

**Opinion issued September 11, 2008**



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

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**NO. 01-07-00119-CV**

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**LUSHANN INTERNATIONAL ENERGY CORP., Appellant**

**V.**

**HARRIS COUNTY, Appellee**

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**On Appeal from the 61st District Court  
Harris County, Texas  
Trial Court Cause No. 2006-10354**

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**MEMORANDUM OPINION**

Appellee, Harris County, filed a motion to dismiss for want of jurisdiction. This Court requested a response by appellant, Lushann International Energy Corp., by April 6, 2007. Appellant filed two motions for extension of time to file the response, extending the filing deadline until July 11, 2007. To date, no response has

been filed.

The trial court rendered judgment on June 22, 2006, and appellant timely filed a motion for new trial on July 21, 2006. Thus, appellant's notice of appeal was due within 90 days after the judgment was signed, which was September 20, 2006. *See* TEX. R. APP. P. 26.1(a)(1). Appellant did not file a notice of appeal by September 20, 2006. However, appellant filed what purported to be a notice of restricted appeal in February 2007. A restricted appeal is only available to a party "who did not timely file a postjudgment motion . . . ." *See* TEX. R. APP. P. 30. Because appellant timely filed a motion for new trial, we lack jurisdiction over this restricted appeal. *Clopton v. Pak*, 66 S.W.3d 513, 515 (Tex. App.—Fort Worth 2001, pet. denied); *see Wright Bros. Energy, Inc. v. Krough*, 67 S.W.3d 271, 273 (Tex. App.—Houston [1st Dist.] 2001, no pet.). We dismiss this appeal for lack of subject matter jurisdiction.

**PER CURIAM**

Panel consists of Justices Nuchia, Alcalá, and Hanks.