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SUBJECT MATTER JURISDICTION TRUMPS ALL IN APPEALS

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Eleventh Circuit case law confirms that the court continues to be vigilant—as it is required to be—to ensure that it possesses subject matter jurisdiction under 28 U.S.C. § 1291 before hearing an appeal. When a litigant considers whether it should prosecute an appeal, it should start its analysis with the threshold issue of whether it can prosecute an appeal, that is, whether the Eleventh Circuit has the power to hear the appeal. With limited exceptions beyond the scope of this blog post, the Eleventh Circuit can only hear appeals of final orders or judgments, i.e., those which leave nothing for the trial court to do but execute judgment. Catlin v. United States, 324 U.S. 229, 233 (1945).

A few examples of recent decisions from the Eleventh Circuit dismissing appeals for lack of subject matter jurisdiction include, Club Madonna, Inc. v. City of Miami Beach, No. 15-14721, 2016 WL 723881 (11th Cir. Feb. 23, 2016) (dismissing appeal of order awarding attorneys' fees as further orders in fee dispute were expected) and Drummond Co., Inc. v. Collinsworth, 816 F.3d 1319 (11th Cir. 2016) (dismissing appeals of non-final order on discovery matter finding no exception applied on facts before it).

Eleventh Circuit Rule 31-1(d) provides the mechanism by which the Court can put the issue of its jurisdiction, or the lack thereof, to the parties by asking them to brief that issue through issuance of a "Jurisdictional Question." Rule 31-1(d), which applies equally to parties represented by counsel and parties representing themselves, and provides, in part, that "[i]f, upon review of the district court docket entries, order and/or judgment appealed from, and the notice of appeal, it appears that this court may lack jurisdiction over the appeal, the court may request counsel and pro se parties to advise the court in writing of their position with respect to the jurisdictional question(s) raised." A jurisdictional question is issued at the Court's discretion. While it does not stay the deadline for the losing party to file its initial brief, the deadline for the prevailing party is stayed until the Eleventh Circuit decides whether it has subject matter jurisdiction to hear the appeal.

For more information about this topic, please contact the authors Paul Avron and Ilyse Homer, on the firm's Business Reorganization Team.

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