

Dismissed and Opinion Filed June 22, 2017.



In The  
**Court of Appeals**  
**Fifth District of Texas at Dallas**

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No. 05-16-00992-CV

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**FRISCO SQUARE DEVELOPERS, LLC, Appellant**  
**V.**  
**KPITCH ENTERPRISES, LLC, Appellee**

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**On Appeal from the 417th Judicial District Court**  
**Collin County, Texas**  
**Trial Court Cause No. 417-01983-2016**

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**MEMORANDUM OPINION**

Before Justices Lang, Brown, and Whitehill  
Opinion by Justice Lang

This consolidated interlocutory appeal and petition for writ of mandamus challenge a temporary injunction and the denial of a motion to strike a petition in intervention. We dismiss both as moot.

**I. BACKGROUND**

KPitch Enterprises, L.L.C. filed the petition in intervention in a suit brought by its part-owner, Gearbox Software, L.L.C., against Frisco Square Developers, L.L.C. ("FSD"). By its intervention, KPitch sought a declaratory judgment that a certain provision in a lease agreement with FSD was unenforceable. KPitch also sought a temporary injunction enjoining FSD from taking certain action.

FSD moved to strike the petition in intervention asserting KPitch lacked standing to intervene. Additionally, FSD filed a counterclaim against KPitch as well as a third-party petition against KPitch's authorized representative, both "subject to [FSD's] motion to strike." The trial court granted KPitch the injunctive relief it requested and subsequently denied FSD's motion to strike. After FSD filed the interlocutory appeal from the temporary injunction and the petition for writ of mandamus from the order denying the motion to strike, KPitch nonsuited the claims asserted in its petition in intervention and moved to dismiss the appellate proceedings as moot.

## **II. MOOTNESS**

### *A. Applicable Law*

The mootness doctrine implicates a court's subject matter jurisdiction, which "is essential to a court's power to decide a case." *See State v. Naylor*, 466 S.W.3d 783, 791-92 (Tex. 2015); *Trulock v. City of Duncanville*, 277 S.W.3d 920, 923 (Tex. App.—Dallas 2009, no pet.). For a court to have subject matter jurisdiction over a suit, a live controversy must exist between the parties. *See State Bar v. Gomez*, 891 S.W.2d 243, 245 (Tex. 1994). If, at any stage of the suit, the controversy between the parties ceases to exist, the suit becomes moot, the court loses jurisdiction over the suit, and the court must dismiss the suit. *See Nat'l Collegiate Athletic Assoc. v. Jones*, 1 S.W.3d 83, 86 (Tex. 1999); *City of El Paso v. Waterblasting Tech., Inc.*, 491 S.W.3d 890, 904 (Tex. App.—El Paso 2016, no pet.); *Wheelbarger v. City of El Lago*, 454 S.W.3d 55, 59 (Tex. App.—Houston [1<sup>st</sup> Dist.] 2014, pet. denied).

A nonsuit "extinguishes a case or controversy from 'the moment [it] is filed'" and renders the merits of the nonsuited case moot. *Travelers Ins. Co. v. Joachim*, 315 S.W.3d 860, 862 (Tex. 2010); *Univ. of Tex. Med. Branch at Galveston v. Blackmon*, 195 S.W.3d 98, 100 (Tex. 2006) (per curiam) (quoting *Shadowbrook Apartments v. Abu-Ahmad*, 783 S.W.2d 210, 211 (Tex. 1990) (per curiam)).

*B. Application of Law to Facts*

Because KPitch nonsuited its petition in intervention, and the intervention sought, in part, injunctive relief, the appeal of the temporary injunction became moot. *See Travelers*, 315 S.W.3d at 862; *see also Gen. Land Office v. Oxy USA, Inc.*, 789 S.W.2d 569, 571 (Tex. 1990) (granting of nonsuit mooted appeal of temporary injunction). So, too, did the mandamus proceeding challenging the trial court's order denying FSD's motion to strike the intervention as the nonsuit "extinguished" the basis for the motion. *See Travelers*, 315 S.W.3d at 862; *see also Waterman Steamship Corp. v. Ruiz*, 355 S.W.3d 387, 399 (Tex. App.—Houston [1<sup>st</sup> Dist.] 2011, pet. denied) (effect of nonsuit was to extinguish cause of action and return parties to position in before suit filed just as if suit had never been brought).

FSD does not dispute KPitch's nonsuit mooted the appeal of the temporary injunction. However, FSD disputes the nonsuit mooted the mandamus. FSD asserts two arguments as to why the mandamus is not moot. First, FSD contends "the motion to strike remains live" as FSD's counterclaim and third-party petition were filed "subject to" the motion to strike. Second, FSD notes that, before KPitch took its nonsuit, "KPitch filed a separate lawsuit re-asserting its allegations" from the petition in intervention and adding additional claims. FSD further notes this new lawsuit was filed in the same court where the intervention was pending because it was a "related case." Citing *In re Union Carbide Corp.*, 273 S.W.3d 152 (Tex. 2008), FSD argues the filing of the new suit while the intervention was pending allowed KPitch to circumvent "the random assignment mechanisms in place to prevent forum-shopping" and "achieved" the effect of a "severance," where a severance would otherwise have not been allowed."

Neither of FSD's contentions refutes the well-established principle that a nonsuit renders the merits of the nonsuited case moot. Accordingly, we reject them.

### III. CONCLUSION

We grant KPitch's motion to dismiss and dismiss the interlocutory appeal and petition for writ of mandamus as moot.

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/Douglas S. Lang/  
DOUGLAS S. LANG  
JUSTICE



**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

FRISCO SQUARE DEVELOPERS, LLC,  
Appellant

No. 05-16-00992-CV      V.

KPITCH ENTERPRISES, LLC, Appellee

On Appeal from the 417th Judicial District  
Court, Collin County, Texas  
Trial Court Cause No. 417-01983-2016.  
Opinion delivered by Justice Lang. Justices  
Brown and Whitehill participating.

In accordance with this Court's opinion of this date, we **DISMISS** the appeal.

We **ORDER** appellee KPitch Enterprises, LLC recover its costs of this appeal from appellant Frisco Square Developers, LLC.

Judgment entered this 22nd day of June, 2017.