



**NUMBER 13-10-00578-CV**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI - EDINBURG**

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**RABA-KISTNER CONSULTANTS, INC.,**

**Appellant,**

**v.**

**OCEAN TOWER, L.P. AND ANTUN T. DOMIT,**

**Appellees.**

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**On appeal from the 357th District Court  
of Cameron County, Texas**

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**MEMORANDUM OPINION**

**Before Justices Yañez, Garza, and Benavides  
Memorandum Opinion Per Curiam**

In this interlocutory appeal, appellant Raba-Kistner Consultants, Inc. challenges the trial court's denial of a motion to dismiss a breach of contract suit brought by appellees, Ocean Tower, L.P. and Antun T. Domit, based on appellees' alleged failure to file a certificate of merit pursuant to section 150.002 of the Texas Civil Practice and

Remedies Code. See TEX. CIV. PRAC. & REM. CODE ANN. § 150.002(a), (f) (Vernon Supp. 2010). On November 3, 2010, appellee Antun T. Domit nonsuited his claims against appellant. On November 4, 2010, we ordered a stay of all underlying trial court proceedings pending consideration of the appeal. See TEX. R. APP. P. 29.3. On December 1, 2010, we ordered that the stay be lifted to allow Ocean Tower, L.P. to nonsuit its remaining claim against appellant in the trial court, and to allow the trial court to render any orders that may be necessary to effectuate the nonsuit. See TEX. R. CIV. P. 162. On December 2, 2010, Ocean Tower, L.P. filed its nonsuit and trial court rendered an order acknowledging the nonsuit and dismissing without prejudice all claims by Ocean Tower, L.P. against appellant. See *id.*

On December 7, 2010, Ocean Tower, L.P. filed an “Emergency Motion to Dismiss Appeal” with this Court, arguing that we lack jurisdiction over the appeal because no live case or controversy involving appellant exists in the trial court. See *Univ. of Tex. Med. Branch at Galveston v. Estate of Blackmon*, 195 S.W.3d 98, 101 (Tex. 2006) (per curiam) (holding that the court of appeals lacked jurisdiction to issue an order and opinion on rehearing after appellee nonsuited her claims against appellant in the trial court); see also *Found. Design, Ltd. v. Barzoukas*, No. 14-08-00485-CV, 2009 Tex. App. LEXIS 4771, at \*3-9 (Tex. App.–Houston [14th Dist.] June 25, 2009, no pet.) (mem. op.) (dismissing appeal as moot after appellee nonsuited his claims against appellant in the trial court).

Having fully considered Ocean Tower, L.P.’s motion, this Court is of the opinion that the motion is meritorious. Accordingly, the motion is GRANTED and this appeal is hereby DISMISSED FOR WANT OF JURISDICTION. See TEX. R. APP. P. 42.3(a),

43.2(f). All other pending motions in this cause are hereby DENIED as moot.

PER CURIAM

Delivered and filed the  
9th day of December, 2010.