

Opinion issued December 30, 2008



**In The
Court of Appeals
For The
First District of Texas**

NO. 01-06-00763-CV

ASIF SAID, Appellant

V.

AZHAR SAID AND PHOENICIAN IMPORTS, INC., Appellees

**On Appeal from the 234th District Court
Harris County, Texas
Trial Court Cause No. 2006-34130**

MEMORANDUM OPINION ON MOTION FOR REHEARING

Appellees Azhar Said and Phoenician Imports have filed a motion for rehearing and motion for en banc reconsideration. Azhar and Phoenician Imports have not filed

a motion to recall this Court's mandate, which the Clerk issued on May 3, 2007, pursuant to our opinion.¹

Azhar and Phoenician claim in their motion that our holding—that preserving the status quo by temporary injunction requires that both brothers be allowed to derive their incomes from the business—somehow violates the employment-at-will doctrine. In making that argument, Azhar and Phoenician assume that Asif Said is an employee, rather than an owner who works in the business.

The issue of the ownership of Phoenician Imports, however, is one that will ultimately be decided as part of the permanent injunction proceedings. Until the ownership of Phoenician Imports is adjudicated, Asif has a right to earn a livelihood that should be protected, if possible, by the courts. *See Byers v. Trans-Pecos Abstract Co.*, 18 S.W.2d 1096, 1098 (Tex. Civ. App.—El Paso 1929, writ dism'd).

¹Because the mandate has issued and has not been recalled, it has been possible for the parties to pursue further proceedings in the trial court. *See* TEX. R. APP. P. 18.6.

We deny the motion for rehearing. *See* TEX. R. APP. P. 49.3. Further, the en banc court did not vote to reconsider, and en banc reconsideration is denied. *See* TEX. R. APP. P. 49.7.

Sam Nuchia
Justice

Panel consists of Justices Nuchia, Keyes, and Higley.

En banc court consists of Chief Justice Radack and Justices Taft, Nuchia, Jennings, Keyes, Alcala, Hanks, Higley, and Bland.