



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. 04-12-00785-CV

Tobey **WAGGONER**,  
Appellant

v.

**LEAD GENERATION AND MARKETING, LLC**,  
Appellee

From the 131st Judicial District Court, Bexar County, Texas  
Trial Court No. 2012-CI-09405  
Honorable Barbara Hanson Neller-moe, Judge Presiding

PER CURIAM

Sitting: Rebecca Simmons, Justice  
Steven C. Hilbig, Justice  
Marialyn Barnard, Justice

Delivered and Filed: December 21, 2012

DISMISSED FOR WANT OF JURISDICTION

On June 8, 2012, appellee Lead Generation and Marketing, LLC sued appellant Tobey Waggoner and other defendants for various civil causes of action. On November 6, 2012, Appellant's counsel's assistant electronically filed a special appearance approximately nine minutes after the trial court called for announcements in the default judgment hearing. Appellant did not present a copy of the special appearance to opposing counsel or the court. The trial court was unable to confirm that the special appearance had been filed, and it granted a default

judgment in favor of appellee. The default judgment did not dispose of all parties and claims in the underlying suit.

On November 20, 2012, Appellant filed a notice of appeal “from an Interlocutory Order . . . that, ‘in effect,’ denied [his] Special Appearance.” In response to Appellant’s motions, on November 30, 2012, we stayed all discovery with respect to Appellant, and on December 7, 2012, we stayed all further proceedings in the underlying suit pending resolution of this appeal—numbered 04-12-00785-CV.

On December 7, 2012, Appellee filed a motion to dismiss this appeal for want of jurisdiction. Appellee asserts that this court lacks jurisdiction in this appeal because the trial court did not consider or deny Appellant’s special appearance.

A party may appeal a district court’s interlocutory order that denies a special appearance. TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a) (West Supp. 2012); see *BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789, 793 (Tex. 2002). However, the record does not show that the trial court considered or denied the special appearance. Further, the November 6, 2012 default judgment does not dispose of all pending parties and claims. See *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). Therefore, we lack jurisdiction over this appeal. See *BMC Software Belg.*, 83 S.W.3d at 793; *Lehmann*, 39 S.W.3d at 195.

Appellee’s motion is granted. We withdraw our November 30, 2012 and December 7, 2012 orders in this appeal, and we dismiss this appeal for want of jurisdiction. See *BMC Software Belg.*, 83 S.W.3d at 793; *Lehmann*, 39 S.W.3d at 195.

PER CURIAM