Motion for Rehearing Denied and Order Issued May 28, 2020.

In the

Fourteenth Court of Appeals

NO. 14-18-00291-CV

AVIAD HAZAN, Appellant

v.

HOMETOWN BANK, N.A., Appellee

On Appeal from the 281st District Court
Harris County, Texas
Trial Court Cause No. 2015-52078

ORDER ON MOTION FOR REHEARING

On March 5, 2020, the court dismissed this appeal of a summary judgment for want of jurisdiction, holding there was no final, appealable judgment due to appellee HomeTown Bank, N.A.'s outstanding counterclaim for attorney's fees. *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001) ("[T]he general rule, with a few mostly statutory exceptions, is that an appeal may be taken only from a final judgment."). HomeTown now moves for rehearing. In its motion, HomeTown does not dispute that this court properly dismissed this appeal for want

of jurisdiction. Rather, HomeTown asserts that the jurisdictional defect has been cured because the trial court signed an order dismissing its claim for attorney's fees on March 20, 2020, 15 days after rendition of this court's judgment.

This is not a proper argument on rehearing, and to understand why, it is important to address the procedural posture of this case. *Lehmann* sets forth the analysis for determining when a judgment is final for purposes of invoking an appellate court's subject-matter jurisdiction. *See id.* at 192–93. Under *Lehmann*, in a case in which only one final and appealable judgment can be rendered, a judgment rendered without a conventional trial is final for purposes of appeal "if and only if" either it (1) actually disposes of all claims and parties then before the court, regardless of its language, or (2) states with unmistakable clarity that it is a final judgment as to all claims and all parties. *Id. Lehmann* also provides that, "[i]f the appellate court is uncertain about the intent of the [trial court's] order, it can abate the appeal to permit clarification by the trial court." *Id.* at 206.

Here, no clarification from the trial court was necessary. As the trial court's order did not unmistakably purport to be a final judgment, we consulted the record to determine the question of finality. *See id.* at 192–93. It was apparent from the record that HomeTown's counterclaim for attorney's fees had not been dismissed by the trial court. As there was no "uncertainty" about HomeTown's outstanding claim, there was nothing for the trial court to "clarify." Accordingly, there were no grounds for abating the appeal under *Lehmann*, leading us to take the only action available to us—dismissing the case for want of jurisdiction. *See id.* at 206.

HomeTown does not claim that this court erred in any way in dismissing the case for want of jurisdiction, arguing instead that the issue we highlighted has now been resolved. Our review on rehearing, however, is constrained to correcting errors in our judgment. *See Willis v. Donnelly*, 118 S.W.3d 10, 49 (Tex. App.—

Houston [14th Dist.] 2003) ("The sole purpose of a motion for rehearing is to provide the court an opportunity to *correct any errors* on issues already presented.") (emphasis added), *rev'd in part on other grounds*, 199 S.W.3d 262 (Tex. 2006).

The court recognizes the time and expense involved in filing and getting an appeal set for submission. Once the mandate issues in case number 14-18-00291-CV, the parties may file a new notice of appeal and in that event may move the court to file the record and briefs in case number 14-18-00291-CV in the new appeal and to set that appeal for submission if the parties agree that no additional briefing is required.

The motion for rehearing is denied.

PER CURIAM

Panel consists of Justices Wise, Zimmerer, and Spain.