



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

**MEMORANDUM OPINION**

No. 04-19-00691-CV

**CUANTO ANTES MEJOR, L.L.C. and M.E. Phillip,**  
Appellants

v.

**EOG RESOURCES, INC.,**  
Appellee

From the 81st Judicial District Court, Karnes County, Texas  
Trial Court No. 15-12-00277-CVK  
Honorable Lynn Ellison, Judge Presiding

Opinion by: Liza A. Rodriguez, Justice

Sitting: Sandee Bryan Marion, Chief Justice  
Patricia O. Alvarez, Justice  
Liza A. Rodriguez, Justice

Delivered and Filed: December 16, 2020

**REVERSED AND REMANDED**

In this second appeal, Cuanto Antes Mejor, L.L.C. and M.E. Phillip (collectively “Cuanto”) challenge the trial court’s summary judgment in favor of EOG Resources, Inc. (“EOG”) based on res judicata and its entry of a take-nothing judgment against Cuanto. We reverse the trial court’s judgment and remand to the trial court for further proceedings consistent with this opinion.

**BACKGROUND**

The facts underlying the dispute between Cuanto and EOG over possession and superior title to an undivided 39/252 interest in a 44.8-acre tract of land in Karnes County, Texas (the

“Property Interest”) are set forth in our prior opinion. *See Cuanto Antes Mejor, L.L.C. v. EOG Resources, Inc.*, No. 04-17-00504-CV, 2018 WL 1733174, at \*1-2 (Tex. App.—San Antonio April 11, 2018, pet. denied). This case began in December 2015 when Cuanto filed a lawsuit against EOG asserting a trespass to try title claim, along with other title-dependent claims for conversion, an accounting of the oil and gas production/proceeds, and damages. The parties filed competing motions for summary judgment solely on the issue of title. Each alleged ownership of the Property Interest. The trial court denied Cuanto’s motion for partial summary judgment on title, granted EOG’s motion for summary judgment and awarded possession and superior title to EOG, and rendered a take-nothing final judgment against Cuanto. Cuanto appealed to this court.

On appeal, Cuanto argued the trial court erred in granting summary judgment for EOG on the issue of title because its own summary judgment evidence proved Cuanto held title. We agreed and held that Cuanto conclusively established its title to the disputed Property Interest through a foreclosure sale and sheriff’s tax deed and that its partial summary judgment motion should have been granted by the trial court. *Id.* at \*8. We further held that EOG’s challenge to Cuanto’s claim to title was barred by the limitations period in the Texas Tax Code. *Id.* We therefore reversed the trial court’s judgment and rendered judgment declaring that Cuanto held superior title to the Property Interest and awarding Cuanto possession. *Id.* EOG sought review in the Texas Supreme Court, but its petition was denied. The mandate issued on September 24, 2018, thereby making our judgment final.

After it prevailed on appeal on the issue of title, Cuanto sought to pursue its title-dependent claims for conversion, an accounting, and damages against EOG in the trial court under the same cause number, Trial Court No. 15-12-00277-CVK.<sup>1</sup> Cuanto filed a “Motion for an Amended

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<sup>1</sup> Cuanto initially filed a separate lawsuit but entered a nonsuit.

Docket Control Order” on December 6, 2018. After a hearing, the trial court granted Cuanto’s motion and set Cuanto’s remaining claims for trial over EOG’s objection that there was already a final judgment and the case was over. Cuanto subsequently amended its petition to add other claims against EOG, including fraud and violations of the Texas Natural Resources Code. On September 3, 2019, EOG filed a traditional motion for summary judgment based on the affirmative defense of res judicata and, in the alternative, a plea in abatement. Cuanto contested EOG’s assertion of res judicata by filing a response claiming there was no prior final judgment on the merits of its title-dependent claims – either in the trial court or the appellate court. *See Travelers Ins. Co. v. Joachim*, 315 S.W.3d 860, 862 (Tex. 2010) (elements of res judicata are (1) a prior final judgment on the merits by a court of competent jurisdiction, (2) identity of parties or those in privity with them, and (3) a second action based on the same claims that were raised or could have been raised in the first action). The trial court granted EOG’s summary judgment on the basis of res judicata and issued a take-nothing judgment against Cuanto (for the second time) on October 3, 2019. Cuanto brought the appeal now before us.

#### DISCUSSION

Cuanto argues the trial court’s grant of summary judgment based on res judicata is erroneous because neither the trial court nor this court entered a final judgment disposing of Cuanto’s title-dependent claims against EOG on their merits. Cuanto asserts it was entitled to pursue those claims after the question of title was resolved in its favor in the first appeal. EOG replies that this court’s April 11, 2018 judgment on title is the final judgment in the case and there can be only one final judgment. EOG contends that (1) Cuanto waived its title-dependent claims by failing to brief them in the first appeal and by failing to file a motion for rehearing or petition for discretionary review to request a remand on those claims, (2) the trial court lost jurisdiction to take any further action in the case after our April 11, 2018 judgment became final, and (3) it (EOG)

properly prevailed on its summary judgment motion because it conclusively established all the elements of res judicata.

When the trial court denied Cuanto's partial summary judgment motion on title and granted EOG's competing summary judgment motion, it resolved the issue of title by declaring that EOG conclusively established it held superior title to the Property Interest. The trial court also entered a "take-nothing judgment" against Cuanto. By entering the take-nothing judgment in favor of EOG, the trial court necessarily disposed of all of Cuanto's pending claims – its claim for title as well as its title-dependent claims for conversion, an accounting, and damages pled in its second amended petition. *See Fed. Deposit Ins. Corp. v. Lenk*, 361 S.W.3d 602, 612 (Tex. 2012) (claim for attorney's fees was necessarily disposed of when trial court ruled in other party's favor); *Lehmann v. Har-Con Corp.*, 39 S.W.3d 91, 200 (Tex. 2001) (entry of a take-nothing judgment against the plaintiff on all claims it asserted is a final judgment, even if the defendant only moved for a partial summary judgment; it may be an erroneous judgment, but it is not interlocutory); *see also Gen'l Telephone Co. of Southwest v. Blacksher*, 742 S.W.2d 465, 468 (Tex. App.—Houston [1st Dist.] 1987, writ denied) (take-nothing judgment disposed of all claims in plaintiff's pleadings even though it did not specifically mention each claim). By disposing of all parties and claims pending before it, the trial court therefore entered a final appealable judgment in the case. *Lehmann*, 39 S.W.3d at 195.

When this court determined in the first appeal that the trial court erred in granting summary judgment on title in favor of EOG, we took two actions – we reversed the trial court's take-nothing judgment in whole and we rendered a declaratory judgment on title for Cuanto. *See Cuanto Antes Mejor*, 2018 WL 1733174, at \*8. As to the rendition, when both parties move for summary judgment on the same issue and the trial court grants one motion and denies the other motion, the reviewing court considers the summary judgment evidence presented by both sides, determines all

questions presented, and, if it determines the trial court erred, it renders the judgment the trial court should have rendered. *Tex. Workforce Comm'n v. Wichita City*, 548 S.W.3d 489, 492 (Tex. 2018). Our declaratory judgment in favor of Cuanto on title became final when the mandate issued. *See* TEX. R. APP. P. 51.1(b). “A mandate issued by the appellate court is a formal command requiring the lower court to comply with the appellate court’s judgment.” *Cessna Aircraft Co. v. Aircraft Network, LLC*, 345 S.W.3d 139, 144 (Tex. App.—Dallas 2011, no pet.). Once final, our judgment declaring that Cuanto holds superior title to the Property Interest became the judgment of the trial court. *Id.* (“[w]hen an appellate court affirms a trial court’s judgment or renders the judgment the trial court should have rendered, that judgment becomes the judgment of both courts) (citing *Cook v. Cameron*, 733 S.W.2d 137, 139 (Tex. 1987) (op. on reh’g)).

With respect to our reversal of the trial court’s take-nothing judgment against Cuanto, when a lower court’s judgment is reversed in whole, that judgment is without effect, as if it had never been rendered. *Phillips v. Bramlett*, 407 S.W.3d 229, 238 (Tex. 2013); *Min v. H & S Crane Sales, Inc.*, 472 S.W.3d 773, 777 (Tex. App.—Houston [14th Dist.] 2015, pet. denied). Therefore, our reversal nullified the take-nothing judgment on Cuanto’s title-dependent claims and placed “the parties . . . [in] the same position on these issues as they occupied before the trial court’s judgment was rendered.” *Cessna*, 345 S.W.3d at 145; *Swank v. Cunningham*, 258 S.W.3d 647, 663 (Tex. App.—Eastland 2008, pet. denied) (reversal of judgment returns parties to status quo). When the mandate effectuating our opinion and judgment issued, it made Cuanto’s title-dependent claims live again but did not resolve them. *See Jay Petroleum LLC v. EOG Resources, Inc.*, 332 S.W.3d 534, 539 (Tex. App.—Houston [1st Dist.] 2009, pet. denied).

Under Rule 43.3, a remand was necessary for further proceedings in the trial court to resolve Cuanto’s title-dependent claims that were revived by the reversal of the take-nothing judgment. *See id.* (an appellate court’s remand returns jurisdiction over a case to the trial court);

*see also* TEX. R. APP. P. 43.3 (“[w]hen reversing a trial court’s judgment, the court must render the judgment that the trial court should have rendered, except when ... a remand is necessary for further proceedings ...”). An appellate court will not grant relief that was not requested. *Jay*, 332 S.W.3d at 538 (citing *Stevens v. Nat’l Educ. Ctrs., Inc.*, 11 S.W.3d 185, 186 (Tex. 2000) (per curiam)). Although EOG asserts Cuanto never requested a remand, its appellant’s brief in the first appeal stated, “[a]ppellants request this court to reverse the Judgment of the trial court granting EOG’s Motion for Summary Judgment and Judgment denying the ‘Cuanto’ and ‘Phillip’ Motion for Partial Summary Judgment, and remand the case to the trial court for further proceeding [sic] to determine ‘Cuanto’s’ actual and exemplary damages.” Cuanto’s prayer for appellate relief asked in part “that the case be remanded to the trial court for further proceedings to determine ‘Cuanto’s’ damages.” EOG also asserts that Cuanto waived consideration of the merits of its title-dependent claims by failing to file a motion for rehearing or petition for discretionary review to correct the mandate that, according to EOG, did not remand the case to the trial court. However, as in *Jay*, our judgment and mandate granted Cuanto’s request for rendition in its favor on title and granted Cuanto’s request for a remand for further proceedings by reversing the take-nothing judgment that had resolved its title-dependent claims, thereby making the claims live again, and by commanding the trial court to observe our order “and in all things have the order duly recognized, obeyed, and executed.” *See Jay*, 332 S.W.3d at 539-40 (construing similar mandate language reversing the trial court’s judgment in favor of appellee on its summary judgment motion and rendering judgment granting appellant’s summary judgment motion and ordering that “this decision be certified below for observance” as including a remand and order to the trial court to consider the now-live claims). Thus, Cuanto “had no reason to request rehearing or petition the Texas Supreme Court because the mandate authorized the trial court to consider the []claims.” *Id.* at 540. We therefore conclude that Cuanto did not waive its title-dependent claims.

By granting summary judgment for EOG based on res judicata, the trial court found that EOG established the three necessary elements of its affirmative defense: (1) a prior final judgment on the merits by a court of competent jurisdiction; (2) identity of parties or those in privity with them; and (3) a second action based on the same claims that were raised or could have been raised in the first action. *See Joachim*, 315 S.W.3d at 862; *Amstadt v. U.S. Brass Corp.*, 919 S.W.2d 644, 652 (Tex. 1996). The purpose of res judicata is to bar a second suit by parties on matters actually litigated in a previous suit as well as on claims that could, and should through the exercise of diligence, have been litigated in the prior suit. *Getty Oil Co. v. Ins. Co. of N. Am.*, 845 S.W.2d 794, 799 (Tex. 1992); *Barr v. Resolution Trust Corp.*, 837 S.W.2d 627, 631 (Tex. 1992) (transactional approach to res judicata requires claims arising out of the same subject matter to be litigated in a single lawsuit). Here, the third element of a second action involving the same claims is absent. As discussed above, the reversal of the trial court's judgment in the first appeal made Cuanto's title-dependent claims live again "which does not constitute res judicata because the matter . . . was never finally determined." *Jay*, 332 S.W.3d at 540 (citing *Tex. Water Rights Comm'n v. Crow Iron Works*, 582 S.W.2d 768, 771 (Tex. 1979)).

Further, an exception to the usual rule of res judicata arises when an appellate court renders a declaratory judgment that should have been rendered by the trial court. In that situation, the prevailing party may seek supplemental relief in the trial court based on the rights declared in the newly rendered judgment – even though the requested relief could have been granted in the original action, unless the requested relief was actually considered and denied in the original action. *Id.* (citing *Valley Oil Co. v. City of Garland*, 499 S.W.2d 333, 335 (Tex. Civ. App. —Dallas 1973, no writ)); *State v. Anderson Courier Serv.*, 222 S.W.3d 62, 65 (Tex. App.—Austin 2005, pet. denied) (such supplemental relief must serve to effectuate the declaratory judgment). "The rationale for this apparent departure from the usual rule of res judicata is that the losing party in a declaratory

judgment action can normally be expected to recognize the rights declared by the judgment and act accordingly, but that if he fails to do so, the court should have ample power to enforce the judgment by subsequent coercive orders, whether or not such relief was sought in the original action.” *Valley Oil*, 499 S.W.2d at 336 (referring to section 8 of the former version of the Declaratory Judgment Act which referenced only “coercive” relief to enforce a declaratory judgment).

Current section 37.011 of the Texas Declaratory Judgment Act broadly provides, “[f]urther relief based on a declaratory judgment or decree may be granted whenever necessary or proper.” TEX. CIV. PRAC. & REM. CODE ANN. § 37.011. The Act does not independently create jurisdiction or substantive rights, but section 37.011 allows the trial court to grant relief ancillary to a declaratory judgment after an appeal even though such relief was not requested on appeal. *In re State*, 159 S.W.3d 203, 206 (Tex. App.—Austin 2005, orig. proceeding). Texas courts, including this court, have thus recognized the prevailing party’s right to pursue supplemental relief ancillary to a declaratory judgment after an appeal and the trial court’s jurisdiction to grant such relief. *See id.* at 206-07 (internal citations omitted); *Jay*, 332 S.W.3d at 540-41; *see also Davis v. Pletcher*, 727 S.W.2d 29, 35 (Tex. App.—San Antonio 1987, writ ref’d n.r.e.) (holding that section 37.011 permits the trial court to grant further “remedial or preventive relief” based on a declaratory judgment when necessary and proper); *Muller v. Leyendecker*, 697 S.W.2d 668, 674 (Tex. App.—San Antonio 1985, writ ref’d n.r.e.) (holding trial court had authority to order lease term extended after rendition of declaratory judgment on appeal that lease remained “in full force and effect” and neither *res judicata* nor waiver barred trial court’s grant of further relief under Declaratory Judgment Act).

Because there was no longer any judgment resolving Quanto’s title-dependent claims after our reversal and the trial court never had the opportunity to consider their merits following our



declaratory judgment, Cuanto is not barred by res judicata or waiver from pursuing its claims for relief based on the right to title declared by our judgment. *See Jay*, 332 S.W.3d at 541. Our opinion and mandate in the first appeal necessarily returned jurisdiction to the trial court and directed the trial court to conduct further proceedings to resolve Cuanto's claims made live by the reversal and rendition of the declaratory judgment that it held superior title. *See id.* at 540-41; *Cessna*, 345 S.W.3d at 145. The scope of the mandate is determined by referring to both the appellate court's opinion and the mandate itself. *Cessna*, 345 S.W.3d at 144. We therefore hold that the trial court erred in granting summary judgment for EOG based on res judicata and in entering a take-nothing judgment against Cuanto.

#### CONCLUSION

Based on the foregoing reasons, we reverse the trial court's judgment granting summary judgment for EOG based on res judicata and entering a take-nothing judgment against Cuanto, and we remand the cause to the trial court for consideration of Cuanto's title-dependent claims on their merits.

Liza A. Rodriguez, Justice