

**Allen v. TIC Participations Trust**  
**722 So.2d 260**  
**Fla.App. 4 Dist.,1998.**  
**Dec. 16, 1998.**

722 So.2d 260, 24 Fla. L. Weekly D1  
District Court of Appeal of Florida,  
Fourth District.

Charles D. ALLEN, Charles D. Beck, Jr., Bruce J. Berg, Sydney C. Bower,  
Leonard Crowley, Eileen Escoto, Walter N. Frank, John E. Garwood, Joy A.  
Garwood, Garland G. Grant, Evelyn Guitreau, Jeffrey Hazle, Judith Ketterer,  
Lawrence A Lange, Elwood Like, Lois Like, Daniel C. Meisinger, Linda P.  
Nichols, Arthur L. O'Connor, Kenneth M. Renney, Patrick Riley, and Leonard S.  
Siekmeier, Appellants,  
v.

TIC PARTICIPATIONS TRUST, a Texas trust, D.E. Frey & Company, Inc., a Delaware  
corporation, Dominion Capital Corporation, a Texas corporation, Harbour  
Investments, Inc., a Wisconsin corporation, Oak Brook Securities Corporation,  
an Illinois corporation, Sunpoint Securities, Inc., a Texas corporation,  
Trident Investment Company, a Texas corporation, and James Frederick Glaza,  
Appellees.

No. 98-3390  
Dec. 16, 1998.

Appeal and cross-appeal were taken from order of Circuit Court, Broward County,  
Jeffrey E. Streitfeld, J., dismissing complaint for lack of subject matter jurisdiction.  
Appellant moved to dismiss cross-appeal. The District Court of Appeal, Klein, J., held  
that appellee could cross-appeal from order, even though cross-appeal was directed  
at earlier interlocutory order denying motion to dismiss for lack of personal  
jurisdiction.  
Motion denied.

West Headnotes

[KeyCite this headnote](#)

- 🔑 30 Appeal and Error
- 🔑 30I Nature and Form of Remedy
- 🔑 30k14 Successive Appeals and Cross-Appeals or Other Proceedings
- 🔑 30k14(4) k. Cross-Appeals or Writs of Error. Most Cited Cases

Order denying motion to dismiss for lack of personal jurisdiction could be cross-  
appealed, following later dismissal of complaint for lack of subject matter jurisdiction  
and appeal of that order. [West's F.S.A. R.App.P.Rules 9.110\(g\), 9.130\(a\)\(3\)\(C\)\(i\),  
\(g\).](#)

\***261** [Philip Mugavero](#) of Silverio & Hall, Miami, and [John F. Head](#) of John F. Head,  
P.C., Denver, Colorado, for appellants.  
[Robert W. Pearce](#) of Lerner & Pearce, P.A., Fort Lauderdale, for appellee Oak Brook  
Securities Corp.

*ORDER DENYING MOTION TO DISMISS CROSS-APPEAL*

[KLEIN, J.](#)

The trial court dismissed appellants' complaint for lack of subject matter jurisdiction on August 27, 1998. This appeal is from that order. Appellees subsequently filed a notice of cross-appeal directed to an earlier order rendered on June 25, 1998, denying their motion to dismiss for lack of personal jurisdiction. The notice of cross-appeal states that it "is precipitated" by appellants' appeal of the final order of August 27.

Appellants have moved to dismiss the cross-appeal on the ground that the appellees can only cross-appeal the final order, not the earlier order, arguing that their failure to appeal from the earlier order precludes a cross-appeal at this time. The motion is not well taken.

As Judge Hubbard explained in his concurring opinion in [Dauer v. Freed, 444 So.2d 1012 \(Fla. 3d DCA 1984\)](#), an interlocutory order entered prior to an entirely favorable final judgment may be cross-appealed by the appellee. The order denying the motion to dismiss for lack of personal jurisdiction was such an interlocutory order, and the correctness of it may be raised on a cross-appeal from the final order. The notice of cross-appeal is technically from the final order, but appellees may assert error as to any adverse interlocutory order preceding the entry of the final order. [Dauer, 444 So.2d at 1016.](#)

Although appellees could have taken a non-final appeal from the order denying their motion to dismiss based on lack of personal jurisdiction under [Florida Rule of Appellate Procedure 9.130\(a\)\(3\)\(C\)\(i\)](#), they also had the option of seeking review of that non-final order on appeal from the final order. [Rule 9.130\(q\)](#). Because the final order is entirely favorable to appellees, the cross-appeal, pursuant to [rule 9.110\(q\)](#), is the appropriate method for seeking review of the earlier order. The motion to dismiss is therefore denied.

[WARNER](#) and [FARMER](#), JJ., concur.  
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