

**PLATCO CORP. V. COLONIAL HOMES, INC., 1967-NMSC-122, 78 N.M. 35, 428 P.2d
9 (S. Ct. 1967)**

**PLATCO CORPORATION, Plaintiff-Appellant,
vs.
COLONIAL HOMES, INC., Defendant-Appellee**

No. 8174

SUPREME COURT OF NEW MEXICO

1967-NMSC-122, 78 N.M. 35, 428 P.2d 9

May 22, 1967

Appeal from the District Court of Lea County, Nash, Judge

COUNSEL

HEIDEL, SWARTHOUT & SAMBERSON, Lovington, New Mexico, Attorneys for
Plaintiff-Appellant.

MALCOLM L. SHAW, Hobbs, New Mexico, Attorney for Defendant-Appellee.

JUDGES

HENSLEY, Jr., Chief Judge, wrote the opinion.

WE CONCUR:

M. E. Noble, J., Irwin S. Moise, J.

AUTHOR: HENSLEY

OPINION

HENSLEY, Jr., Chief Judge, Court of Appeals.

{1} This action was brought to recover a money judgment and the complaint was based on a verified account. From an adverse judgment the plaintiff has appealed.

{2} The complaint named two defendants, Colonial Homes, Inc., and M. A. Shaw, who was also president of the corporate codefendant. Service of process upon M. A. Shaw was delayed until some five days before the trial date. The issues between the plaintiff and the defendant, Colonial Homes, Inc., were tried separately at the request of the

plaintiff pursuant to Section 21-1-1(42)(b), N.M.S.A. 1953. The complaint was based on a single claim against both defendants. In due time a judgment was entered dismissing the complaint as to the defendant Colonial Homes, Inc., and further reciting that jurisdiction of the cause was retained as to the issues between the plaintiff and the defendant M. A. Shaw.

{3} Before reaching the issues presented by the appellant we are met at the outset with Supreme Court Rule 5(1) also referred to as Section 21-2-1(5)(1), N.M.S.A. 1953, providing for appeals from final judgments.

In *Floyd v. Towndrow*, 48 N.M. 444, 152 P.2d 391, we discussed the reason for Rule 5, supra. We have recently considered the rule and its application in *Lopez v. Hoffman*, 77 N.M. 396, 423 P.2d 429. Without repeating the rationale and listing the authorities contained in that opinion we will only announce that the judgment here sought to be appealed from is not a final judgment. The action taken by the appellant was premature. Compare *Saunders v. Metropolitan Government of Nashville*, 214 Tenn. 703, 383 S.W.2d 28; *Scheid v. Pinkham*, 395 S.W.2d 166 (Mo. 1965).

{4} The judgment not being a final one, we will dismiss the appeal therefrom.

{5} IT IS SO ORDERED.

WE CONCUR:

M. E. Noble, J., Irwin S. Moise, J.