PETITION FOR A BILL OF REVIEW IN TEXAS

Minh-Tam (Tammy) Tran

I. Summary of the Roadmap for a Bill of Review Proceeding

Twenty years after *Lehmann*, Texas courts continue to grapple with the definition of a final judgment.[1] The Texas Legislature should consider providing a more precise definition of "final judgment," in civil litigation, using *Lehmann Final Judgment Rule*.[2] The current ambiguity surrounding this term can create uncertainty for litigants, making it difficult to determine when to appeal or whether to undergo unnecessary new trial proceedings. In Harris County, where obtaining an oral hearing before the 75th day, when the motion is deemed denied by operation of law, is sadly challenging. This uncertainty can lead to substantial risks. For example, if litigants appeal on the 30th after the courts signed the purported final judgments, they may face dismissal by the court of appeals after incurring significant expenses for records. Alternatively, they may need to pursue costly bill-of-review proceedings. This dilemma disproportionately affected litigants with average economic means, frequently forcing them to relinquish their rights in the face of powerful corporations with deep legal pockets.

Consequently, the bill-of-review court's initial step is to determine if the judgment is final.[3] In the case study below, the petitioners invoked the Texas Supreme Court's *Lehmann Final Judgment Rule*. This rule dictated that a judgment issued without a conventional trial is final for appeal only if *"either it actually disposes of all claims and parties* then before the court, regardless of its language, or *it states with unmistakable clarity that it is a final judgment as to all claims and all parties*." *Lehmann v. HarCon Corp*., 39 S.W.3d 191, 193 (Tex. 2001) (emphasis added); *Continental Airlines, Inc. v. Kiefer*, 920 S.W.2d 274, 27677 (Tex. 1996); *Park Place Hosp. v. Estate of Milo*, 909 S.W.2d 508, 510 (Tex. 1995).

Next, the bill-of-review court must apply the three (3) critical rules governing a bill of review:

A. Exclusive Jurisdiction: The court that rendered the judgment (the "original court") has exclusive jurisdiction.[4]It must conduct a bill-of-review hearing.

B. Three-Element Requirement: A bill-of-review petitioner must plead and prove three (3) elements: (1) *a meritorious claim* to the underlying cause of action, (2) which plaintiff/petitioner was prevented from making by the opposing party's fraud, accident

[1] *Lehmann v. HarCon Corp*., 39 S.W.3d 191, 193 (Tex. 2001).

[2] Surprisingly, the *Lehmann Final Judgment Rule* is not known or understood by many litigants.

[3] *Id.*

[4] *See Richards v. Comm'n for Lawyer Discipline*, 81 S.W.3d 506, 508 (Tex. App.- Houston [1st Dist.] 2002, no pet.).

or wrongful conduct or *official mistake*, (3) *unmixed* with any fault or negligence on plaintiff/petitioner's own part.[5]

C. Prima Facie Proof: What does *a meritorious claim* to the underlying cause of action mean? The Texas Supreme Court referred to it as the ***Baker* inquiry** in a bill-of-review proceedings.[6] It means a bill-of-review petitioner only needs to present prima facie proof of a meritorious defense to the cause of action alleged to support the judgment.

1. For example, in the case study below, the original court issued two separate judgments:

   An order *granting the defendant's traditional motion for summary judgment* disposing of all the petitioners' claims, whereas only one of the petitioners' six claims was presented in the defendant's motion for summary judgment.

   A "final" dismissal without prejudice of the defendant's claims against all parties.

   The petitioners argued that neither order was final. They contended that they only needed to provide prima facie evidence demonstrating that they **had not** signed the subject agreement. The defendant had falsely claimed to the original court that the petitioners had signed the agreement, leading the court to inadvertently grant summary judgment on the petitioner's breach of contract claim.

II. The Initiative Step: The Order(s) Need to Be Reviewed.

A. One Judgment Rule: Rule 301 provides that "only one final judgment shall be rendered in any cause except where it is otherwise specially provided by law," such as in "some probate and receivership proceedings, in which multiple judgments final for purposes of appeal can be rendered on certain discrete issues." Tex. R. Civ. P. 301; *Lehmann*, 39 S.W.3d at 193.[7] Thus, only one of the two orders in the case study can purportedly be a final judgment.

B. The First Order: The "*Order Granting Defendant's Traditional Motion for Summary Judgment*" is not a final judgment because:

It did not actually dispose of all claims and parties, nor did it state with unmistakable clarity that it is a final judgment as to all claims and all parties.

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[5] *Mabon Ltd. V. Afri-Carib Enters., Inc*., 369 S.W 3d 809, 812 (Tex. 2012).

[6] *See Beck v. Beck*, 771 S.W.2d 141, 141-42 (Tex. 1989) (citing *Baker v. Goldsmith,* 582 S.W.2d 404 (Tex. 1979; *Hanks v. Rosser,* 378 S.W.2d 31, 34 (Tex. 1964)).

[7] (Citing *Crowson v. Wakeham*, 897 S.W.2d 779, 783 (Tex. 1995) (involving probate proceedings); *Huston v. Federal Deposit Ins. Corp.*, 800 S.W.2d 845, 847 (Tex. 1990) (involving receivership proceedings)).

Therefore, even if there are remaining issues that were not addressed in the motion for summary judgment, the order can still be considered final if it clearly indicates that it is the final judgment disposing of all claims and parties involved. This is often referred to as **an "erroneous but final" judgment**. *Lehmann*., 39 S.W.3d at 193; *Continental Airlines, Inc.*, 920 S.W.2d at 276.

As a rule of thumb, a trial court can only grant summary judgment on issues explicitly raised in the motion for summary judgment. If the court disposes of issues not raised in the motion, the judgment is erroneous, resulting in reversible error. This is because the opposing party did not have a fair opportunity to present evidence or arguments on those unraised issues. *See Blancett v. Lagniappe Ventures, Inc*., 177 S.W.3d 584, 592 (Tex. App.—Houston [1st Dist.] 2005, no pet.); *Positive Feed, Inc. v. Guthmann*, 4 S.W.3d 879, 881 (Tex. App.—Houston [1st Dist.] 1999, no pet.) ("*When, as here, a trial court grants more relief by summary judgment than requested, by disposing of issues never presented to it, the interests of judicial economy demand that we reverse and remand as to those issues but address the merits of the properly presented claims.*"). Unaddressed issues or claims cannot be a basis for summary judgment. *See Chessher v. Southwestern Bell Tel. Co*., 658 S.W.2d 563, 564 (Tex. 1983) (per curiam).

A summary judgment order that resolves only a portion of a case, such as a breach of contract claim among multiple claims, is generally not immediately appealable. This is because the case remains ongoing until all claims are resolved. Moreover, even if the order addresses a substantial part of the case, it may still be considered interlocutory and not appealable unless it satisfies both prongs of the *Lehmann Final Judgment Rule*. Failing to meet these criteria can result in the appeal being dismissed, leading to additional costs and delays for the parties involved.

C. The Second Order: Titled "Order of Dismissal and Final Judgment" is not final.

This Order only "**dismissed the defendant's claims against the plaintiff and third-party defendant without prejudice**." It did not dismiss all claims of the plaintiff and third-party defendant against the defendant. Again, for an order to be a final judgment and appealable, it must actually dispose of all claims and parties; or it states with unmistakable clarity that it is a final judgment as to all claims and all parties." Similarly, simply labeling an order "final" does not make it so. *Lehmann*., 39 S.W.3d at 193 at 205.

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CAUSE NO. 2021-81537

WAYNE MAGNESS,	§	**IN THE DISTRICT COURT**
Plaintiff,	§	
	§	
vs.	§	**HARRIS COUNTY, TEXAS**
	§	
AMERICAN DREAM INSPECTIONS, TX, LLC	§	
	§	
Defendant.	§	**125TH JUDICIAL DISTRICT**

ORDER OF DISMISSAL AND FINAL JUDGMENT

On this day came on to be heard Defendant American Dream Inspections, Tx, LLC's Notice of Nonsuit and Dismissal as to its claims against Plaintiff Wayne Magness and Third-Party Defendant Phuong Tonya Tran. It is therefore,

ORDERED that all claims asserted by Defendant American Dream Inspections, Tx, LLC against Plaintiff Wayne Magness are hereby dismissed without prejudice to the refiling of same. It is further

ORDERED that all claims asserted by Defendant American Dream Inspections, Tx, LLC against Third-Party Defendant Phuong Tonya Tran are hereby dismissed without prejudice to the refiling of same.

This Order is a final judgment of this matter.

IT IS FURTHER ORDERED that all costs of suit be and are hereby taxed against the party by whom they were incurred.

SIGNED this ___ day of _____, 2024.

Signed:
2/8/2024

JUDGE PRESIDING

D. <u>Conclusion</u>: None of the orders in the case study satisfied the *Lehmann Final Judgment Rule.* Neither order disposes of all claims and parties. Nor does any of the orders state with unmistakable clarity state that it "is a final judgment as to all claims and all parties." *Lehmann*, 39 S.W.3d at 195. Therefore, both orders are not actually final and thus non-appealable as a matter of law.[8]

[8] If a defendant files a motion for summary judgment on one of four claims raised by the plaintiff, and the trial court grants the motion and signs a judgment that states that it is final and that the plaintiff takes nothing, <u>the judgment is erroneous but final and appealable,</u> and will be reversed and remanded. *See Lehmann*, 39 S.W.3d at 204.

III. Bill of Review Standard (Three Rules)

A. First Rule - Only the original court that rendered the "final judgment" has exclusive subject matter jurisdiction to hear the bill of review. *See Richards v. Comm'n for Lawyer Discipline,* 81 S.W.3d 506, 508 (Tex. App.- Houston [1st Dist.] 2002, no pet.). In *Richards*, the First Court of Appeals found that the 165th Court lacked subject matter jurisdiction, and held: "*As stated above, the 165th District Court was without subject matter jurisdiction to hear the bill of review. We vacate the judgment and dismiss the cause for want of jurisdiction."* *Id.* at 510. (Emphasis added.)

B. Second Rule - The bill of review standard: To succeed on a bill of review, the bill-of-review petitioner must plead and prove three elements: (1) *a meritorious claim* to the underlying cause of action, (2) which plaintiff was prevented from making by the opposing party's fraud, accident or wrongful conduct or *official mistake*, (3) *unmixed* with any fault or negligence on plaintiff's own part. *Mabon*, 369 S.W 3d at 812.

C. Third Rule – The *Baker* Inquiry: only prima facie proof inquiry needs to be presented at the bill-of-review pre-trial hearing according to *Beck* and *Baker*. Thus, the only relevant inquiry is whether the petitioner has presented prima facie proof of a meritorious defense to the cause of action alleged to support the judgment**.** *See Beck,* 771 S.W.2d at 989 (citing *Baker v. Goldsmith,* 582 S.W.2d 404 (Tex. 1979; *Hanks v. Rosser,* 378 S.W.2d 31, 34 (Tex. 1964)).

1. **<u>Element 1 of the bill of review</u>: the petitioner must satisfy this burden. Via affidavits, a petitioner could show a meritorious defense to the cause of action alleged to support the judgment, according to *Beck* and *Baker*.**

   In our case study, the petitioners maintain that the agreement with the defendant is invalid. The petitioner, a non-English speaker, testified that she never signed the inspection agreement. Her husband, another petitioner, was required to be present to explain any documents whenever she was asked to sign. The purported signature on the inspection agreement is merely a printed name and a timestamp, lacking a handwritten signature. The purported signature on the inspection agreement (Appendix A) was not her actual signature, digital or otherwise. The petitioners have submitted three authenticated documents containing the wife's genuine signature for comparison. On the face of the documents, the court could easily determine the authenticity of the purported signature. Therefore, there was a genuine dispute of material fact regarding the petitioners' breach of contract claim.

   - **The case study: This is the inspection agreement submitted as the defendant's summary judgment evidence: (Exhibits A and B)**

Agreements

Inspections Agreement	2020-10-12 9:45:10 PM CDT
Phuong Tran (PhuongTran108)	✔ Agreed on 2020-10-13 9:33:57 AM CDT Signature: Tanya Tran

(Exhibit B – Inspection Agreement)

- **This is petitioner's true signature, authenticated by her affidavit attached to her petition for bill of review:**

dotloop signature verification: dtlp.us/0vWc-x5X1-LKvv

PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC) 08-18-2014

EQUAL HOUSING OPPORTUNITY

ADDENDUM FOR PROPERTY SUBJECT TO MANDATORY MEMBERSHIP IN A PROPERTY OWNERS ASSOCIATION

(NOT FOR USE WITH CONDOMINIUMS)

ADDENDUM TO CONTRACT CONCERNING THE PROPERTY AT

18734 Prince Ranch dr, Cypress, TX 77433
(Street Address and City)

Bridgeland HOA / 281-304-1318
(Name of Property Owners Association, (Association) and Phone Number)

A. SUBDIVISION INFORMATION: "Subdivision Information" means: (i) a current copy of the restrictions applying to the subdivision and bylaws and rules of the Association, and (ii) a resale certificate, all of which are described by Section 207.003 of the Texas Property Code.

(Check only one box):

☐ 1. Within _____ days after the effective date of the contract, Seller shall obtain, pay for, and deliver the Subdivision Information to the Buyer. If Seller delivers the Subdivision Information, Buyer may terminate the contract within 3 days after Buyer receives the Subdivision Information or prior to closing, whichever occurs first, and the earnest money will be refunded to Buyer. If Buyer does not receive the Subdivision Information, Buyer, as Buyer's sole remedy, may terminate the contract at any time prior to closing and the earnest money will be refunded to Buyer.

☐ 2. Within _____ days after the effective date of the contract, Buyer shall obtain, pay for, and deliver a copy of the Subdivision Information to the Seller. If Buyer obtains the Subdivision Information within the time required, Buyer may terminate the contract within 3 days after Buyer receives the Subdivision Information or prior to closing, whichever occurs first, and the earnest money will be refunded to Buyer. If Buyer, due to factors beyond Buyer's control, is not able to obtain the Subdivision Information within the time required, Buyer may, as Buyer's sole remedy, terminate the contract within 3 days after the time required or prior to closing, whichever occurs first, and the earnest money will be refunded to Buyer.

☐ 3. Buyer has received and approved the Subdivision Information before signing the contract. Buyer ☐ does ☐ does not require an updated resale certificate. If Buyer requires an updated resale certificate, Seller, at Buyer's expense, shall deliver it to Buyer within 10 days after receiving payment for the updated resale certificate from Buyer. Buyer may terminate this contract and the earnest money will be refunded to Buyer if Seller fails to deliver the updated resale certificate within the time required.

☑ 4. Buyer does not require delivery of the Subdivision Information.

The title company or its agent is authorized to act on behalf of the parties to obtain the Subdivision Information ONLY upon receipt of the required fee for the Subdivision Information from the party obligated to pay.

B. MATERIAL CHANGES. If Seller becomes aware of any material changes in the Subdivision Information, Seller shall promptly give notice to Buyer. Buyer may terminate the contract prior to closing by giving written notice to Seller if: (i) any of the Subdivision Information provided was not true; or (ii) any material adverse change in the Subdivision Information occurs prior to closing, and the earnest money will be refunded to Buyer.

C FEES: Except as provided by Paragraphs A, D and E, Buyer shall pay any and all Association fees or other charges associated with the transfer of the Property not to exceed $**250** and Seller shall pay any excess.

D. DEPOSITS FOR RESERVES: Buyer shall pay any deposits for reserves required at closing by the Association.

E. AUTHORIZATION: Seller authorizes the Association to release and provide the Subdivision Information and any updated resale certificate if requested by the Buyer, the Title Company, or any broker to this sale. If Buyer does not require the Subdivision Information or an updated resale certificate, and the Title Company requires information from the Association (such as the status of dues, special assessments, violations of covenants and restrictions, and a waiver of any right of first refusal), ☐ Buyer ☑ Seller shall pay the Title Company the cost of obtaining the information prior to the Title Company ordering the information.

NOTICE TO BUYER REGARDING REPAIRS BY THE ASSOCIATION: The Association may have the sole responsibility to make certain repairs to the Property. If you are concerned about the condition of any part of the Property which the Association is required to repair, you should not sign the contract unless you are satisfied that the Association will make the desired repairs.

Tanya Phuong Tran dotloop verified 10/06/20 6:56 PM CDT GLZN-MRDB-KQBV-A9VH
Buyer

Seller

Buyer

Seller

The form of this addendum has been approved by the Texas Real Estate Commission for use only with similarly approved or promulgated forms of contracts. Such approval relates to this contract form only. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 936-3000 (www.trec.texas.gov) TREC No. 36-8. This form replaces TREC No. 36-7.

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The only relevant inquiry at the bill-of-review pretrial hearing is whether the petitioners have presented prima facie proof of a meritorious defense to the

cause of action alleged to support the judgment.[9] **The petitioners have.** In the instant case, the original court granted the summary judgment on the defendant's agreement, which was NOT signed by the petitioners, according to their affidavit.

It is undisputed that the defendant has not moved for summary judgment on the petitioners' DTPA, misrepresentation, breach of express warranty, unconscionability, and negligence misrepresentation.

2. **Element 2 and Element 3 of the Bill of Review:** The petitioners were prevented from making their meritorious claims by clerical error (official mistake) which stated that the order was the final judgment. But for the official mistake, the petitioners could have proceeded with other claims. This error was not caused by any fault or negligence on the petitioners' part. *See Mabon Ltd.*, 369 S.W.3d at 812.

IV. Defendants' Other Four (4) Objections

A. The defendant in the case study asserts that the original court must dismiss the bill of review under Rule 91a because it lacks the new cause number and service, arguing that Texas procedure requires a new lawsuit with a different cause number for a bill of review.

The petitioners' response: First, "Defendant's Rule 120a Special Appearance for the Purpose of Filing Rule 91a Motion to Dismiss" is defective, because it was not verified. Second, this objection should be overruled as moot. Initially, the petitioners filed their original petition for bill of review as a new lawsuit. It was assigned a new cause number by the new court. Subsequently, the Chief Administrative Judge correctly transferred this cause number back to the original court that rendered the judgment, the one with exclusive subject matter jurisdiction. Service of citation was unnecessary because the defendant has made an appearance in both cause numbers. *See* Tex. R. Civ. P. 120.[10]

Additionally, on the next day, the petitioners filed a copy of the original petition for bill of review in the original court as an extra precaution. The reason is that the original court has exclusive jurisdiction to hear the bill of review. *See Richards v. Comm'n for Lawyer Discipline,* 81 S.W.3d at 508.

[9] *See Beck,* 771 S.W.2d at 989.

[10] "The defendant may, in person, or by attorney, or by his duly authorized agent, enter an appearance in open court. Such appearance shall be noted by the judge upon his docket and entered in the minutes and shall have the same force and effect as if the citation had been duly issued and served as provided by law." Tex. R. Civ. P. 120.

B. The defendant objects to the petitioners' motion to correct clerical errors, arguing that the original court lost its plenary power over the merits of the case to hear this motion. According to Rule 329b(f), after a trial court's plenary power has expired, a bill of review is the exclusive remedy to set aside a final judgment rendered by a trial court with jurisdictional power. See *Middleton v. Murff*, 689 S.W.2d 212, 213 (Tex. 1985).

> **The petitioners' response:** This objection should be overruled as to whether the court lost its plenary power. (It has not.) The original court stated at the hearing that, if neither of the orders was final, its plenary power has not expired, rendering the bill of review unnecessary. However, if one of the orders was final, Plaintiff's "Motion to Correct the Judgment" becomes moot, and the bill of review is triggered as Defendant asserts, and the original court shall hear the bill of review.

C. The defendant argues that the bill of review should be dismissed because the petitioners failed to appeal, therefore, the petitioners failed to present prima facie proof of meritorious grounds as a pre-trial matter. Citing *Beck ,*771 S.W.2d at 141-42.

> **The petitioners' response:** This objection should be overruled. Lack of appeals is not a bill-of review requirement according to the ruling of *Beck v. Beck*, 771 S.W.2d 141, 141- 42 (Tex. 1989). Interestingly, the defendant in the case study cited but completely misunderstood *Beck v. Beck*, 771 S.W.2d 141, 141-42 (Tex. 1989). In fact, the Texas Supreme Court's ruling in that case directly supports the petitioners' position, refuting the defendant's claim that the bill of review should be dismissed due to the lack of appeal. The *Beck* Court explained:
>
> > Violet Beck filed a petition for bill of review seeking to set aside a divorce judgment. Following a pre-trial hearing, the trial court dismissed the petition, holding that Violet had failed to make a prima facie showing of her meritorious defense to the divorce action. The court of appeals affirmed, although on different grounds. The court of appeals assumed, without deciding, that Violet had made out a prima facie defense but nevertheless affirmed the order of dismissal because it concluded that her sworn pleadings, as a matter of law, established her negligence. *We reverse the judgment of the court of appeals because it has erroneously converted the pre-trial hearing authorized by Baker v. Goldsmith*, 582 S.W.2d 404 (Tex. 1979), *for inquiry into the meritorious defense element of petitioner's bill of review, into a summary judgment proceeding on all elements of Violet's bill of review*.
> >
> > It has long been the rule that a party seeking to invoke a bill of review to set aside a final judgment must prove three

elements: (1) *a meritorious defense to the cause of action alleged to support the judgment*; (2) an excuse justifying the failure to make that defense which is based on the fraud, accident or wrongful act of the opposing party, *or official errors*; and (3) an excuse *unmixed with the fault* or negligence of the petitioner. *Hanks v. Rosser*, 378 S.W.2d 31, 34 (Tex. 1964). **In *Baker v. Goldsmith* we reiterated these traditional elements and outlined the trial procedure to be utilized for bills of review.**

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To establish a prima facie defense in this case, Violet argued that her absence from trial weighed significantly in the trial court's determination that the best interests of the children would be served by the appointment of Merle, the father, as managing conservator. Violet further argued that Merle was awarded approximately 99% of the community property and that had she been at trial the court would not have made such a disproportionate division. Merle's attorney essentially conceded at the pre-trial hearing that Violet had made out a prima facie defense when he stated: "And I would be willing to stipulate that there is a meritorious defense, I'm not real sure what it is, but for purposes of this hearing I will stipulate to that." The trial court agreed, stating, "I'm convinced that she has [a] good claim." Nevertheless, the trial court, without further explanation, denied Violet's bill of review relief for failing to show a prima facie defense.

*****

The court of appeals concluded [as Defendant wished the original court would follow the court of appeals instead of the Texas Supreme court] **that Violet was negligent in failing to diligently pursue other remedies such as a motion for new trial or appeal by writ of error**. *The flaw in this approach is that the court of appeals treated the pre-trial hearing concerning only the issue of Violet's meritorious defense as a summary judgment hearing on all elements of Violet's petition for bill of review.* Such review would be erroneous even if Merle had filed a motion for summary judgment, because no summary judgment record was developed, and it is improper to use summary judgment to determine whether pleadings fail to state a cause of action. *Massey v. Armco Steel Co.*, 652 S.W.2d 932, 934 (Tex. 1983); *Texas Dep't of Corrections v. Herring*, 513 S.W.2d 6, 10 (Tex. 1974).

We hold that in conducting the pre-trial hearing [for a

> **bill of review] authorized by *Baker v. Goldsmith,* the only relevant inquiry is whether the petitioner has presented prima facie proof of a meritorious defense** [to the cause of action alleged to support the judgment.] Violet did in this case. We reverse the judgment of the court of appeals and remand the cause to the trial court for further proceedings in accordance with this opinion.

(Emphasis added.)

Applying *Beck* to the case study, the sole relevant inquiry is whether the petitioners have established a prima facie case for a meritorious defense to the defendant's claim. They have. The defendant's claim, which was the basis for the original summary judgment, is that the inspection agreement disclaimed liability for termite inspections. However, the petitioners have presented prima facie evidence that they did not sign the inspection agreement, thereby creating a genuine issue of material fact.

Moreover, Texas follows the one final order rule. Because neither order was final, they both are interlocutory, and non-appealable. Texas law does not permit appeals from interlocutory orders, which are orders made during the course of litigation but before the entry of final judgment. *See City of Beaumont v. Guilloroy*, 751 S.W.2d 491, 492 (Tex. 1988) (per curiam). Thus, any appeal either on the 90th day after the Court signed the order would be futile and dismissed by the Court of Appeals.

D. Defendant's argument that the first "Order Granting Defendant's Traditional Motion for Summary Judgment" did dismiss "all of Plaintiff's claims."

Unfortunately, this is precisely why such an order was erroneous by official mistake. It dismissed claims that were not even mentioned or addressed in Defendant's motion for traditional summary judgment. *See Blancett*, 177 S.W.3d at 592; *Positive Feed, Inc.*, 4 S.W.3d 879, 881. Unaddressed issues or claims cannot be a basis for summary judgment. *See Chessher*, 658 S.W.2d at 564. The portion of a final summary judgment that is rendered on the petitioners' entire case under these circumstances predictably will be reversed because the judgment grants more relief than that requested.

V. Conclusion

The petitioners in the case study pleaded that: 1) they have endured significant hardship. 2) The original court possesses exclusive jurisdiction over the bill-of-review. 3) Neither of the two prior orders constituted a final judgment. 4) There are outstanding causes of action that were not addressed in the defendant's motion for summary judgment. 5) The three requirements for a bill of review have been satisfied. 6) Especially, the petitioners have shown a meritorious defense to the cause of action alleged to support the judgment, according to *Beck* and *Baker*: the inspection agreement was not signed by the petitioners. To promote judicial efficiency, the original court

should either vacate the judgment due to clerical error (official mistake) or grant the petitioners' petition for bill of review.

Practical consideration: the original court should save an unnecessary burden of requiring the petitioners to appeal to the Court of Appeals and then return to the same court. That would be an unnecessary waste of judicial economy and resources for the court, the parties as well as the taxpayers!