

NO. 07-07-0040-CV  
IN THE COURT OF APPEALS  
FOR THE SEVENTH DISTRICT OF TEXAS  
AT AMARILLO  
PANEL B  
JULY 5, 2007

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ARK OF SAFETY CHRISTIAN CHURCH, INC., APPELLANT

V.

CHURCH LOANS & INVESTMENTS TRUST, APPELLEE

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FROM THE 108<sup>TH</sup> DISTRICT COURT OF POTTER COUNTY;

NO. 093264-00-E; HONORABLE ABE LOPEZ, JUDGE

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Before QUINN, C.J., and CAMPBELL and HANCOCK, JJ.

**OPINION**

Ark of Safety Christian Church (Ark) appeals from the granting of a summary judgment by the trial court in favor of Church Loans & Investments Trust (Church Loans). Prior to filing its brief in response to Ark's appellate brief, Church Loans has filed a motion to dismiss the appeal pursuant to Texas Rule of Appellate Procedure 42.3(c). We grant the motion.

## Procedural Background

On December 5, 2006, the trial court entered a final summary judgment against Ark in the amount of \$57,750 in money damages, \$24,000 in attorney fees, \$7,170 in pre-judgment interest, and post-judgment interest accumulating at the rate of \$19.90 per day. Ark subsequently filed a motion for new trial, which was overruled by order of the trial court on January 26, 2007. Ark gave notice of appeal on February 16, 2007. On January 23, 2007, Church Loans initiated post-judgment discovery by serving interrogatories and requests for production on Ark. The interrogatories and requests for production went unanswered and subsequently, on March 26, 2007, Church Loans filed a motion to compel answers to post-judgment discovery. The trial court held a hearing on Church Loans's motion to compel, on April 13, 2007, and ordered Ark to deliver full and complete answers and responses by 5:00 p.m. on April 18, 2007. At the same time, Ark was further ordered to pay reasonable attorney fees of \$1,000 to Church Loans. Subsequently, on April 25, 2007, Church Loans filed a second motion to compel and a motion to show cause alleging that Ark had failed to comply with the trial court's order of April 13, 2007. As a result of the second motion, the trial court entered an order on April 27, 2007, requiring Ark to pay counsel for Church Loans, by 5:00 p.m. on May 2, 2007, \$2,500 as sanctions for Church Loans being required to file a second motion to compel. The trial court also ordered Ark to provide full and complete answers and responses to Church Loans's post-judgment discovery by 5:00 p.m. on May 4, 2007. Further, the order of the trial court required Ark to pay \$1,000 for each business day after May 4, 2007, that full and complete discovery, previously ordered, was not delivered to Church Loans. Finally, the trial court ordered that,

if Ark had not complied with the order of the trial court by May 4, 2007, Ark was to personally appear before the court, by and through its Pastor, on Friday, May 11, 2007. On May 11, 2007, the trial court held a show cause hearing. The trial court held Ark's representative in contempt and ordered additional sanctions, fines, and required that Ark post a supersedeas bond in the amount of \$100,000. The record reflects that no supersedeas bond was filed and that Ark took no action to comply with the trial court's orders.

### Analysis

Based upon the failure of Ark to answer the post-judgment discovery, pay the associated sanctions, and/or file a supersedeas bond, Church Loans has requested this court to dismiss the appeal. The losing party to a lawsuit for money damages has a choice to either submit to the judgment or supersede the judgment by filing of a proper bond while the case is pending appellate review. Hayes v. Hayes, 920 S.W.2d 344, 347 (Tex.App.–Texarkana 1996, writ denied). Since giving notice of appeal, Ark has neither answered post-judgment discovery, a method whereby the judgment creditor can attempt to enforce his judgment, nor has Ark superseded the judgment, even after being explicitly ordered to do so by the trial court's order of May 11, 2007. Ark has, therefore, failed to comply with an order of the trial court. TEX. R. APP. P. 42.3(c). Church has filed a motion requesting that we dismiss the appeal for Ark's failure to comply with the order of the trial court. Ark, though served with a copy of the motion, has filed no response. Inasmuch as the trial court's orders have not been complied with, we grant the dismissal of the appeal. TEX. R. APP. P. 42.3 (c); Hayes, 920 S.W.2d at 347.

## Conclusion

Church's motion to dismiss is granted and the appeal is dismissed.

Mackey K. Hancock  
Justice