Court of Appeals
of the State of Georgia

ATLANTA, April 13, 2017

The Court of Appeals hereby passes the following order:

A17A0836. BRAC DEVELOPMENT, LLC et al. v. MITCHELL.

John Mitchell brought this action in the Superior Court of Lamar County against BRAC Development, LLC, and Christopher and Mark McCook, seeking enforcement of certain oral agreements among the parties. The defendants answered and filed a counterclaim for amounts the plaintiff allegedly owed them. After a bench trial, the trial court gave the plaintiff the relief he prayed for and entered a "Final Order and Judgment." The "Final Order and Judgment" does not address the defendants' counterclaim, and the appellate record contains no other order disposing of the counterclaim. The defendants filed a motion for a new trial, which the trial court denied, and then they filed this direct appeal. On appeal, they argue, inter alia, that the trial court erred in failing to address their counterclaim. This Court lacks jurisdiction.

> In a case involving multiple parties or multiple claims, a decision adjudicating fewer than all the claims or the rights and liabilities of less than all the parties is not a final judgment. In such circumstances, there must be an express determination under OCGA § 9-11-54 (b) or there must be compliance with the interlocutory appeal requirements of OCGA § 5-6-34 (b). Where neither of these code sections are followed, the appeal is premature and must be dismissed.

(Footnote omitted.) *Shoenthal v. Shoenthal*, 333 Ga. App. 729, 730 (776 SE2d 663) (2015). Although the trial court entered judgment on the plaintiff's claims and styled its order as "final," the defendants' counterclaim has not been adjudicated and apparently remains pending. Therefore, the challenged order is not a final order, and

it is appealable only through the interlocutory appeal procedures set forth in OCGA § 5-6-34 (b). The defendants' failure to comply with those procedures deprives this Court of jurisdiction, and this appeal is hereby DISMISSED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, 04/13/2017
I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.
Witness my signature and the seal of said court hereto affixed the day and year last above written.

Stephen E. Castlen, *Clerk.*