona fide attempt to appeal the October 31st judgment in favor of JAT even though the notice of appeal was prematurely filed and bore the parent cause number. *Id.*; TEX. R. APP. P. 27.1(a).

Accordingly, we have jurisdiction over the appeal. We now turn to the substantive issues.

ANALYSIS

On appeal, Aguinaga urges several bases for reversal. For brevity, we distill Aguinaga's arguments to a single controlling issue: whether the trial court erred in entering an agreed final judgment when Aguinaga did not consent to the underlying Rule 11 settlement agreement and where JAT did not plead or prove breach of the agreement.

A. Standard of review

A judge's decision whether a settlement agreement should be enforced as an agreed judgment or must be the subject of a contract action requiring additional

pleadings and proof is subject to the abuse of discretion standard of review. *Staley v. Herblin*, 188 S.W.3d 334, 336 (Tex. App.—Dallas 2006, pet. denied) (citing *Mantas v. Fifth Court of Appeals*, 925 S.W.2d 656, 659 (Tex. 1996)). A trial judge has no discretion in determining what the law is or in applying the law to the facts. *Id.* (citing *Brown v. Vann*, 167 S.W.3d 627, 630 (Tex. App.—Dallas 2005, no pet.)). Thus, a failure by the trial judge to analyze or apply the law correctly will constitute an abuse of discretion. *Id.*

B. Withdrawal of consent to settlement agreement

Written settlement agreements may be enforced as contracts even if one party withdraws consent before judgment is entered on the agreement. *Ford Motor Co. v. Castillo*, 279 S.W.3d 656, 663 (Tex. 2009) (citing *Padilla v. LaFrance*, 907 S.W.2d 454, 461 (Tex. 1995)). However, a court may not enter an agreed judgment under Rule 11 when one of the parties no longer consents to the judgment. *In re M.A.H.*, 365 S.W.3d 814, 818–19 (Tex. App.—Dallas 2012, no pet.) (citing *Castillo*, 279 S.W.3d at 663; *Padilla*, 907 S.W.2d at 461; *Gunter v. Empire Pipeline Corp.*, 310 S.W.3d 19, 22 (Tex. App.—Dallas 2009, pet. denied)). A judgment enforcing a settlement agreement after a party revokes consent is void. *Id.* (citing *S & A Restaurant Corp. v. Leal*, 892 S.W.2d 855, 857 (Tex. 1995); *Cook v. Cook*, 243 S.W.3d 800, 802 (Tex. App.—Fort Worth 2007, no pet.)). When one party revokes consent to a Rule 11 settlement agreement, the party seeking enforcement of the

agreement for judgment may enforce the agreement through a separate claim for breach of contract. *Id.*

The law does not recognize the existence of any special summary proceeding for the enforcement of a written settlement agreement. *Gunter*, 310 S.W.3d at 22 (citing *Cadle Co. v. Castle*, 913 S.W.2d 627, 631 (Tex. App.—Dallas 1995, writ denied) (en banc)). Thus, an action to enforce a settlement agreement, where consent is withdrawn, must be based on proper pleading and proof. *Id.* Proper notice and hearing are also required. *Id.* In short, if consent is withdrawn, “the only method available for enforcing a settlement agreement is through summary judgment or trial.” *Id.* (citing *Staley*, 188 S.W.3d at 336). To allow enforcement of a disputed settlement agreement simply on motion and hearing would deprive a party of the right to be confronted by appropriate pleadings, assert defenses, conduct discovery and submit contested fact issues to a judge or jury. *Staley*, 188 S.W.3d at 336.

C. Application

Here, the parties entered a Rule 11 settlement agreement on July 20, 2023. The agreement required the parties to execute an agreed final judgment to be held in trust by JAT and not filed with court unless certain contingencies occurred. JAT later moved to enforce the Rule 11 agreement, contending that Aguinaga had breached the agreement by failing to deliver one of the real properties “free and clear.” Aguinaga objected to the motion to enforce, asserting it did not consent to

the Rule 11 agreement and JAT’s motion was procedurally improper. Nonetheless, the trial court signed the agreed judgment as requested by JAT.

We agree with Aguinaga that the trial court erred in doing so. Once Aguinaga withdrew its consent to the Rule 11 agreement,¹ the trial court could not simply enter the agreed judgment on JAT’s motion to enforce. *Gunter*, 310 S.W.3d at 22; *Staley*, 188 S.W.3d at 336. JAT did not amend its pleadings to assert a breach of contract claim regarding the Rule 11 agreement, and Aguinaga objected to this failure of pleading.

JAT has argued its motion to enforce (in which JAT alleged that Aguinaga had breached the Rule 11 agreement) was a sufficient pleading and, in essence, a summary judgment motion. However, we have previously rejected similar arguments. “Motions are not the functional equivalents of pleadings.” *Patel v. Gonzalez Hotels, LLC*, No. 05-20-01020-CV, 2022 WL 2527005, at *2 (Tex. App.—Dallas July 7, 2022, no pet.) (mem. op.) (citing *Rupert v. McCurdy*, 141 S.W.3d 334, 339 (Tex. App.—Dallas 2004, no pet.)).

¹ JAT argues that Aguinaga never expressly revoked consent prior to the entry of the agreed judgment. However, JAT has not cited, nor have we located, any authority supporting that withdrawal of consent to an agreement is ineffective unless specific language or “magic words” are used. In its objection to the motion to enforce the Rule 11 agreement, Aguinaga contested having ever willingly consented to the Rule 11 agreement, argued an “absence of Defendants’ consent” to the agreement, and cited authority holding that courts cannot enter an agreed judgment after a party revokes consent to an underlying settlement agreement. Whether or not there was original consent to the agreement—something we do not need to address to resolve this appeal—we consider Aguinaga’s disclaiming consent as of the filing of its objection sufficient to show lack of consent prior to the trial court’s entry of the agreed judgment.

In *Patel*, the parties entered a Rule 11 settlement agreement. *Id.* at *1. One term in the agreement provided that the defendants consented to the entry of an agreed judgment. *Id.* However, defendants later withdrew consent to the Rule 11 agreement. *Id.* The plaintiff (Mahesh) filed a motion for summary judgment and enforcement of the Rule 11 agreement. *Id.* at *2. Mahesh had not pleaded a breach of contract claim but argued his motion to enforce served the same function as a formally pleaded contract claim. *Id.*

We rejected that argument: “[A]ppellants objected to Mahesh’s failure to plead a contract claim, which brought notice concerns into sharp relief. . . . Because there was no pleaded contract claim to support the trial court’s award . . . and because Mahesh’s motion was an inadequate substitute for such a pleading, the trial court erred in granting summary judgment.” *Patel*, 2022 WL 2527005, at *3 (discussing *Cadle*, 913 S.W.2d at 630; then *Crump v. Crump*, No. 05-04-01515-CV, 2005 WL 2841146, at *1 (Tex. App.—Dallas Oct. 31, 2005, no pet.) (mem. op.); and then *Gunter*, 310 S.W.3d at 22); *see also M.A.H.*, 365 S.W.3d at 820 (even if father had actually pleaded breach of contract regarding a Rule 11 agreement, the record did not support that the trial court held a hearing on that cause of action, there was no trial notice of such a setting, and no ruling on any breach of contract claim).

Here, because Aguinaga withdrew consent to the Rule 11 agreement, and because there was no pleaded breach of contract claim for that agreement, the trial court erred in entering the agreed judgment in response to JAT’s motion to enforce.

Patel, 2022 WL 2527005, at *3; *Cadle*, 913 S.W.2d at 630–32; *Crump*, 2005 WL 2841146, at *1. We sustain Aguinaga’s primary issue.

On appeal, the parties make many arguments regarding the validity of the Rule 11 agreement, factual sufficiency, and various defenses, but what resolves this case are the facts that Aguinaga withdrew consent to the Rule 11 agreement and that JAT did not properly plead and prove breach of contract. Having sustained Aguinaga’s primary issue, we need not address the parties’ remaining arguments.

CONCLUSION

Because Aguinaga withdrew consent to the Rule 11 agreement and because no breach of contract claim was pleaded or proved, the trial court erred in entering the agreed judgment in response to JAT’s motion to enforce. We reverse the trial court’s judgment and remand for further proceedings consistent with this opinion.

/Jessica Lewis/

JESSICA LEWIS
JUSTICE