

938 So.2d 565
District Court of Appeal of Florida,
Second District.

John F. BEMBEN and Dorothy Fine, Appellants,

v.

Gregory M. CHOCK and Judith K.
Chock, Jeanne McGill, Cynthia Lee, and
Marco Island Real Estate, Appellees.

No. 2D05-5889. | Sept. 6, 2006.

| Rehearing Denied Oct. 6, 2006.

Synopsis

Background: Purchasers brought action against vendors for specific performance of a sales contract for a vacant lot. The Circuit Court, Collier County, [Daniel R. Monaco, J.](#), granted final summary judgment in favor of purchasers. Vendors appealed.

[Holding:] The District Court of Appeal, [Whatley, J.](#), held that trial court lacked jurisdiction to enter final summary judgment pending vendor's interlocutory appeal of another order.

Reversed and remanded.

West Headnotes (2)

[1] Appeal and Error

 [Jurisdiction of Lower Court](#)

Appellate court was unable to address merits of any issues raised on appeal from summary judgment, given that trial court lacked jurisdiction to enter final order for summary judgment.

[3 Cases that cite this headnote](#)

[2] Appeal and Error

 [Interlocutory Appeals](#)

Trial court lacked jurisdiction to enter final summary judgment for purchasers in action for

specific performance of a land sales contract against vendors, where trial court entered such judgment during the pendency of an interlocutory appeal of an order denying vendors' motion to dissolve purchasers' lis pendens. [West's F.S.A. R.App.P.Rule 9.130\(f\)](#).

[3 Cases that cite this headnote](#)

Attorneys and Law Firms

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[Jana Jay Malen](#) of [Stephen R. Ostrow, P.A.](#), Marco Island, for Appellees.

Opinion

[WHATLEY](#), Judge.

[1] John F. Bemben and Dorothy Fine (the Sellers) appeal the final summary judgment entered in favor of Gregory M. Chock and Judith K. Chock (the Buyers) in the Buyers' action against them for specific performance of a sales contract for a vacant lot. We reverse because the trial court lacked jurisdiction to enter the judgment. ¹

¹ Because the trial court lacked jurisdiction to enter a final order, we are unable to address the merits of the issues raised in this appeal. However, we note that based on the briefing, it appears that the parties recognize that the trial court misstated the amount of the purchase price in the final summary judgment and may have erred in dismissing the counter-petition with prejudice.

[2] The final summary judgment is a nullity because the trial court entered it during the pendency of the Sellers' interlocutory appeal of an order denying their motion to dissolve the Buyers' lis pendens. *See Fla. R.App. P. 9.130(f)* ("In the absence of a stay, during the pendency of a review of a non-final order, the lower tribunal may proceed with all matters, including trial or final hearing; provided that the lower tribunal may not render a final order disposing of the cause pending such review."); *Brewer v. Solovsky*, 899 So.2d 497 (Fla. 4th DCA 2005); *Katz v. NME Hosps., Inc.*, 791 So.2d 1127, 1128 (Fla. 4th DCA 2000) (noting that committee notes to [rule 9.130\(f\)](#) point out that the lower tribunal is divested of jurisdiction to enter a final order during a nonfinal

appeal); *Imperatore v. NationsBank of Fla., N.A.*, 677 So.2d 933 (Fla. 4th DCA 1996).

We quash the final summary judgment and remand for further proceedings.

Reversed and remanded.

FULMER and WALLACE, JJ., Concur.

Parallel Citations

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