

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2010-5011

WESTERN MANAGEMENT, INC.,

Plaintiff,

and

YVONNE R. KOVACEVICH

Plaintiff-Appellant,

and

ROBERT E. KOVACEVICH,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

Appeal from the United States Court of Federal Claims in 08-CV-116,
Judge Nancy B. Firestone.

ON MOTION

Before MICHEL, Chief Judge, SCHALL and LINN, Circuit Judges.

PER CURIAM.

ORDER

The United States moves to dismiss Yvonne R. Kovacevich and Robert E. Kovacevich's appeal as premature. The appellants oppose.

The appellants filed a complaint in the United States Court of Federal Claims seeking a refund of federal income taxes paid. The United States filed an amended counterclaim for outstanding tax liabilities. The appellants moved to strike the counterclaim for lack of jurisdiction and the Court of Federal Claims denied the motion. The appellants appealed that order.

The court's jurisdiction over appeals from decisions of the Court of Federal Claims is governed by 28 U.S.C. § 1295(a)(3). Section 1295(a)(3) provides that the court has jurisdiction over "an appeal from a final decision of the United States Court of Federal Claims" (emphasis added). "A 'final decision' generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Catlin v. United States, 324 U.S. 229, 233 (1945); see also Ultra-Precision Mfg. Ltd. v. Ford Motor Co., 338 F.3d 1353, 1356-57 (Fed. Cir. 2003) ("[a] district court's judgment is final where it 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" (citation omitted)). Because the complaint and the United States' counterclaim are pending in the Court of Federal Claims, there is no final decision or judgment.

Accordingly,

IT IS ORDERED THAT:

- (1) The United States' motion to dismiss is granted.

(2) Each side shall bear its own costs.

FOR THE COURT

DEC 16 2009

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Robert E. Kovacevich
Yvonne R. Kovacevich
Regina S. Moriarty, Esq.

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

DEC 16 2009

JAN HORBALY
CLERK

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ISSUED AS A MANDATE: DEC 16 2009