

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-3809

Summary Calendar

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ASHLAND CHEMICAL, INC.,

Plaintiff-Appellant,

v.

LAWRENCE A. LOMBARDINO,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
(CA-93-2434 "N" (5))

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(February 3, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

Defendant-appellee Lawrence A. Lombardino requests this court to dismiss the instant appeal on the basis, inter alia, that the court below had not entered a final judgment under 28 U.S.C. § 1291 or Federal Rule of Civil Procedure 54(b), and so, appellate jurisdiction had not been acquired by this court. We agree and dismiss the appeal.

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\*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

Although the district court's original order in this case, entered on November 9, 1993, was arguably final -- in spite of Ryan v. Occidental Petroleum Corp., 577 F.2d 298, 302 (5th Cir. 1978) -- that court subsequently amended its order, in response to motions filed by the defendant pursuant to Federal Rules of Civil Procedure 59(e) and 60(b), to remove all language of finality, and ordered the appellant to file a request for 54(b) certification so that a partial final judgment could be entered for purposes of appeal.

We understand that the appellant intends to file a motion for Rule 54(b) certification, and we assume from the procedural history of this case that the district court will grant the motion, thus finalizing the order dismissing the appellant's breach of contract claim for purposes of appeal. At that point, the appellant may file a new notice of appeal and proceed with the case. Accordingly, we dismiss this appeal for lack of jurisdiction without prejudice to the refiling of another notice of appeal after a final judgment or partial final judgment under Rule 54(b) is entered by the court below.

DISMISSED.