

**From:** Law Office of Steven K. Hayes <shayes@stevehayeslaw.com>  
**Sent:** Friday, July 26, 2024 4:31 PM  
**To:** shayes@stevehayeslaw.com  
**Subject:** Second Court Newsletter: Business Court Staff Attorney Positions, New Opinions

July 26, 2024

Dear Friends:

As you probably know, our friends Jerry Bullard and Brian Stagner have been appointed to serve, starting September 1, 2024, as the judges for the Eighth Business Court Division in Fort Worth. Jerry and Brian have started accepting applications for Staff Attorney. If you have an interest in applying for those positions, or finding out more about them, here is how you can do so (and I don't including actual website links here, because doing so sometimes adversely impacts the dissemination of this email):

- Go to the website for the Texas Comptroller of Public Accounts;
- Scroll to the bottom of the page, and click on the icon for "Careers;"
- When you do so, another banner will unfurl at the bottom of the page. Click on the "Job Search" line;
- That pulls up the "capps" website. On the left hand side of the page, you will see a box for "Organization." Click on "see all organizations."
- Click the box for "Office of Court Administration," unclick all other boxes, and then click the box toward the bottom of that insert labeled "Add;"
- You will see several listings. Two of them will take you to the pages for the Staff Attorney openings for Jerry and Brian.

I've had the pleasure of knowing both of these guys for decades. They are both good, smart lawyers, and I'll bet it would be fun to work with them as they get the Business Court rolling in Fort Worth.

In the meantime, the Court steadily produces opinions, heading toward the end of its fiscal year (August 31).

***Recent opinions issued by the Court in civil cases cover the following issues***

- *Contract (Listing Agreement, Summary Judgment, Anticipatory Repudiation, Alternative Claims, No Appeal)*
- *Homeowners Association (Cross Claim, Amended Petition Dropping Party, Final Judgment)*
- *Temporary Injunction (Form, Voidness)*

***Recent opinions issued by the Court in civil cases cover the following issues (footnotes omitted in all summaries unless otherwise stated. All names in suits involving minors are aliases unless otherwise noted):***

***Contract (Listing Agreement, Summary Judgment, Anticipatory Repudiation, Alternative Claims, No Appeal): MVP Fort Worth Taylor v. Roy, No. 02-23-00060-CV-***"The parties dispute whether Appellant MVP Fort Worth Taylor, LLC was required to pay Appellee John Roy a commission under their real estate listing agreement (Listing Agreement). The trial court answered in the affirmative, granting traditional summary judgment for Roy on his breach of contract claim.

Because Roy did not conclusively establish any grounds for summary judgment on that claim, we will reverse and remand....In its dispositive appellate issue, MVP argues that Roy’s summary judgment motion did not conclusively establish his right to judgment on his breach of contract claim.<sup>3</sup> Roy’s motion sought summary judgment on three grounds: that MVP had anticipatorily repudiated the Listing Agreement and that two commission-triggering events had occurred.”

- **Anticipatory Repudiation:** “the evidence showed merely that MVP directed Roy to pull the Property listing. Pulling the listing did not, in and of itself, deprive Roy of the exclusive right to sell the Property. And the exclusive right to sell the Property did not equate to a guarantee that a sale would occur. In fact, the Listing Agreement itself contemplated that Roy could sell the Property only for a ‘a purchase price agreed to by [MVP].’ By pulling the listing, MVP was effectively communicating that it would not agree to any purchase price—or at least, it would not agree to any purchase price that it could realistically envision receiving. This was its prerogative under the terms of the Listing Agreement;....Roy therefore failed to conclusively establish MVP’s alleged anticipatory repudiation of the Listing Agreement, and the trial court could not have granted traditional summary judgment on this basis.”
- **Commission Triggering Events:** “Roy also claimed that he was entitled to traditional summary judgment because (1) he had procured a buyer—Noyack—that was ‘ready, able and willing to purchase the Property at . . . a purchase price agreed to by [MVP]’; and (2) the Color Up acquisition transaction amounted to MVP having transferred ‘an interest in [MVP] . . . in lieu of a sale of the Property.’ He did not conclusively establish either of these commission-triggering events....MVP and Noyack never reached an agreement regarding the terms of sale....when MVP pulled its listing, Noyack had just extended an updated offer that ‘was contingent upon obtaining financing,’ .... Although Roy argues that ‘all indications [we]re that Noyack could have [obtained financing],’ he does not point to any evidence to support this representation, and he did not offer any in the trial court.... even if Noyack had been able to obtain financing, MVP was under no obligation to accept the financing contingency.” Additionally, in a very fact intensive issue, “[b]ecause Roy did not conclusively establish that the Preliminary Acquisition Agreement amounted to a transfer of an interest in MVP in lieu of a sale of the Property, the trial court could not have granted him traditional summary judgment on this basis. And because this was the final ground supporting the traditional summary judgment, we sustain MVP’s challenge to that judgment.”
- **Breach of Contract (Additional Commission Triggering Events):** “MVP’s summary judgment motion gave only cursory inspection to some of the commission-triggering events, often leaving the trial court on its own to sift through MVP’s voluminous exhibits in search of supportive evidence....MVP assumed a weighty burden—the burden of conclusively disproving an element of Roy’s claim—and its motion for traditional summary judgment failed to carry that burden. Therefore, it was not entitled to traditional summary judgment on Roy’s breach of contract claim.”
- **Alternative Claims (No Appeal):** “In addition to breach of contract, Roy filed alternative claims for quantum meruit and money had and received. MVP moved for traditional summary judgment on those claims, and on appeal, Roy acknowledges that the trial court’s final judgment implicitly entered judgment against him on his alternative claims. Roy did not file a notice of appeal, so we leave those portions of the judgment undisturbed. See Tex. R. App. P. 25.1(c) (stating that ‘[a] party who seeks to alter the trial court’s judgment or other appealable order must file a notice of appeal’).”

***Homeowners Association (Cross Claim, Amended Petition Dropping Party, Final Judgment):***  
*Byrd v. Villages of Woodland Springs*, No. 02-23-00078-CV—“Pro se appellant Joe W. Byrd appeals the trial court’s amended final judgment that granted appellee The Villages of Woodland

Springs Homeowners Association, Inc. (the HOA)’s Rule 91a motion on his counterclaims and the HOA’s motion for summary judgment on its claims against him. In four issues, Byrd complains that the trial court erred (1) by failing to include his cross claim against his home’s previous owner; (2) by not honoring federal and state due-process and “Article 51” provisions; (3) by failing to dispose of all parties and all issues; and (4) by not requiring the HOA “to file Arcadia Decision.” We affirm.

Cross Claim, Amended Petition Dropping Party, Final Judgment: “In his first and third issues, Byrd complains that the trial court erred by failing to include his cross claim against Legg and by failing to dispose of all parties and all issues in the case because his cross claim was not addressed.... Essentially, he argues that the trial court’s judgment is not final....The record reflects that Legg was dismissed from the lawsuit in September 2021 [when the HOA”filed an amended petition...adding Byrd as the defendant...and dropping Legg from the Lawsuit by omitting her from the pleading”], when the HOA filed its amended petition after Byrd’s March 2020 general appearance and answer, and that Byrd made no attempt to bring Legg back into the lawsuit when he filed his counterclaim and cross claim in July 2022....Because Legg was no longer in the lawsuit after the HOA filed its amended petition, the trial court did not err by excluding Byrd’s attempted cross claim, and we overrule his first issue. And because Legg was not a party to the lawsuit when the trial court entered judgment, the record correctly reflects that the trial court disposed of all parties and all issues in the case, and we overrule Byrd’s third issue.”

**Temporary Injunction (Form, Voidness):** *nFusion Capital v. BS Concepts*, No. 02-24-00167-CV– “Appellee BS Concepts, LLC sued appellant nFusion Capital Finance, LLC—and Jason Marcum and Associated Rock Concepts, Inc.—and obtained a temporary injunction enjoining all three from (1) presenting a forged deed of trust to any person or entity involved with the sale of the real property encumbered by that deed of trust; (2) attempting to foreclose on the property; (3) “[m]aking or presenting any claim to any person, party, or entity to any part of the subject property”; and (4) seeking to impede, restrain, or affect the “payment, transfer, exchange[,] or distribution of proceeds from” the property’s sale. Only nFusion appealed the trial court’s order. See Tex. Civ. Prac. & Rem. Code Ann. § 51.014(a)(4)....Rule 683 of the Texas Rules of Civil Procedure requires an order granting a temporary injunction to set the cause for a trial on the merits. Tex. R. Civ. P. 683;....This requirement—along with Rule 683’s other requirements—is mandatory and must be strictly followed....An order that does not comply with Rule 683’s requirements is void.... Because the temporary-injunction order does not set a date for a trial on the merits, it is void.... We vacate the trial court’s March 28, 2024 order granting the temporary injunction.”

All for now. Y'all stay safe and well. Have a great weekend!

Yours,

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