Order entered April 28, 2021

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-01551-CV

WARREN CHEN AND DYNACOLOR, INC., Appellants

V.

RAZBERI TECHNOLOGIES, INC., THOMAS J. GALVIN, LIVEOAK VENTURE PARTNERS I, L.P., LIVEOAK VENTURES PARTNERS 1A, L.P., KENNETH L. AND VIRGINIA T. BOYDA, AS TRUSTEES OF THE BOYDA FAMILY REVOCABLE TRUST DATED 10/12/1990, AND JIRI AND ROSEMARY MODRY, AS TRUSTEES OF THE JRAM TRUST UDT, Appellees

On Appeal from the 193rd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-18-16568

ORDER

Before Justices Schenck, Smith, and Garcia

On November 2, 2020, this Court granted appellees' motion to dismiss interlocutory appeal as moot and issued a memorandum opinion dismissing appellants' appeal.[1]

[1] Justice Browning authored the opinion, in which Justices Whitehill and Schenck joined.

On December 31, 2020, this Court granted appellants' motion for rehearing, withdrew the opinion dismissing the appeal as moot, vacated our judgment of the same day, and indicated "The Court will issue a further opinion on the merits—and judgment pursuant to that opinion—in due course."[2]

Now before the Court is appellees' January 14, 2021 motion for rehearing. We conclude, as we did in our original opinion, that *City of Lancaster v. White Rock Commercial, LLC*, No. 05-16-00842-CV, 2017 WL 2875520, at *1 (Tex. App.—Dallas July 6, 2017, no pet.) (mem. op.), controls the outcome of this case. Our conclusion is reinforced by the Supreme Court of Texas recently citing both *Lancaster* and our original opinion in this case. *See Elec. Reliability Council of Tex., Inc. v. Panda Power Generation Infrastructure Fund, LLC*, No. 18-0792, 2021 WL 1047236, at *5 & n.13 (citing *Chen* for proposition that "the trial court's entry of a final summary judgment in the plaintiff's favor moots the defendant's pending interlocutory appeal from a prior order denying the defendant's special appearance because the prior order merges into the final judgment").

Accordingly, we **GRANT** appellees' January 14, 2021 motion for rehearing and **WITHDRAW** the Court's December 31, 2020 order granting appellants' motion for rehearing as **IMPROVIDENTLY GRANTED**. We **REINSTATE** the

[2] Justice Browning dissented, without opinion, from the December 31, 2020 order granting appellants' motion for rehearing.

Court's November 2, 2020 opinion dismissing appellants' appeal as moot and **REINSTATE** our judgment of the same day.

/s/ CRAIG SMITH
JUSTICE

Schenck, J., dissenting