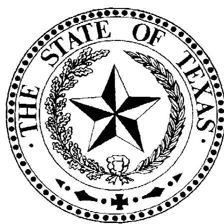
Affirmed and Opinion filed March 28, 2002.



In The

Fourteenth Court of Appeals

NO. 14-01-00522-CV

YOUSEF "JOE" SHAMI
d/b/a BELTWAY FAST STOP, Appellant

V.

PAYPHONE MANAGEMENT COMPANY, Appellee

On Appeal from the County Civil Court at Law No. 1
Harris County, Texas
Trial Court Cause No. 691,925

O P I N I O N

In this contract dispute, Yousef "Joe" Shami d/b/a/ Beltway Fast Shop ("Shami") appeals a judgment in favor of Payphone Management Company ("Payphone") on the grounds that: the trial court erred in denying Shami's motion for leave to file a cross action; the trial court erred in treating the judgment as a final judgment when by its own language it does not determine the rights of all the parties to the suit and does not dispose of all the issues involved; and, because the judgment in this case is interlocutory, this Court lacks jurisdiction over the appeal. We affirm.

Shami and Mowfac Jabri were sued by Payphone for breach of a pay telephone service contract. After a bench trial, the trial court entered judgment (the "judgment") on February 9, 2001, in favor of Payphone and against Shami but not Jabri. On March 9, 2001, Shami filed a cross action (the "cross action") against Jabri and a motion for leave to file it (collectively, the "motion for leave"),[1] which the trial court denied.

Shami's first point of error argues that the trial court erred in denying the motion for leave because his cross action was properly filed under Texas Rule of Civil Procedure 63 in that there was no showing of unfair surprise. *See* TEX. R. CIV. P. 63 ("Parties may amend their pleadings . . . at such time as not to operate as a surprise to the opposite party . . . ."). A party may amend his pleading after verdict but not after the trial court has entered final judgment. *Greenhalgh v. Service Lloyds Ins. Co.*, 787 S.W.2d 938, 940 (Tex. 1990). A trial court's ruling on whether to allow an amendment under rule 63 is reviewed for abuse of discretion. *See id.* at 939; *Hardin v. Hardin*, 597 S.W.2d 347, 349-50 (Tex. 1980).

In this case, the judgment's "Mother Hubbard" language[2] indicates the trial court's intent to make it a final judgment.[3] Shami's motion for leave was filed after the judgment was entered. Decisions applying rule 63 have declined to allow post-judgment amendments,[4]

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[1] Although Shami's brief also refers to a motion to consolidate with another, unspecified action, the record contains no ruling on that motion, and Shami's brief contains no discussion pertaining to the merits of the motion to consolidate. Therefore, we do not address it.

[2] Among other things, the judgment states: "All other relief not expressly granted is denied."

[3] A judgment is final for purposes of appeal if it disposes of all pending parties and claims in the record. *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). When there has been a full trial on the merits, either to the bench or before a jury, the inclusion of a "Mother Hubbard" clause, *e.g.*, "all relief not granted is denied," indicates the trial court's intention to dispose of the entire matter and thus signifies finality. *Lehmann*, 39 S.W.3d at 203-04.

[4] *See Texas Gen. Indem. Co. v. Ellis*, 888 S.W.2d 830, 831-32 (Tex. App.—Tyler 1994, no writ) (declining to allow post-judgment amendment); *Boarder to Boarder Trucking, Inc. v. Mondi, Inc.*, 831 S.W.2d 495, 499 (Tex. App.—Corpus Christi 1992, no writ) (same); *Morris v. Hargrove*, 351 S.W.2d 666, 668 (Tex. Civ. App.—Austin 1961, no writ) (same); *Warren v. Ward Oil Corp.*, 87 S.W.2d 501, 502-03 (Tex. Civ. App.—Texarkana 1935, no writ) (same); *see also Greenhalgh v. Serv. Lloyds Ins. Co.*, 787 S.W.2d 938, 940 (Tex. 1990) (explaining generally that courts have declined to allow post-judgment amendments).

and Shami has cited no case in which a trial court has been reversed for denying a post-judgment amendment. Because Shami's first point of error thus fails to establish that the trial court erred in denying his motion for leave, it is overruled.

Shami's second and third points of error contend that the judgment was not final because it contained the clause (the "clause"): "IT IS FURTHER ORDERED that nothing herein ordered shall preclude [Shami] from seeking recovery of any claim from [Jabri] *if permissible* under the laws of the State of Texas." (emphasis added). Claiming that the judgment thereby recognized, but did not adjudicate, this claim by Shami against Jabri, Shami contends that the clause rendered the judgment interlocutory. Therefore, Shami argues that the trial court erred in denying his motion for leave, and this Court lacks jurisdiction over the appeal. We disagree.

Rather than giving Shami additional rights or otherwise changing the relative positions of the parties in any way, the clause merely acknowledges that nothing in the judgment precludes Shami from doing whatever he otherwise had the right to do under the law. Because Shami had no claim pending against Jabri in the case when the trial court entered the judgment,[5] there was no such claim which the judgment left undisposed so as to render the judgment interlocutory. Because Shami's second and third points of error thus fail to demonstrate that the judgment is interlocutory, they are overruled, and the judgment of the trial court is affirmed.

/s/ Richard H. Edelman
Justice

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[5] In this respect, the present case is readily distinguishable from *Wilcox*, which Shami relies upon. *See Wilcox v. St. Mary's Univ. of San Antonio, Inc.*, 501 S.W.2d 875 (Tex. 1973). In that case, concerning ownership of historical documents, the trial court entered a judgment which stated, in part, "nothing herein shall operate to the prejudice of either the State of Texas or City of Laredo in their claims of title to that portion of the 'Wilcox Collection' known as the 'Laredo Archieves,' *said claims of title being still before this Court for adjudication.*" *Id.* at 875-76 (emphasis added). Unlike the facts in *Wilcox*, no claims were still before the court in the present case when the judgment was entered. Moreover, the clause did not (and could not) itself create any new or additional claims to those that had been asserted by the parties and disposed of by the judgment.

Judgment rendered and Opinion filed March 28, 2002.

Panel consists of Justices Hudson, Fowler, and Edelman.

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