

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 CA 1223

JEW
JTA by JEW

TRACER PROTECTION SERVICES, INC.
AND TRACER ARMED SERVICES, INC.

VERSUS

DAVID G. BURTON, SR. AND RHONDA W. HAYES

Judgment Rendered: MAR - 6 2012

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 587,952

Honorable R. Michael Caldwell, Judge

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BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

McCleendon J. concurs, in part and dissents in part with reasons. by JEW

WELCH, J.

Plaintiffs, Tracer Protection Services, Inc. and Tracer Armed Services, Inc. (sometimes collectively referred to as "Tracer"), appeal a partial summary judgment decreeing that an agreement executed on February 12, 2004 is a valid and binding agreement and transferred ownership of Tracer stock to defendant, David Burton, applying the after acquired title doctrine, and declaring certain documents invalid. Tracer also seeks review of the denial of its motion for summary judgment on the issue of the validity of the February 12, 2004 agreement and the issue of Tracer's ownership. We reverse the trial court's granting of Mr. Burton's motion for partial summary judgment, affirm the denial of Tracer's motion for partial summary judgment, and remand.

BACKGROUND

On February 26, 2010, Tracer filed this lawsuit seeking damages and injunctive relief against Mr. Burton and Rhonda Hayes. It later amended its petition to add React Security, LLC, a company formed by Mr. Burton and Ms. Hayes, as a defendant. In the petition, Tracer alleged that while a Tracer employee, Mr. Burton used Tracer funds to pay his personal expenses, converted company equipment to his personal benefit, gave himself unauthorized raises, and mismanaged Tracer business, assets, and employees. Tracer further alleged that Mr. Burton and Ms. Hayes conspired to misappropriate and convert Tracer's assets and trade secrets for their own personal use and benefit. Tracer sought to recover damages, alleging that Mr. Burton's actions constituted a breach of his fiduciary duty and that the actions of Mr. Burton and Ms. Hayes constitute unfair trade practices under Louisiana law. Mr. Burton, Ms. Hayes, and React Security (collectively referred to as "Mr. Burton") filed an answer, a reconventional demand, and a third party demand against Tracer. They also filed third party demands naming as defendants Clifton "Ted" Redlich, Rene Ortlieb, III, Ortlieb

Venture Capital Corporation, Adelyn Ortlieb, and Ayranne Ortlieb Webb, all of whom Mr. Burton alleged claimed an ownership interest in Tracer. Mr. Burton alleged that Mr. Redlich and Mr. Ortlieb illegally took control of Tracer's assets and that they created false documents to give the impression that they owned Tracer, when in fact, Tracer was owned 100% by Mr. Burton.

Tracer and Mr. Burton filed cross motions for partial summary judgment on the issue of the ownership of Tracer. In his motion for partial summary judgment, Mr. Burton insisted that he acquired ownership of 100% of Tracer's stock on February 12, 2004, pursuant to the unambiguous terms of a written agreement signed by himself and Mr. Redlich in the presence of attorney Marvin Owen. Secondly, Mr. Burton asked the court to declare certain documents, confected in 2009 and 2010, through which Mr. Redlich and the Ortlieb interests claimed to own 100% of Tracer's stock, to be null and void on the basis that Mr. Redlich previously conveyed 100% ownership of Tracer to Mr. Burton and because Mr. Ortlieb, a convicted felon, is forbidden by law from owning 50% of Tracer's stock.

In its motion for partial summary judgment, Tracer asked the court to determine that the February 12, 2004 document did not and could not have transferred ownership of Tracer to Mr. Burton. First, Tracer argued, the document is absolutely null because it contradicted the terms of and requirements of documents executed in connection with Tracer's bankruptcy reorganization, pursuant to which, all of Tracer Protection Services Inc.'s (TPSI) shares, originally owned by Mr. Burton, were transferred to Ansted, Inc., a company owned by Mr. Redlich. Secondly, Tracer urged that the document could not have transferred full ownership of Tracer because on the date it was signed, Mr. Ortlieb's company, Alsace Lorraine Corporation (ALC), owned 50% of the shares of Ansted, Inc., making ALC a 50% owner of Tracer. Furthermore, Tracer insisted, the proposal could not have transferred ownership of Tracer because it was signed by Mr.

Redlich in his personal capacity, there is no indication that he signed on behalf of Ansted, Inc., and none of the corporate formalities for transferring ownership of Tracer stock had been satisfied. Lastly, Tracer submitted, the document could not have transferred Tracer stock to Mr. Burton because it does not state a price, but left the amount Mr. Redlich was to receive for the sale of Tracer stock blank, which is a clear indication that there was no meeting of the minds as to the price. Tracer also asked that the court enter partial summary judgment decreeing that the Ortlieb interests own 50% of Tracer.

The parties introduced considerable evidence in support of and in opposition to the cross motions for summary judgment on the issue of Tracer's ownership. This evidence reflects that Mr. Burton formed TPSI in 1990 and was the sole shareholder of TPSI's stock. On February 9, 1996, Mr. Redlich and Ann Redlich incorporated Ansted, Inc. Both Mr. and Mrs. Redlich were listed as first directors of the corporation in the articles of incorporation.

In 1996, TPSI filed a petition for relief under Chapter 11 of the United States Bankruptcy Code. In late 1997, the bankruptcy court confirmed a plan of reorganization that included four agreements, executed on October 6, 1997. Pursuant to these agreements, Mr. Burton transferred all of his shares of stock in TPSI, representing 100% ownership of the company, to Ansted, Inc. for the sum of \$100,000.00, which was deposited into the registry of the bankruptcy court. Ansted, Inc. was appointed to manage Tracer, and Mr. Burton was to continue to be employed by Tracer and serve as its nominal president. The parties also executed a stock option agreement in which Ansted, Inc. gave Mr. Burton the option to purchase Tracer's stock between September 5, 2001 through December 21, 2001 for \$340,000.00.

According to the affidavits of Mr. Redlich and Mr. Ortlieb, after purchasing Tracer out of bankruptcy, Ansted, Inc. needed an infusion of capital. They attested

that in November 1997, Mr. Ortlieb's company, ALC, bought 50% of Ansted, Inc. for \$75,000.00. Attached to Mr. Redlich's affidavit is a stock certificate issued to ALC for 50 shares of Ansted, Inc. The stock certificate does not list a date of the transfer. Tracer also submitted a check written from ALC to "Ted Redlich" in the amount of \$75,000.00, dated November 1, 1997, with a notation that it was for 50% of the shares of Ansted, Inc.'s stock. In 2001, Mr. Redlich formed and incorporated Tracer Armed Services, Inc. (TASI) as a division of TPSI in order to separate the armed services line of business from the unarmed guard services division.

It is undisputed that in 2004, Mr. Redlich and Mr. Burton discussed the sale of Tracer to Mr. Burton. It is further undisputed that Mr. Redlich and Mr. Burton met at the law office of attorney Marvin Owen on February 12, 2004, and signed a document entitled "Agreement," which had been prepared before the visit by Mr. Burton. This document provides as follows:

This agreement is made by and between David G. Burton and Clifton J. Redlich regarding Tracer Protection Services, Inc. and Tracer Armed Services, Inc. This agreement supersedes the agreement that was submitted in Bankruptcy, which was a revision of our original verbal agreement. The purpose of this agreement is to honor the terms and conditions of our original agreement, which are as follows:

David Burton, 100% owner of Tracer Protection Services, Inc. was seeking bankruptcy protection and required financial assistance in order to successfully reorganize. On _____ both parties agreed that Clifton would invest _____ dollars into. For his investments, Clifton would be repaid his entire investment by Tracer plus he would receive compensation from Tracer in the amount of One Hundred Thousand dollars per year, for the rest of his life. In order to satisfy the court, Clifton would take temporary possession of Tracer Protection Services, Inc. stock while in bankruptcy. Although in possession of the stock while in bankruptcy, Clifton would only have control of the company financials, and David would maintain all operational authority. Once the bankruptcy was closed, all shares Tracer Protection Services, Inc. stock would be returned to David.

As of now the bankruptcy is closed and Clifton is receiving compensation in the amount [sic]One Hundred Thousand Dollars per year and is receiving compensation in the amount of Twenty Thousand Dollars per year for unpaid portions of his investment and

unpaid compensation. A complete audit will be performed forthright to determine the exact amounts of unpaid investments and compensation and will be filed as an addendum to this agreement. This audit will be completed and submitted on an annual basis until all unpaid investments and compensation have been paid. . . .

. . . All payments for unpaid investments and compensation will be approved and made by David and shall be made as soon as the company is able at a minimum amount of Ten Thousand Dollars per year. . . .

During this agreement a new company, Tracer Armed Services, Inc. was formed as an Armed Division of Tracer. The stock for Tracer Armed Services, Inc. is currently in Clifton's name, however for the purpose of this agreement, this company shall be considered an asset of Tracer Protection Services, Inc. and as of the execution date of this agreement David will own 100% of both Tracer Protection Services, Inc. and Tracer Armed Services, Inc[.] and this shall be indicated accordingly on all corporate documents.

In his affidavit, Mr. Redlich attested that he and Mr. Burton tentatively agreed to general terms of the sale and met with Mr. Owen to prepare a legally binding document and discuss specific terms, including payment. He further stated that he believed the February 12, 2004 document was nothing more than a letter of intent or a proposal setting forth the terms to be included in Mr. Owen's draft agreement. Mr. Redlich insisted that he never did execute a final binding contract.

In his affidavit, Mr. Owen stated that Mr. Burton and Mr. Redlich met in his office for approximately 10-15 minutes, during which time they reviewed and discussed the history of the TPSI and TASI and agreed that a transfer of ownership would take place to Mr. Burton. Mr. Owen attested that Mr. Burton had prepared a layman's version of a buy and sell agreement that Mr. Redlich had previously agreed with and acknowledged at the meeting he agreed with. During the meeting, Mr. Redlich provided Mr. Burton with TASI's corporate documents, including its articles of incorporation, a meeting of the board of directors naming Mr. Redlich and Lisa Thompson as corporate officers, and the company's bylaws. Following this meeting, Mr. Owen prepared a more specific buy-sell agreement and a promissory note reflecting a sales price in the amount of \$506,605.83. Neither Mr.

Burton nor Mr. Redlich signed these documents.

At the hearing on the cross motions for summary judgment, the trial court found that the undisputed evidence established that Mr. Burton and Mr. Redlich in fact signed the February 12, 2004 agreement. The court further concluded that the agreement is a valid contract that conveyed whatever stock Mr. Redlich owned in the Tracer companies to Mr. Burton. The court specifically stated that there may be questions about exactly what Mr. Redlich owned on the day he signed the agreement, but the court was not addressing that issue at this point. The court rejected each of the bases upon which Tracer attacked the validity of the purported stock transfer, making the following rulings as to each: (1) the agreement did not evidence a bankruptcy fraud; (2) the fact that Mr. Redlich signed the document in his individual capacity did not invalidate the document; (3) Mr. Ortlieb's lack of consent to the transfer of Tracer stock did not invalidate the agreement, questioning why, if Mr. Ortlieb was a shareholder in Ansted, Inc., he was not so listed on Ansted Inc.'s liquidation documents; and (4) the price for the sale had been set at \$506,250.00, the amount Mr. Redlich listed in a financial statement as a note receivable from Tracer two months after signing the agreement.

The court also concluded that whatever assets of Ansted, Inc. Mr. Redlich acquired when his company was liquidated in November 2006 were conveyed to Mr. Burton pursuant to the after acquired title doctrine. Lastly, the court found that the purported conveyance of Tracer's stock in 2009 or 2010 by Mr. Redlich and Mr. Ortlieb was invalid.

In accordance with its rulings at the hearing, the court entered judgment denying Tracer's motion for partial summary judgment and granting Mr. Burton's motion for partial summary judgment. Specifically, the trial court entered judgment decreeing that: the February 12, 2004 agreement is a valid and binding contract by which Mr. Redlich conveyed to Mr. Burton whatever stock in Tracer

that Mr. Redlich owned on that date; the after acquired title doctrine applied so that any stock in the Tracer companies Mr. Redlich thereafter acquired upon the dissolution of Ansted, Inc. also became the property of Mr. Burton; and the documents dated 2009 and 2010, which are the subject of Mr. Burton's motion for partial summary judgment and all stock certificates issued in connection therewith, insofar as they are inconsistent with the 2004 Agreement, are invalid.

The trial court certified the judgment as a final, appealable judgment pursuant to La. C.C.P. art. 1915(B)(1). In the designation, the court set forth the following written reasons for certifying that there is no just reason for the delay: (1) the validity and the enforceability of the February 12, 2004 agreement is a crucial element and central issue in this case; (2) all, or substantially all, of the other claims in this suit are affected by this judgment; (3) this judgment bears a significant relationship to the unadjudicated claims; and (4) future developments in the case will likely not moot any appeal.

DISCUSSION

Jurisdiction

Appellate courts have the duty to examine subject matter *sua sponte*, even when the parties do not raise the issue. **Motorola, Inc. v. Associated Indemnity Corporation**, 2002-0716 (La. App. 1st Cir. 4/30/03), 867 So.2d 715, 717. A partial summary judgment rendered pursuant to La. C.C.P. art. 966(E) may only be immediately appealed during an ongoing litigation if it has been designated as a final judgment by the trial court. La. C.C.P. art. 1915(B). Because the trial court gave reasons for certifying the judgment as immediately appealable, the proper standard of review in assessing the propriety of the certification is whether the trial court abused its discretion. **R.J. Messinger, Inc. v. Rosenblum**, 2004-1664 (La. 3/2/05), 894 So.2d 1113, 1122.

The issue of whether Mr. Burton acquired an ownership in interest in Tracer

by virtue of the February 12, 2004 agreement affects all of the claims asserted in this litigation. Whether Mr. Burton is an owner or was an employee of Tracer is determinative of whether Tracer can pursue any of the damage or injunctive relief claims asserted against Mr. Burton in its main demand. The validity of that agreement also determines whether Tracer can assert an alternative breach of contract claim. Moreover, Mr. Burton can only pursue the claims he is asserting in his reconventional demand and third party demands if he in fact has an ownership interest in Tracer. Under these circumstances, we find no abuse of discretion in the trial court's determination that there is no just reason for the delay and in certifying the summary judgment as immediately appealable pursuant to La. C.C.P. art. 1915(B).

Summary Judgment

A motion for summary judgment should be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(B). An appellate court reviews summary judgments *de novo*, using the same criteria that govern the trial court's consideration of whether summary judgment is appropriate. **Aaron & Turner, L.L.C. v. Perret**, 2007-1701 (La. App. 1st Cir. 5/4/09), 22 So.3d 910, 914, writ denied, 2009-1148 (La. 10/16/09), 19 So.3d 476.

A trial court may not make credibility determinations on a motion for summary judgment. Credibility of a witness is a question of fact. In determining a motion for summary judgment, the court must assume that all affiants are credible. **Hutchinson v. Knights of Columbus, Council No. 5747**, 2003-1533 (La. 2/20/04), 866 So.2d 228, 234.

After examining the evidence in light of the trial court's reasons for granting summary judgment, it is evident that the trial court made several key credibility

determinations in finding the February 12, 2004 agreement to be a valid and binding contract. The trial court expressly stated its disbelief that Mr. Ortlieb's company, ALC, was an Ansted, Inc. shareholder at the time the agreement was signed by Mr. Redlich and Mr. Burton because the Ansted, Inc. 2006 dissolution documents did not list ALC as a shareholder. However, in sworn affidavits, Mr. Ortlieb and Mr. Redlich attested that ALC bought 50% of Ansted, Inc. in November 1997 for \$75,000.00, and offered proof of a check written to Mr. Redlich by ALC in November, 1997 for \$75,000.00. Mr. Redlich further attested that in 2004, Ansted, Inc.'s sole asset was TPSI and TASI. The court was required to assume that these affiants were credible regarding ALC's ownership interest in Ansted, Inc. Moreover, the court avoided determining the issue of ALC's ownership in Tracer by stressing that it was only deciding that Mr. Redlich conveyed whatever interest he owned in Tracer to Mr. Burton. However, a determination of whether ALC owned 50% of Ansted, Inc.'s stock on February 12, 2004 is crucial in order to determine whether Mr. Redlich, acting individually and without observing any corporate formalities whatsoever, could unilaterally transfer Ansted, Inc.'s sole asset to Mr. Burton. We find that the trial court erred in making credibility determinations and avoiding the issue of ALC's ownership to find as a matter of law the February 12, 2004 agreement is a valid and binding contract vesting Mr. Burton with ownership of the Tracer companies. At a minimum, whether ALC owned 50% of Ansted, Inc. at the time Mr. Redlich signed the February 12, 2004 agreement purporting to transfer 100% ownership of the Tracer companies to Mr. Burton, the sole asset of Ansted, Inc., is a question of fact that must be determined before a final ruling on the validity of the February 12, 2004 agreement can even be made.

Furthermore, the evidence demonstrates there is a genuine issue of fact as to whether the parties agreed on a price for the sale of Tracer's stock. A sale is a

contract whereby a person transfers ownership of a thing for a price in money. To perfect a sale, the thing, the price, and the consent of the parties are required. La. C.C. art. 2439. The price must be fixed by the parties in a sum either certain or determinable by a method agreed upon by them. La. C.C. art. 2464.

The February 12, 2004 agreement does not state a price for the transfer of Tracer's stock to Mr. Burton. The agreement provides that it was agreed that Mr. Redlich would invest money in Tracer to allow it to successfully organize and for his investment, Mr. Redlich would be repaid the entire investment and receive compensation in the amount of \$100,000.00 for the rest of his life from Tracer. The agreement left blank the amount of money Mr. Redlich invested in Tracer. It states that Mr. Redlich had been paid \$100,000.00 per year in compensation and \$20,000.00 per year for the unpaid portions of his investments and compensation. The agreement stipulates that a complete audit would be performed "forthright" in order to determine the exact amount of Mr. Redlich's unpaid investments and compensation, the result of which was to be filed as an addendum to the agreement. The agreement further stipulates that this audit would be completed and submitted on an annual basis until all unpaid investments and compensation had been paid.

In finding that the price had been set by the parties, the trial court relied on a financial statement prepared by Mr. Redlich dated March 31, 2004, in which Mr. Redlich listed a note receivable from Tracer in the amount of \$506,250.00. (R 975) The court found that this document "would seem to indicate that there was a price determined, and that was the amount set." We find that the trial court erred in speculating that this document established an agreed to price for the sale of Tracer. While the agreement set forth a method of determining the price of the sale, it is disputed whether the price was in fact determined in accordance with the terms of the agreement. Mr. Redlich stated in his affidavit that an addendum was

never prepared setting forth a price for the sale and that he did not perform annual audits. (R 797). In his deposition, Mr. Burton stated that audits had been performed by Mr. Redlich and insisted that he and Mr. Redlich agreed to the sum of \$450,000.00, recalling that he signed a note payable to Mr. Redlich in the amount of \$450,000.00, but did not produce this note. Furthermore, Mr. Burton stated that he refused to sign the formal buy-sell agreement prepared by Mr. Owen because it was not an accurate reflection of the agreement he and Mr. Redlich signed on February 12, 2004. The formal buy-sell agreement set the price of the sale at \$506,605.83. Because there exists a genuine issue of fact as to whether the parties determined a price for the sale of Tracer to Mr. Burton, we find that the trial court erred in finding that as a matter of law, the February 12, 2004 agreement is a valid and binding contract of sale.

Tracer also appeals the remaining portions of the trial court's grant of Mr. Burton's summary judgment, namely, the application of the after acquired title doctrine and the determination that the 2009 and 2010 documents are invalid. Because the trial court based these rulings on the validity of the February 12, 2004 agreement, these rulings must necessarily also be reversed.

In this appeal, Tracer also assigns as error the trial court's failure to grant summary judgment decreeing that the February 12, 2004 agreement is null and void and declaring that ALC owned 50% of Ansted, Inc. on February 12, 2004, and that the Ortlieb interests currently own 50% of the Tracer companies.¹ These are both disputed factual issues which may not be resolved on summary judgment. Accordingly, we find no error in the trial court's denial of Tracer's motion for summary judgment.

¹We review this interlocutory ruling in connection with the appeal of the partial summary judgment designated as final pursuant to La. C.C.P. art. 1915(B). See **State ex.rel Division of Administration, Office of Risk Management v. National Union Fire Insurance Company of Louisiana**, 2010-0689 (La. App. 1st Cir. 2/11/11), 56 So.3d 1236, 1242, fn. 6, writ denied, 2011-0849 (La. 6/3/11), 63 So.3d 1023.

In short, the ownership of Tracer is the central issue to be resolved in this litigation, and that ultimate ruling can only be made after resolving a number of factual issues, on which the credibility of the claimants will no doubt play an important part. The issue of Tracer's ownership should be decided at a trial on the merits, which is designed to evaluate the facts when credibility is at issue.

CONCLUSION

For the foregoing reasons, the judgment appealed from is reversed insofar as it granted summary judgment finding the February 12, 2004 agreement to be a valid contract and declared the 2009 and 2010 documents to be invalid. The trial court's denial of Tracer's motion for partial summary judgment on the issue of Tracer's ownership is affirmed. The case is hereby remanded for proceedings consistent with this opinion. All costs of this appeal are assessed 50% to Tracer Protection Services, Inc. and Tracer Armed Services, Inc. and 50% to David Burton.

REVERSED IN PART; AFFIRMED IN PART; REMANDED.

STATE OF LOUISIANA

COURT OF APPEAL

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TRACER PROTECTION SERVICES, INC.
AND TRACER ARMED SERVICES, INC.

VERSUS

DAVID G. BURTON, SR. AND RHONDA W. HAYES

*Amc
by JEW*

McCLENDON, J., concurs in part, dissents in part, and assigns reasons.

I concur with the majority's reversal of the grant of Mr. Burton's motion for partial summary judgment. However, I disagree with the majority's decision to review the denial of Tracer's motion for partial summary judgment on appeal.

Generally, once there is a *final* judgment on the merits, this court has jurisdiction to consider all prior interlocutory rulings on appeal. See People of Living God v. Chantilly Corp., 251 La. 943, 207 So.2d 752 (La. 1968). This applies only to unrestricted appeals. The appeal before us is not an unrestricted appeal.

The grant of a motion for partial summary judgment is appealable with the certification as final pursuant to LSA-C.C.P. 1915(B). See 1997 La. Acts No. 483, § 2, effective July 1, 1997. However, while Article 1915(B) provides that the trial court can designate the grant of a motion for partial summary judgment as a final judgment, it does not provide for any such corollary designation of a denial of a motion for summary judgment.¹ The proper review of a denial of a motion for summary judgment is under the court's supervisory jurisdiction.

The majority, in finding this court has appellate jurisdiction to consider the denial of Tracer's motion for partial summary judgment, relies upon **State ex rel**

¹ See Louisiana Code of Civil Procedure article 968, which provides, in pertinent part, that "[a]n appeal does not lie from the court's refusal to render any judgment on the pleading or summary judgment."

Division of Administration v. National Union Fire, 10-0689, p.8 n.6 (La.App. 1 Cir. 2/11/11), 56 So.3d 1236, 1242 n.6, wherein this court stated in the case of an appeal of a partial judgment or partial summary judgment designated as final under LSA-C.C.P. art. 1915(B), an appellant may also appeal an interlocutory judgment involving the same or related issues, such as a judgment denying a cross-motion for summary judgment. In so finding, the court in **National Union Fire** relied upon **Dean v. Griffin Crane & Steel, Inc.**, 05-1226, p. 4 n.3 (La.App. 1 Cir.5/5/06), 935 So.2d 186, 189 n. 3, writ denied, 06-1334 (La.9/22/06), 937 So.2d 387, wherein this court, on appeal, reviewed the grant of a motion for partial summary judgment designated as final pursuant to LSA-C.C.P. art. 1915(B), as well as the corollary denial of the cross motion for summary judgment.² However, based on the Louisiana Supreme Court decision in **Hood v. Cotter**, 08-0215, pp. 7-8 (La. 12/2/08), 5 So.3d 819, 823-24, I believe **Dean** to be misguided.

While I recognize the efficacy of addressing the denial of a cross motion for summary judgment with the corollary grant, insofar as both motions involve the same or interrelated issues, we cannot confer jurisdiction where none exists. Therefore, I respectfully dissent in part.

² In **Dean**, however, one of the parties had sought review of the denial of the motion for summary judgment via supervisory writs. This court dismissed the supervisory writ application, perhaps improperly, informing the relator that it could properly seek review of that judgment on appeal.