

Reversed and Remanded and Opinion filed June 7, 2001.



In The

Fourteenth Court of Appeals

NO. 14-99-00559-CV

JACINTO PLAZA, INC., Appellant

V.

**MICHAEL CIANCIOLA, DON A. CZARNESKI,
AND DAC REALTY GROUP, INC., Appellees**

**On Appeal from the 269th District Court
Harris County, Texas
Trial Court Cause No. 96-22254**

OPINION

This case comes on appeal from a judgment by the 269th District Court of Harris County. The trial court, during a pre-trial conference, admitted evidence, and then sua sponte granted what amounted to a directed verdict in favor of appellees. No record was ever made of this pre-trial conference. The trial court then held a hearing, which is in the record, where the parties announced ready for trial, the trial court appears to have re-admitted the exhibits previously admitted, and re-announced its ruling made at the pre-trial conference. Appellant appeals from this pre-trial directed verdict, raising seven points of error. We reverse and

remand on appellant's first point of error, and therefore will not examine appellant's other six points of error concerning the merits of the case.

This case involves a dispute between appellant and appellees on whether an office lease entered into between appellant and the State of Texas, through an independent bid process, is covered by a commission agreement entered into between appellant and appellees.

On January 4, 1999, before the start of trial, the trial court held a pre-trial conference to pre-admit evidence. After all the exhibits were admitted into evidence, the trial court ruled as a matter of law that the terms of the contract were unambiguous and the lease entered into with the State of Texas falls within the provision of the commission agreement entered into between appellant and appellees. The trial court then rendered judgment on behalf of appellees in the amount of \$77,325.00. The trial court's action in rendering a pre-trial judgment in favor of appellees amounted to a pre-trial directed verdict and thus was clearly erroneous.

A trial court may sua sponte withdraw a case from the jury and render judgment. *Valero Eastex Pipeline Co. v. Jarvis*, 926 S.W.2d 789, 792 (Tex. App.—Tyler 1996, writ denied); *Trubell v. Patten*, 582 S.W.2d 606, 609-10 (Tex. Civ. App.—Tyler 1979, no writ). Where there is no evidence warranting submission to the jury, it is the court's duty to withdraw the case from their consideration and dispose of it as a matter of law. *Valero Eastex Pipeline Co.*, 926 S.W.2d at 792; *Marlin Associates v. Trinity Universal Ins. Co.*, 226 S.W.2d 190, 193 (Tex. Civ. App.—Dallas 1949, no writ). When only questions of law are involved, a trial court may, at the conclusion of the hearing of the evidence, take the case from the jury and proceed to render judgment. *Valero Eastex Pipeline Co.*, 926 S.W.2d at 792; *Harvey v. Elder*, 191 S.W.2d 686, 687 (Tex. Civ. App.—San Antonio 1945, writ ref'd).

However, a trial court may not properly direct a verdict, on its own motion, if all of the evidence has not been presented. *Wedgeworth v. Kirskey*, 985 S.W.2d 115, 116 (Tex. App.—San Antonio 1998, no pet.); *Nassar v. Hughes*, 882 S.W.2d 36, 38 (Tex. App.—Houston [1st Dist.] 1994, writ denied). A trial court commits reversible error when it

directs a verdict before all the evidence has been presented. *Wedgeworth*, 985 S.W.2d at 116; *Buckner v. Buckner*, 815 S.W.2d 877, 878 (Tex. App.—Tyler 1991, no writ). The trial court, in our case, directed verdict in favor of appellees before a trial. This conduct was premature and improper.

Having determined that the trial court erred in directing a verdict in favor appellees, we sustain appellant's first point of error. As noted above, our review of the first point of error disposes of the entire case, and we will not address appellant's remaining points of error. Accordingly, we reverse and remand this case to the trial court for a new trial consistent with this opinion.

/s/ Paul C. Murphy
Senior Chief Justice

Judgment rendered and Opinion filed June 7, 2001.

Panel consists of Senior Chief Justice Murphy¹ and Justices Hudson and Seymore.

Do Not Publish — TEX. R. APP. P. 47.3(b).

¹ Senior Chief Justice Paul C. Murphy sitting by assignment.