# TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

**NO. 03-16-00672-CV**

**Guido Amendola, Appellant**

**v.**

**Micro Layer Energy, LLC, Appellee**

**FROM THE DISTRICT COURT OF HAYS COUNTY, 22ND JUDICIAL DISTRICT**
**NO. 16-0107, HONORABLE GARY L. STEEL, JUDGE PRESIDING**

## M E M O R A N D U M  O P I N I O N

Appellant Guido Amendola has filed a motion to dismiss his appeal from a no-answer default judgment. *See* Tex. R. App. P. 42.1. Amendola asserts that the trial court's judgment is not a final and appealable judgment. We agree.

A default judgment is not presumed to be final. *In re Burlington Coat Factory Warehouse of McAllen, Inc.*, 167 S.W.3d 827, 829 (Tex. 2005). "[W]hen there has not been a conventional trial on the merits, an order or judgment is not final for purposes of appeal unless it actually disposes of every pending claim and party or unless it clearly and unequivocally states that it finally disposes of all claims and all parties." *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 205 (Tex. 2001). When necessary to determine whether an order disposes of all pending claims and parties, we must examine the record in the case. *Id.* at 205-06.

In this case, the language in the order does not unequivocally express that it was intended to be final, and the order does not contain language denying all relief not granted (although that language alone would not be dispositive). *See In re Burlington Coat Factory*, 167 S.W.3d at 829-30 (explaining that in default-judgment context court must state more than that "all other relief not expressly granted is hereby denied" to unequivocally indicate finality); *Lehmann*, 39 S.W.3d at 206 ("A statement like, 'This judgment finally disposes of all parties and all claims and is appealable,' would leave no doubt about the court's intention."). Nor does the judgment expressly dispose of all claims. *See In re Burlington Coat Factory*, 167 S.W.3d at 830; *Lehmann*, 39 S.W.3d at 200, 204, 206.

The plaintiff below, Micro Layer Energy, LLC, alleged claims for breach of contract and fraudulent misrepresentation, concealment, and inducement. Micro Layer Energy also alleged that Amendola was liable for treble damages under the Deceptive Trade Practices Act for misrepresentations and breaches of express and implied warranties. In addition, Micro Layer Energy sought pre-judgment and post-judgment interest, attorneys' fees, and court costs. The trial court's judgment disposes of Micro Layer Energy's claims for breach of contract and fraudulent misrepresentation and awards damages based on those claims. It also awards attorneys' fees, post-judgment interest, and court costs. The judgment does not, however, dispose of Micro Layer Energy's DTPA claims or claim for pre-judgment interest. *See In re Burlington Coat Factory*, 167 S.W.3d at 830 (concluding default judgment not final because it did not state that it was final judgment, it did not purport to dispose of all parties and all claims, and it did not actually dispose of plaintiff's claim for punitive damages); *see also Sudderth v. Phillips*,

No. 05-02-01039-CV, 2003 WL 1752503, at *1 (Tex. App.—Dallas Apr. 3, 2003, pet. denied) (mem. op.) (dismissing appeal for want of jurisdiction because default judgment did not expressly dispose of appellee's claim for prejudgment interest, despite "Mother Hubbard" clause in judgment providing that "[a]ll remedies not granted herein are specifically denied"). We conclude the trial court's August 29, 2016 judgment is not final and appealable, and we have no jurisdiction to consider an appeal of this interlocutory order. *See Lehmann*, 39 S.W.3d at 195 (appellate courts generally have jurisdiction to review only final judgments and orders). Consequently, we grant Amendola's motion and dismiss this appeal for want of jurisdiction.

Cindy Olson Bourland, Justice

Before Chief Justice Rose, Justices Field and Bourland

Dismissed for Want of Jurisdiction

Filed: March 2, 2017