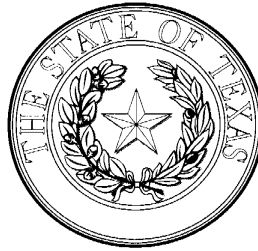


Opinion issued December 20, 2018



In The
Court of Appeals
For The
First District of Texas

NO. 01-17-00580-CV

**ART SHABAN, INDIVIDUALLY AND D/B/A WESTHEIMER PAINT &
BODY, Appellant**

V.

THE HERTZ CORPORATION, Appellee

**On Appeal from the County Civil Court at Law No. 4
Harris County, Texas
Trial Court Case No. 1074604**

MEMORANDUM OPINION

In this case, appellee, the Hertz Corporation, sued appellant, Art Shaban, individually and doing business as Westheimer Paint & Body, in the Harris County Civil Court at Law Number 4 for several claims, including breach of contract, theft,

conversion, and trademark infringement, and it sought damages and injunctive relief against Shaban. Hertz pleaded that it sought damages within the jurisdictional limits of the county court. Shaban, appearing pro se, asserted counterclaims against Hertz for breach of contract, fraud, negligent misrepresentation, and unjust enrichment, and he sought damages in excess of \$200,000, i.e., beyond the jurisdictional limits of the county court.

Hertz moved for partial traditional summary judgment on its own breach of contract claim and for no-evidence summary judgment on Shaban's counterclaims. During the litigation, both parties requested that the county court dismiss Shaban's counterclaims for lack of subject-matter jurisdiction because the amount in controversy of the counterclaims exceeded the county court's maximum jurisdictional limit. Shaban requested that the county court transfer the case to the Harris County district court, but the county court denied this request. The county court granted Hertz's traditional summary judgment motion on its own breach of contract claims and granted Hertz's no-evidence summary judgment motion, ruling that Shaban take nothing on his counterclaims against Hertz.

In three issues on appeal, Shaban argues that the county court erred in granting Hertz's no-evidence summary judgment motion on his counterclaims on the grounds that: (1) Shaban had failed to pay the filing fee and thus his counterclaims were only "conditionally filed"; (2) the trial court lacked subject-matter jurisdiction over

Shaban's counterclaims because the amount in controversy for the counterclaims exceeded the jurisdictional limit for statutory county courts; and (3) Shaban presented summary judgment evidence raising genuine issues of material fact on each of his counterclaims.

We reverse the judgment of the trial court and dismiss Shaban's counterclaims for lack of subject-matter jurisdiction.

Background

The Hertz Corporation rents vehicles to drivers and occasionally partners with local repair shops, such as Westheimer Paint & Body, to make its rental services available at these locations. On August 1, 2013, Hertz and Art Shaban, the owner and operator of Westheimer Paint and Body, entered into a contract that allowed Shaban to operate "a non-exclusive Hertz automobile rental agency on Hertz'[s] behalf" at Westheimer Paint and Body, located in west Houston ("the Agency Agreement" or "the Agreement"). The Agency Agreement obligated Hertz, among other things, to provide passenger vehicles to Shaban for rental to customers, to assume all expenses for fuel and repairs, to furnish Shaban with protection against automobile liability, and to furnish Shaban with specific forms and advertising materials. The Agency agreement obligated Shaban, among other things, to rent vehicles on Hertz's behalf at Hertz's published rates, to report all casualty occurrences and losses, to permit Hertz to place and remove signage on the property,

not to use Hertz's name or marks except in the manner authorized by Hertz, to require the completion of a rental agreement for each vehicle rented, to notify Hertz promptly when vehicles sustained damages, to ensure that all vehicles were in proper working order, and to provide proper security for the vehicles.

On March 7, 2016, Hertz filed suit against Shaban in the Harris County Civil Court at Law Number 4, a statutory county court. Hertz alleged that after it notified Shaban that it was electing to terminate the Agency Agreement in December 2015, Shaban refused to return at least six rental vehicles to Hertz, he continued to use Hertz's proprietary marks and trade name, and he failed to return software and other property to Hertz. Hertz alleged that Shaban had violated several provisions in the Agency Agreement and asserted a breach of contract claim against Shaban. Hertz also asserted claims for theft of property and conversion against Shaban. It sought injunctive relief, including a temporary restraining order, a temporary injunction, and a permanent injunction enjoining Shaban from holding his business out as a Hertz affiliate and from using Hertz's trade name and proprietary trademarks. Hertz alleged that it sought "monetary relief totaling \$100,000.00 or less."

Shaban, acting pro se, answered and asserted counterclaims against Hertz. Shaban denied Hertz's allegations that he was in possession of vehicles belonging to Hertz and that he was using Hertz's proprietary marks. He also alleged that it was Hertz's responsibility to remove its signs and logos from Shaban's property at

Hertz's own expense. Shaban also alleged that, in January 2015, he entered into a new contract with Hertz that included, among other things, requirements that Shaban lease a new location for a Hertz rental agency and that Hertz compensate Shaban for renovation costs, rental costs for the facility, a yearly management fee, and commissions.

Shaban asserted counterclaims against Hertz for breach of contract, unjust enrichment, negligent misrepresentation, fraud, and intentional infliction of emotional distress. Shaban asserted that because Hertz had filed a petition seeking damages within the jurisdictional limits of the county court, the court had obtained subject-matter jurisdiction over the case. Shaban also alleged, "The sum of Defendant's counterclaims seek monetary relief in an amount in excess of \$200,000 (Dollars) and not more than \$1,000,000 (Dollars)." Specifically, Shaban sought the following amounts of damages with respect to each of his counterclaims: \$300,000 for his breach of contract claim; \$300,000 for his unjust enrichment claim; \$300,000 for his negligent misrepresentation claim; \$400,000 for his fraud claim; and \$100,000 for his intentional infliction of emotional distress claim.¹

Hertz moved for traditional partial summary judgment on its own breach of contract claim. Hertz argued that Shaban had violated the Agency Agreement by

¹ In the prayer for relief contained in his counterpetition, Shaban sought \$400,000 in "special and compensatory damages," \$100,000 in "general damages," and punitive damages "in an amount to be determined."

failing to “follow material portions of the agreement including, but not limited to, requirements in completing and retaining rental agreements and the failure to timely report vehicles as stolen, lost, or missing.” Hertz also argued that Shaban had violated the Agreement’s “post-termination” provisions because Shaban had failed to return Hertz’s property, including several rental cars, and because Shaban continued to hold his business out as a Hertz affiliate and to use Hertz’s trademarked logos and trade name. As summary judgment evidence, Hertz relied on Shaban’s deemed admissions. Hertz requested that the county court grant summary judgment as to Shaban’s breach of the Agency Agreement “and that this matter proceed to trial as to damages.”

Hertz also moved for no-evidence summary judgment on Shaban’s counterclaims. Hertz argued that Shaban had provided no evidence that Hertz owed him for any commissions, renovations, or repairs, and, thus, he had no evidence to support his counterclaims for breach of contract, unjust enrichment, negligent misrepresentation, and fraud. Hertz’s motion specifically asserted no-evidence challenges to multiple elements of each of Shaban’s counterclaims. Hertz requested that the county court rule that Shaban take nothing on his counterclaims. Shaban, still acting pro se, responded to Hertz’s summary judgment motions and asserted that the record contained evidence raising a fact issue on his counterclaims. Shaban did not attach any evidence to his response.

While Hertz's summary judgment motions were pending, Shaban retained counsel on February 10, 2017. On February 23, 2017, Shaban's counsel filed a motion to transfer the case to the Harris County district court, arguing that, although the county court had jurisdiction over Hertz's causes of action against Shaban, the county court did not have jurisdiction over Shaban's counterclaims against Hertz because the amount in controversy for these counterclaims exceeded the \$200,000 maximum jurisdictional limit for the court, a statutory county court. Shaban argued that because he sought damages in excess of \$200,000, as alleged in his counterpetition, only the district court had jurisdiction to hear the case. Shaban requested that the county court transfer the entire case—Hertz's claims and Shaban's counterclaims—to the district court.

In response, Hertz noted that Shaban had prayed for the recovery of \$400,000 in general damages, \$100,000 in actual damages, and an undetermined amount of punitive damages. Hertz agreed with Shaban that the county court lacked jurisdiction over his counterclaims because those claims exceeded the jurisdictional limit of the county court, but it argued that the county court lacked the authority to transfer the case to the district court. It argued that, instead, the county court should dismiss Shaban's counterclaims and should retain jurisdiction over Hertz's claim, which was undisputedly within the jurisdictional limits of the county court. Hertz argued that although Shaban "pleaded himself out of court" when he filed counterclaims

demanding relief clearly in excess of the jurisdictional limits of [the county court],” Shaban could not divest the county court of jurisdiction over Hertz’s original breach of contract claim, and therefore the court should deny Shaban’s motion to transfer.

On March 7, 2017, Hertz filed its own motion to dismiss Shaban’s counterclaims for lack of jurisdiction. Hertz noted that the county court’s jurisdictional limit was \$200,000, and it argued:

Here, Shaban asserted Counterclaims for an amount greater than \$200,000 and less than \$1,000,000. Specifically, Shaban is seeking \$400,000 in general damages, \$100,000 in actual damages [sic], and an undetermined amount of punitive damages. It is clear from Shaban’s pleading that the Court does not have jurisdiction to hear his causes of action, and, therefore, should dismiss Shaban’s Counterclaims. After the Counterclaim is dismissed, Shaban may refile it in the proper court.

Hertz thus argued that dismissal of Shaban’s counterclaims was the proper course of action. The county court denied Shaban’s motion to transfer on March 10, 2017.

On March 15, 2017, Shaban filed his counterclaims against Hertz in a separate action in Harris County district court, and he sought monetary relief of more than \$1,000,000. He then filed an amended motion to transfer in the county court, requesting that the county court transfer the case to the district court where his counterclaims were pending. He argued that because the district court had jurisdiction to hear both parties’ claims, whereas the county court only had jurisdiction to hear Hertz’s claims, judicial economy and fairness would be served by having the district court adjudicate the case.

Hertz again opposed Shaban's request to transfer, arguing that "the mere fact that Shaban's counterclaims may exceed the jurisdictional limits of [the county court] does not divest the Court of its ability to rule on Hertz's causes of action." Hertz requested that the county court proceed to trial on Hertz's claims. After Hertz responded to the amended motion, Shaban filed a motion to dismiss his counterclaims on April 5, 2017, noting that he had filed a separate suit against Hertz in district court because the damages sought in his counterclaims exceeded the county court's jurisdictional limits. Shaban requested that the county court dismiss his counterclaims against Hertz without prejudice.

The county court did not rule on Shaban's amended motion to transfer, nor did it rule on Hertz's motion to dismiss Shaban's counterclaims or Shaban's motion to dismiss his counterclaims.

On April 25, 2017, the county court granted Hertz's traditional summary judgment motion on its breach of contract claim, ruling that the Agency Agreement was the binding contract between the parties and that Shaban had breached the Agency Agreement. The trial court based its ruling on Shaban's deemed admissions. On the same day, the county court also granted Hertz's no-evidence motion on Shaban's counterclaims, ruling that Shaban take nothing on his counterclaims against Hertz.

On May 22, 2017, the county court held a trial on the merits of Hertz's remaining claims and on damages for its breach of contract claim. Despite receiving notice of the trial setting, neither Shaban nor his counsel appeared at trial. Hertz moved for a post-answer default judgment on damages and on its claim for injunctive relief against Shaban. The county court entered a permanent injunction against Shaban, enjoining him from (1) using Hertz's name, trademarks, marks, and trade names; (2) owning or operating a business incorporating the use of the name "Hertz"; and (3) promoting, advertising, offering for sale, selling, or distributing products or services containing or using Hertz's name and trademarks. This order also included the following language incorporating the county court's prior summary judgment rulings and finding Shaban liable for the damages and injunctive relief sought by Hertz:

Further, the Court, having previously entered an Interlocutory Order Granting [Hertz's] No Evidence Motion for Summary Judgment on April 25, 2017 and an Order Granting [Hertz's] Traditional Motion for Partial Summary Judgment on April 25, 2017, both of which are incorporated herein by reference and made a part hereof, FINDS [defendant] Art Shaban is liable for those damages [and] injunctive relief sought by The Hertz Corporation.

The order concluded by stating, "This is a final order and resolves all matters in controversy.

Shaban filed multiple motions requesting that the county court reconsider its summary judgment rulings.² Shaban again asserted that the county court lacked jurisdiction over his counterclaims because the amount in controversy of his counterclaims exceeded the jurisdictional limits of the county court and, thus, the court should not have ruled on the merits of the claims by granting Hertz's no-evidence summary judgment motion and ordering that Shaban take nothing on his counterclaims. Shaban also requested that the county court allow him to withdraw the admissions deemed against him. The county court denied Shaban's motion to reconsider, and this appeal followed.

Subject-Matter Jurisdiction

In his second issue, Shaban contends that the county court erred in granting Hertz's no-evidence summary judgment motion and rendering a take-nothing judgment on his counterclaims because the county court lacked subject-matter jurisdiction over the counterclaims. Specifically, Shaban argues that the county court lacked jurisdiction because the statutory jurisdictional limit for the Harris County Civil Courts at Law is \$200,000, and the amount in controversy for Shaban's

² Shaban's counsel argued that county court staff informed him prior to the court's ruling on Shaban's first motion to transfer that because Shaban had not paid a filing fee when he filed his counterclaims while acting pro se, his counterclaims were not considered on file with the court. Shaban attached a copy of the court's docket sheet, which included the following notation for March 9, 2017, the day before the county court denied Shaban's first motion to transfer: "No counterclaim on file, nothing paid for L/M [left message] for [attorney] on 3-10-17."

counterclaims, as alleged in his counterpetition, exceeded this limit. Because this issue is dispositive of Shaban's appeal, we address this issue first.

A. *Standard of Review and Governing Law*

Subject-matter jurisdiction is essential to the authority of a court to decide a case. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 553–54 (Tex. 2000); *see also In re United Servs. Auto. Ass'n*, 307 S.W.3d 299, 309 (Tex. 2010) (“A judgment is void if rendered by a court without subject matter jurisdiction.”). Subject-matter jurisdiction cannot be waived or conferred by agreement, and it may be raised at any point during the proceeding. *Anderson v. Truelove*, 446 S.W.3d 87, 91 (Tex. App.—Houston [1st Dist.] 2014, no pet.) (quoting *Rusk State Hosp. v. Black*, 392 S.W.3d 88, 103 (Tex. 2012)). The pleader must allege facts that affirmatively demonstrate the trial court's jurisdiction to hear the case. *Id.* Whether subject-matter jurisdiction exists is a question of law that we review de novo. *City of Houston v. Rhule*, 417 S.W.3d 440, 442 (Tex. 2013) (per curiam).

Texas state district courts are courts of “general jurisdiction,” and a presumption exists that courts of general jurisdiction have subject-matter jurisdiction unless a contrary showing is made. *Dubai Petroleum Co. v. Kazi*, 12 S.W.3d 71, 75 (Tex. 2000). County courts at law, however, are courts of “limited jurisdiction.” *United Servs. Auto. Ass'n v. Brite*, 215 S.W.3d 400, 401 (Tex. 2007); *Garrett Operators, Inc. v. City of Houston*, 360 S.W.3d 36, 44 (Tex. App.—Houston [1st

Dist.] 2011, pet. denied). Jurisdiction in county courts at law is not presumed, and, therefore, “the authority to adjudicate the claims presented must be established at the outset of the case.” *Abdullatif v. Erpile, LLC*, 460 S.W.3d 685, 691 (Tex. App.—Houston [14th Dist.] 2015, no pet.) (citing *Dubai Petroleum*, 12 S.W.3d at 75).

Texas Government Code section 25.0003, which is generally applicable to county courts at law, provides that a statutory county court “has jurisdiction over all causes and proceedings, civil and criminal, original and appellate, prescribed by law for county courts.” TEX. GOV’T CODE ANN. § 25.0003(a) (West Supp. 2017). Under this section, a statutory county court exercising concurrent jurisdiction “with the constitutional jurisdiction of the county court has concurrent jurisdiction with the district court” in civil cases “in which the matter in controversy exceeds \$500 but does not exceed \$200,000 . . . as alleged on the face of the petition.” *Id.* § 25.0003(c)(1). “The jurisdictional statute for county courts at law values the matter in controversy on the amount of damages ‘alleged’ by the plaintiff, not on the amount the plaintiff is likely to recover.” *Brite*, 215 S.W.3d at 402–03; *Tune v. Tex. Dep’t of Pub. Safety*, 23 S.W.3d 358, 361 (Tex. 2000) (“It has long been the law that the phrase ‘amount in controversy,’ in the jurisdictional context, means ‘the sum of money or the value of the thing originally sued for’”) (emphasis in original); *Eris v. Giannakopoulos*, 369 S.W.3d 618, 622 (Tex. App.—Houston [1st Dist.]

2012, pet. dismiss'd) (“To determine the amount in controversy, courts of appeals generally look to the allegations in the plaintiff’s petition.”).

When there is nothing on the face of the petition and no evidence in the record to prove that the amount in controversy was fraudulently alleged, “the averments in the petition control.” *Continental Coffee Prods. Co. v. Cazarez*, 937 S.W.2d 444, 449 (Tex. 1996); see *Bland Indep. Sch. Dist.*, 34 S.W.3d at 554 (stating that plaintiff’s pleadings are determinative “unless the defendant specifically alleges that the amount was pleaded merely as a sham for the purpose of wrongfully obtaining jurisdiction”); *Transamerica Occidental Life Ins. Co. v. Rapid Settlements, Ltd.*, 262 S.W.3d 409, 412 (Tex. App.—Houston [1st Dist.] 2008, no pet.) (“Normally, the plaintiff’s pleadings determine the amount in controversy, except when the defendant alleges that the amount in controversy pleaded by the plaintiff is a sham to wrongfully obtain jurisdiction.”). “The plaintiff’s allegation of damages in excess of jurisdictional limits suffices to show the amount in controversy, even if damages cannot ultimately be proved at all.” *Bland Indep. Sch. Dist.*, 34 S.W.3d at 554.

Counterclaims, whether permissive or compulsory, must be within the trial court’s jurisdiction. *Smith v. Clary Corp.*, 917 S.W.2d 796, 798 (Tex. 1996) (per curiam); *In re King*, 478 S.W.3d 930, 935–36 (Tex. App.—Dallas 2015, orig. proceeding) (“The operative rule defining compulsory counterclaims begins with the requirement that the claim be ‘within the jurisdiction of *the court.*’”) (emphasis in

original); *Weinberger v. Longer*, 222 S.W.3d 557, 560 (Tex. App.—Houston [14th Dist.] 2007, pet. denied) (following *Smith* and stating that counterclaims, whether permissive or compulsory, must be within trial court’s jurisdiction). In determining whether a trial court has jurisdiction over a counterclaim, “counterclaims are judged on their own merits and must independently comport with a court’s jurisdiction.” *Color Tile, Inc. v. Ramsey*, 905 S.W.2d 620, 623 (Tex. App.—Houston [14th Dist.] 1995, no writ); *see also Abdullatif*, 460 S.W.3d at 692 (“[T]he existence of subject-matter jurisdiction over a plaintiff’s claims does not mean that the trial court had subject-matter jurisdiction over the intervenor’s distinct claims—particularly where, as here, the trial court [one of the Harris County Civil Courts at Law] is a court of limited jurisdiction.”). “[A] final judgment of a court that lacks jurisdiction over an unlitigated counter-claim arising out of the same transaction or occurrence [as the plaintiff’s claim] does not bar the later assertion of that unlitigated part of the claim.” *In re King*, 478 S.W.3d at 936.

A counterclaim is not within the trial court’s jurisdiction when the amount in controversy exceeds the maximum jurisdictional limit of the court. *Smith*, 917 S.W.2d at 798; *see also* TEX. R. CIV. P. 97 (providing that counterclaim may seek relief exceeding amount sought in pleading of opposing party “so long as the subject matter is within the jurisdiction of the court”); *Dykes v. Crausbay*, 214 S.W.3d 200, 202 (Tex. App.—Amarillo 2007, no pet.) (stating that amount in controversy limits

“apply to both original and counterclaims”); *French v. Moore*, 169 S.W.3d 1, 7–8 (Tex. App.—Houston [1st Dist.] 2004, no pet.) (stating that if party asserts multiple claims against one opposing party, amounts of each separate claim are aggregated to determine amount in controversy, that counterclaims—whether permissive or compulsory—must be within court’s jurisdictional limits, and that trial court should dismiss counterclaim if it exceeds trial court’s maximum jurisdictional limit); *Pinckard v. Associated Popcorn Distribs., Inc.*, 611 S.W.2d 491, 492 (Tex. Civ. App.—Dallas 1981, no writ) (stating that because defendant’s counterclaim exceeds jurisdictional limits of county court, “it does not fall within the definition of compulsory counterclaim”).

A trial court does not lose jurisdiction over a plaintiff’s claim that is properly within its jurisdictional limits simply because a defendant files a counterclaim that exceeds the court’s jurisdictional limits. *See Pinckard*, 611 S.W.2d at 492; *see also Thomas v. Long*, 207 S.W.3d 334, 338 (Tex. 2006) (“[I]t is proper for a trial court to dismiss claims over which it does not have subject matter jurisdiction but retain claims in the same case over which it has jurisdiction.”); *Continental Coffee*, 937 S.W.2d at 449 (“As a general rule, where jurisdiction is once lawfully and properly acquired, no later fact or event can defeat the court’s jurisdiction.”); *Abdullatif*, 460 S.W.3d at 696 (holding—in case involving declaratory judgment claims filed by plaintiff, defendant, and intervenor—that statutory county court properly exercised

subject-matter jurisdiction over plaintiff’s claim and affirming that portion of judgment, but court did not have subject-matter jurisdiction over other parties’ claims and dismissing without prejudice claims by defendant and intervenor); *Color Tile*, 905 S.W.2d at 622–23 (noting general rule “that the plaintiff’s original petition determines the jurisdiction of the court over the claims before it” but that in spite of this rule, “a trial court has no jurisdiction to hear a claim brought by either a plaintiff or a defendant that is not within its subject matter jurisdiction”).

If a defendant asserts a counterclaim that exceeds the jurisdictional limits of the trial court, the proper remedy is dismissal of the counterclaim. *See Kitchen Designs, Inc. v. Wood*, 584 S.W.2d 305, 307 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.) (stating that because defendants’ counterclaim exceeded jurisdictional limits of trial court, “the trial court should have dismissed the [defendants’] cause of action” instead of awarding damages to defendants on jury’s verdict); *see also Color Tile*, 905 S.W.2d at 623–24 (dismissing defendant’s counterclaim because claim exceeded jurisdictional limits of trial court, but affirming take-nothing judgment against plaintiff on its own claim because plaintiff did not challenge trial court’s judgment concerning its claim on appeal).

B. Analysis

In this case, Hertz filed suit against Shaban in the Harris County Civil Court at Law Number 4, a statutory county court, for breach of contract, theft of property,

and conversion, and Hertz sought damages and injunctive relief. Shaban, acting pro se, answered Hertz's suit and also asserted counterclaims against Hertz for breach of contract, unjust enrichment, negligent misrepresentation, fraud, and intentional infliction of emotional distress. Shaban alleged, "The sum of Defendant's counterclaims seek monetary relief in an amount in excess of \$200,000 (Dollars) and not more than \$1,000,000 (Dollars)." Specifically, Shaban sought damages in the amount of \$300,000 on his breach of contract claim, \$300,000 on his unjust enrichment claim, \$300,000 on his negligent misrepresentation claim, \$400,000 on his fraud claim, and \$100,000 on his intentional infliction of emotional distress claim. Shaban therefore pleaded damages in excess of \$200,000, the maximum jurisdictional limit of the county court. *See* TEX. GOV'T CODE ANN. § 25.0003(c)(1).

Hertz subsequently filed two motions for summary judgment: a traditional motion on its own breach of contract claim, and a no-evidence motion on Shaban's counterclaims. While Hertz's summary judgment motions were pending before the county court, Shaban retained counsel. Shaban's counsel moved the county court to transfer the case to the Harris County district court because Shaban sought, in his counterclaims, damages in excess of the county court's maximum jurisdictional limit of \$200,000. Hertz responded and, in this response, agreed that the county court lacked jurisdiction over Shaban's counterclaims because his claims exceeded the jurisdictional limits of the county court, but Hertz requested that the county court

decline to transfer the case to the district court because the county court retained jurisdiction over Hertz's breach of contract claim. Hertz thus requested denial of Shaban's motion to transfer and dismissal of his counterclaims.

Hertz then filed a separate motion requesting that the county court dismiss Shaban's counterclaims for lack of jurisdiction. Hertz argued:

Here, Shaban asserted Counterclaims for an amount greater than \$200,000 and less than \$1,000,000. Specifically, Shaban is seeking \$400,000 in general damages, \$100,000 in actual damages [sic], and an undetermined amount of punitive damages. It is clear from Shaban's pleading that the Court does not have jurisdiction to hear his causes of action, and, therefore should dismiss Shaban's Counterclaims. After the Counterclaim is dismissed, Shaban may refile it in the proper court.

(Internal citations omitted.) After Hertz filed its motion to dismiss, Shaban filed an amended motion to transfer, alleging that he had filed suit against Hertz in the Harris County district court, seeking damages in excess of \$1,000,000, and again requesting that the county court transfer the case pending before it to the district court. Shaban also filed a motion requesting that the county court dismiss his counterclaims because he had filed a separate suit in the Harris County district court.

The county court denied Shaban's first motion to transfer, but the court did not rule on either Hertz's motion to dismiss or on Shaban's amended motion to transfer or his motion to dismiss. Instead, the county court granted Hertz's traditional summary judgment motion on Hertz's own breach of contract claim and granted

Hertz's no-evidence summary judgment motion on Shaban's counterclaims. The county court ruled that Shaban take nothing on his counterclaims against Hertz.

Here, although Hertz's breach of contract claim was within the jurisdictional limits of the county court, Shaban pleaded damages for his counterclaims in excess of the county court's jurisdictional limits. *See Garza v. Chavarria*, 155 S.W.3d 252, 256 (Tex. App.—El Paso 2004, no pet.) (stating that party may plead himself out of court by seeking specific amount of damages outside jurisdictional limits of court). In determining whether the amount in controversy requirement is satisfied, “counterclaims are judged on their own merits and must independently comport with a court’s jurisdiction.” *Color Tile*, 905 S.W.2d at 623; *see Smith*, 917 S.W.2d at 798 (stating that counterclaim is not within court’s jurisdiction when amount in controversy exceeds maximum jurisdictional limit of court). Looking at the amounts alleged in Shaban’s counterpetition, as we must when determining the amount in controversy, we conclude that the amount in controversy of Shaban’s counterclaims exceeded the \$200,000 maximum jurisdictional limit of the Harris County Civil Courts at Law. *See TEX. GOV’T CODE ANN. § 25.0003(c)(1)*; *Brite*, 215 S.W.3d at 402–03 (stating that jurisdictional statute for statutory county courts values matter in controversy on amount of damages alleged by plaintiff, not on amount plaintiff is likely to recover).

On appeal, Hertz argues that the county court had jurisdiction to rule on Shaban's counterclaims. Hertz first argues that Shaban's counterclaims are moot because he committed a prior material breach of the Agency Agreement, which discharged Hertz from future performance under the Agreement. Hertz points out that deemed admissions from Shaban established that he materially breached the Agreement. This argument relates to the ultimate merits of Shaban's counterclaims and whether he can recover on his counterclaims. Determining the amount in controversy for jurisdictional purposes, however, "must ordinarily be decided solely on the pleadings." *Bland Indep. Sch. Dist.*, 34 S.W.3d at 555.

In *Bland Independent School District*, the Texas Supreme Court discussed a situation in which a defendant argues that a trial court lacks subject-matter jurisdiction because the amount in controversy of the plaintiff's claim was below the court's minimum jurisdictional limit and stated:

Thus, for example, when a defendant asserts that the amount in controversy is below the court's jurisdictional limit, the plaintiff's pleadings are determinative unless the defendant specifically alleges that the amount was pleaded merely as a sham for the purpose of wrongfully obtaining jurisdiction, or the defendant can readily establish that the amount in controversy is insufficient, as for example when the issue in dispute is a license or right rather than damages. *A plea to the jurisdiction cannot be used to require the plaintiff to prove the damages to which he is entitled in order to show that they exceed the court's jurisdictional limits. The plaintiff's allegation of damages in excess of jurisdictional limits suffices to show the amount in controversy, even if damages cannot ultimately be proved at all.* Were it otherwise, the plaintiff would be required to try his entire case to show an entitlement to damages in excess of the court's jurisdictional limits.

Id. at 554 (emphasis added); *Rodney R. Elkins & Co. v. Immanivong*, 406 S.W.3d 777, 778–79 (Tex. App.—Dallas 2013, no pet.) (stating that, when jurisdictional challenge is based on amount in controversy, pleadings are generally determinative); *Acreman v. Sharp*, 282 S.W.3d 251, 253 (Tex. App.—Beaumont 2009, no pet.) (stating same).

Here, in his counterpetition, Shaban alleged damages for his counterclaims in excess of the county court’s jurisdictional limit of \$200,000. This—Shaban’s counterpetition—is what we must look to in order to determine the amount in controversy; we do not consider evidence that Shaban materially breached the contract at issue, such that he cannot recover on his counterclaims. *See Abdullatif*, 460 S.W.3d at 694 (noting, in case involving declaratory relief claims asserted by intervenor, that question before appellate court was not whether trial court should have struck intervenor’s pleadings but whether trial court had subject-matter jurisdiction to address intervenor’s claims).

Hertz also argues on appeal that Shaban’s allegations concerning damages for his counterclaims are “merely a sham for the purpose of wrongly divesting the trial court of jurisdiction,” pointing out that Shaban has never presented any evidence of his damages. In determining amount in controversy, the pleadings are generally determinative “unless the defendant specifically alleges that the amount was pleaded merely as a sham for the purpose of wrongfully obtaining jurisdiction.” *Bland Indep.*

Sch. Dist., 34 S.W.3d at 554; *see also Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 224 n.4 (Tex. 2004) (“The plaintiff’s allegations in the petition of the amount in controversy control for jurisdictional purposes unless the party challenging jurisdiction *pleads and proves* that the plaintiff’s allegations of the amount in controversy were made fraudulently for the purpose of obtaining jurisdiction.”) (emphasis added); *Transamerica Occidental Life Ins. Co. v. Rapid Settlements, Ltd.*, 284 S.W.3d 385, 389 (Tex. App.—Houston [1st Dist.] 2008, no pet.); *French*, 169 S.W.3d at 6.

Here, Hertz did not specifically allege in the county court that Shaban had pleaded the amount of damages in his counterpetition merely as a sham to wrongfully defeat jurisdiction in the county court. Instead, Hertz repeatedly argued—in its responses to Shaban’s motion to transfer and amended motion to transfer, as well as in its own motion to dismiss Shaban’s counterclaims for lack of subject-matter jurisdiction—that the county court lacked jurisdiction over Shaban’s counterclaims because the amount in controversy of those counterclaims exceeded the county court’s jurisdictional limit. Hertz presented no argument or evidence that Shaban pleaded the amount of damages in his counterpetition merely as a sham to defeat jurisdiction; Hertz instead relied upon this allegation to affirmatively request that the county court dismiss Shaban’s counterclaims. Hertz cannot now, on appeal, reverse course and argue that Shaban’s allegation of damages was a mere sham to

defeat the county court's jurisdiction. *See Miranda*, 133 S.W.3d at 224 n.4 (stating that party's allegations of amount in controversy in petition control unless party challenging jurisdiction pleads and proves that allegations of amount in controversy were made fraudulently).

Because the amount in controversy of Shaban's counterclaims exceeded the maximum jurisdictional limit of the county court, we conclude that the county court lacked jurisdiction to rule on Shaban's counterclaims. We therefore hold that the county court erred to the extent that it granted Hertz's no-evidence summary judgment motion on Shaban's counterclaims and ruled that Shaban take nothing on those counterclaims. *See Garza*, 155 S.W.3d at 258 (holding that when appellate court determines that trial court lacked jurisdiction, proper disposition is to reverse trial court's judgment and dismiss case); *see also City of Garland v. Louton*, 691 S.W.2d 603, 605 (Tex. 1985) (per curiam) ("If the trial court lacks subject matter jurisdiction, the appellate court can make no order other than reversing the judgment of the court below and dismissing the cause."); *Abdullatif*, 460 S.W.3d at 696 (dismissing without prejudice declaratory relief claims filed by defendant and intervenor that were not within subject-matter jurisdiction of statutory county court); *Kitchen Designs*, 584 S.W.2d at 307 (stating that because defendants' counterclaim exceeded jurisdictional limit of trial court, "the trial court should have dismissed the [defendants'] cause of action").

We sustain Shaban’s second issue.³

Conclusion

We reverse the judgment of the county court granting Hertz’s motion for no-evidence summary judgment on Shaban’s counterclaims and ruling that Shaban take nothing on his counterclaims. We dismiss without prejudice Shaban’s counterclaims for lack of subject-matter jurisdiction.

Evelyn V. Keyes
Justice

Panel consists of Justices Keyes, Bland, and Lloyd.

³ Because we hold that the county court lacked jurisdiction to rule on Shaban’s counterclaims, we need not address Shaban’s first issue—concerning whether the county court could rule on his counterclaims despite his failure to pay the filing fee—and his third issue—concerning whether he raised a fact issue on each of his counterclaims sufficient to defeat summary judgment