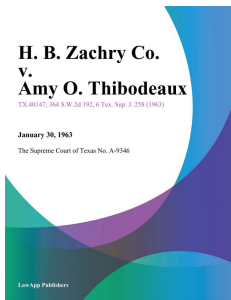


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H B ZACHRY CO V AMY O THIBODEAUX EBOOKS 2019



Author: The Supreme Court of Texas No. A-9346

Realese Date: Expected @@expectedReleaseDate@@

Per Curiam Amy Thibodeaux sued Zachry and the City of San Antonio. On April 18, 1962, the trial court granted Zachry's motion for summary judgment. There was no severance of Zachry's suit from that against the City. The order granting Zachry's motion contained a notice of appeal. On May 3, 1962, on motion of the plaintiff Thibodeaux, the trial court dismissed the suit as to the City. This order did not refer to the Zachry order and did not contain a notice of appeal, and none was thereafter given. The Court of Civil Appeals held that both orders (of April 18 and May 3) were interlocutory and that no final judgment had been rendered. Hence, it dismissed the appeal ""without prejudice to have a final judgment entered."" 361 S.W.2d 579. In McEwen v. Harrison, 162 Tex. 125, 345 S.W.2d 706 (1961) an interlocutory default judgment was taken against Texaco, Inc. Thereafter the plaintiffs took a non-suit as to the other two defendants. This Court said that upon the taking of the non-suit as to the remaining defendants ""the default judgment taken against Texaco thereupon became final."" 345 S.W.2d at 707. Upon the second appeal in the McEwen case, it was held that the order of dismissal as to the two remaining defendants was a final judgment; and notwithstanding the earlier default judgment against Texaco, the time for appeal or writ of error by Texaco started to run from the entry of the final judgment.--the order disposing of the remaining defendants. Texaco, Inc. v. McEwen, 356 S.W.2d 809, writ refused, n.r.e.

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