



**COURT OF APPEALS FOR THE
FIRST DISTRICT OF TEXAS AT HOUSTON**

ORDER

Appellate case name: RSS MSBAM2014C17-TX HAH, LLC v. Houston Airport Hospitality LP, Pacifica Host, Inc. and Pacifica Harbor View Two, L.P.

Appellate case number: 01-20-00336-CV

Trial court case number: 2018-06512

Trial court: 133rd District Court of Harris County

The parties have filed an agreed joint motion to abate this appeal pending entry of a final and appealable judgment by the trial court. The motion is **denied**.

Background

Appellant filed suit in the trial court, bringing claims against Appellees for various breaches of contract concerning a loan agreement and other related agreements entered into between the Parties. Appellees filed counterclaims for conversion and a request for a declaratory judgment. The trial court granted Appellees' Motion for Judgment, ordering that Appellant take nothing by its suit, and dismissed Appellant's claims with prejudice. The order did not address any of Appellees' counterclaims and did not state that it was a final, appealable judgment. Appellant filed a Notice of Appeal of the trial court's order. The parties have filed a joint motion (1) acknowledging that the trial court's order is not a final, appealable judgment, and (2) requesting that this matter be abated pending the trial court's entry of a final, appealable judgment.

Discussion

Under Texas Rule of Appellate Procedure 27.2, this Court may abate a case to allow "an order that is not final to be made final and may allow the modified order and all proceedings relating to it to be included in a supplemental record." TEX. R. APP. P. 27.2. The rule is permissive, not mandatory. *See McNally v. Guevara*, 62 S.W.3d 195, 196 (Tex. 2001) (remanding for court of appeals to determine whether to abate appeal for entry of a final judgment pursuant to Rule 27.2 or to dismiss the appeal for want of jurisdiction).

Although the record in this case has not been filed, the parties acknowledge in their motion to abate that Appellees' counterclaims remain pending. The motion thus indicates that substantive claims and issues must still be addressed by the trial court. These matters are neither perfunctory nor ministerial. Given what remains to be resolved by the trial court before rendition of a final judgment, we decline to abate the appeal. *See Trane US, Inc. v. Sublett*, 501 S.W.3d 783, 787 (Tex.

App.—Amarillo 2016, no pet.) (denying appellant’s request to abate for trial court to determine amount of attorney’s fees under TCPA claim because it would require more than ministerial or perfunctory act); *Garcia v. Comm’rs Court of Cameron Cnty.*, 101 S.W.3d 778, 786 (Tex. App.—Corpus Christi 2003, no pet.) (holding appellate rules 27.2, 44.3, or 44.4(a) do not confer authority on appellate court to abate an appeal while there are “significant issues yet to be determined by the trial court”).

Conclusion

For the foregoing reasons, the motion to abate is **denied**. Furthermore, the parties are notified that this case will be dismissed for want of jurisdiction unless a response is filed within **10 days** of this order demonstrating that this Court has jurisdiction over the appeal. *See* TEX. R. APP. P. 42.3(a). If a meritorious response is not received, we will dismiss the appeal without prejudice to refiling once the trial court renders a final, appealable judgment.

It is so ORDERED.

Judge’s signature: /s/ Sarah B. Landau
Acting individually

Date: July 9, 2020