



IN THE
TENTH COURT OF APPEALS

No. 10-06-00256-CV

MOTOR COACH INDUSTRIES MEXICO, S.A. DE C.V.,
F/K/A DINA AUTOBUSES, S.A. DE C.V.,

Appellant

v.

JAMES HINTON, INDIVIDUALLY AND AS REPRESENTATIVE OF THE
ESTATE OF DOLORES HINTON, DECEASED, DAVID HINTON,
ROBERT KURYLA, KAREN KURYLA, HATTIE BINNS, RETA HAYNES,
MELINDA GREGER, ALAN HORTON, ELAINE HORTON, RUTH POWELL,
JUDY BENSON, JAMES L. FREEMAN, INDIVIDUALLY AND AS
PERSONAL REPRESENTATIVE OF THE ESTATE OF JO CATHERINE
FREEMAN, DECEASED, JAMES F. FREEMAN, MELANIE JO BROOKS,
SUSAN AKERS BILLS, INDIVIDUALLY AND AS EXECUTRIX OF THE
ESTATES OF ROBERT MELVIN AKERS, DECEASED, AND MILDRED
DELOIS AKERS, DECEASED, ROBERT MELVIN AKERS, JR., PATSY
BEASLEY, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF
WAYNE BEASLEY, DECEASED, SHIRLEY SOMMER, AND PEGGY
ARMSTRONG,

Appellees

And

10-08-00353-CV

MCI SALES AND SERVICE, INC., F/K/A HAUSMAN BUS SALES, INC.,
Appellant

v.

JAMES HINTON, INDIVIDUALLY AND AS REPRESENTATIVE OF THE
ESTATE OF DOLORES HINTON, DECEASED, DAVID HINTON,
ROBERT KURYLA, KAREN KURYLA, HATTIE BINNS, RETA HAYNES,

**MELINDA GREGER, ALAN HORTON, ELAINE HORTON, RUTH POWELL,
JUDY BENSON, JAMES L. FREEMAN, INDIVIDUALLY AND AS
PERSONAL REPRESENTATIVE OF THE ESTATE OF JO CATHERINE
FREEMAN, DECEASED, JAMES F. FREEMAN, MELANIE JO BROOKS,
SUSAN AKERS BILLS, INDIVIDUALLY AND AS EXECUTRIX OF THE
ESTATES OF ROBERT MELVIN AKERS, DECEASED, AND MILDRED
DELOIS AKERS, DECEASED, ROBERT MELVIN AKERS, JR., PATSY
BEASLEY, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF
WAYNE BEASLEY, DECEASED, SHIRLEY SOMMER, AND PEGGY
ARMSTRONG,**

Appellees

**From the 170th District Court
McLennan County, Texas
Trial Court No. 2003-2308-4**

DISSENT TO SEVERANCE AND REINSTATEMENT ORDER

The Court's opinion and judgment in 10-06-00256-CV issued on September 10, 2008. On September 19, 2008, we received a notice of bankruptcy of one of the Appellants. On September 19, 2008, we also received Appellees' motion for extension of time to file a motion for rehearing. On September 22, 2008, we purported to grant the Appellees' motion for extension of time to file a motion for rehearing until October 27, 2008. On September 22, 2008, we received a letter from Appellants regarding the Court's purported order granting the extension after the notice of bankruptcy had been received. On October 7, 2008 we acknowledged the automatic stay due to having received the notice of bankruptcy, but did not acknowledge the date of the receipt or the effective date of the stay. Today we purport to sever the proceeding on our own motion. I would not.

I would first clarify the procedural posture of the stay by noting that the Court's September 22, 2008 order granting Appellees an extension of time in which to file their motion for rehearing and extending the due date until October 27, 2008 was a void order because it was issued after we had received notice of the bankruptcy stay. I would then inquire of the parties regarding whether the matter was appropriate for severance; in particular, whether the Appellees' claims against the Appellants are severable. In this proceeding it appears that the Appellees brought a single claim, albeit multiple theories of product liability, against multiple but related corporate Appellants. The judgment for each Appellee is for the same claim (multiple theories) and precisely the same damages jointly and severally against each Appellant. Before I vote to attempt to sever these Appellants, I would request briefing on the issue of severability. Further, it appears we may be creating an undesirable course of proceeding because, while represented by able counsel, none of the parties has sought this court's intervention in this manner.

Accordingly, I respectfully dissent from the severance and reinstatement order.

TOM GRAY
Chief Justice

Dissent to Severance and Reinstatement Order delivered and filed October 15, 2008
Publish