

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 16-17623-AA

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INVERSIONES Y PROCESADORA TROPICAL INPROTSA, S.A.,  
a Costa Rican Corporation,

Plaintiff-Appellant  
Cross Appellee,

versus

DEL MONTE INTERNATIONAL GMBH,  
a Swiss Corporation,

Defendant-Appellee  
Cross Appellant.

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Appeals from the United States District Court  
for the Southern District of Florida

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Before: MARCUS and ROSENBAUM, Circuit Judges.

BY THE COURT:

The motion of Defendant-Appellee-Cross Appellant Del Monte International GMBH (“Del Monte”) for a limited remand of this case is GRANTED.

Plaintiff-Appellant-Cross Appellee Inversiones y Procesadora Tropical INPROTSA, S.A. (“Inprotsa”) has appealed from the district court’s December 6, 2016 order, which granted Del Monte’s motion to dismiss Inprotsa’s petition to vacate an arbitration award. The court’s order did not expressly address Del Monte’s cross-petition to confirm the arbitration award. Del Monte filed a motion in the district court to clarify the order, asking the court to make clear whether it also intended to grant the cross-petition and confirm the award. In a February 9, 2017

order, the district court declined to rule on that motion, concluding that it lacked jurisdiction over the motion because Inprotsa had already filed this appeal. Del Monte now asks us to remand this case so that the district court can resolve the pending motion for clarification.

We express no opinion as to whether the district court's December 6 order resolved Del Monte's cross-petition to confirm the arbitration award. Whether or not it did so, this case is due to be remanded. On the one hand, if the order did in fact grant the cross-petition to confirm the award, then it is a final, appealable order. *See World Fuel Corp. v. Geithner*, 568 F.3d 1345, 1348 (11th Cir. 2009). In that case, Del Monte's motion for clarification was effectively a Rule 59(e) motion to alter or amend the judgment. *See Fed. R. Civ. P. 59(e)*. As such, the motion must be resolved before we can exercise jurisdiction over the appeal. *See Fed. R. App. P. 4(a)(4)(B)*. This is so even though Inprotsa's notice of appeal was filed before Del Monte's motion. *See Stansell v. Revolutionary Armed Forces of Colombia*, 771 F.3d 713, 745-46 (11th Cir. 2014). Notably, the district court's order of February 9, 2017 did not resolve the motion for clarification; rather, that order expressly declined to do so.

On the other hand, if, as Del Monte urges, the December 6 order did not resolve the cross-petition to confirm, then the order is not final. *See Supreme Fuels Trading FZE v. Sargeant*, 689 F.3d 1244, 1245-46 (11th Cir. 2012). In that case, the order either is appealable as an interlocutory order, or it is not appealable. *See id.* If it is appealable as an interlocutory order, then the analysis is the same as if the order were final: we lack jurisdiction over the appeal until the district court resolves the motion for clarification. *See Fed. R. Civ. P. 59(e); Fed. R. App. P. 4(a)(4)(B)*. By contrast, if the order did not resolve the cross-petition and is not appealable as an interlocutory order, then it is not appealable at all. *See 28 U.S.C. § 1291*.

In sum, in any event, this case is due to be remanded. Accordingly, we hereby remand this case to the district court, so that the court may resolve Del Monte's December 8, 2016 motion for clarification of the court's December 6 order. After the district court resolves that motion, the case should be returned to this Court for further proceedings.