

**TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

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**NO. 03-21-00032-CV**

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**Appellants, John Roberts Austin I LP d/b/a Lexus of Austin and d/b/a Lexus of Lakeway,  
Vicki Roberts, Abby Elizabeth Argo, Randy Phillip Hoff, Steven Derrick Walker,  
Michael Lee Cobb, and Edward Cooke// Cross-Appellant, Vijay Netaji**

**v.**

**Appellee, Vijay Netaji//Cross-Appellees, John Roberts Austin I LP d/b/a Lexus of Austin  
and d/b/a Lexus of Lakeway, Vicki Roberts, Abby Elizabeth Argo, Randy Phillip Hoff,  
Steven Derrick Walker, Michael Lee Cobb, and Edward Cooke**

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**FROM THE 53RD DISTRICT COURT OF TRAVIS COUNTY  
NO. D-1-GN-21-000568, HONORABLE DUSTIN M. HOWELL, JUDGE PRESIDING**

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**NO. 03-21-00540-CV**

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**John Roberts Austin I, LP d/b/a Lexus of Austin and d/b/a Lexus of Lakeway;  
Vicki Roberts; Abby Elizabeth Argo; Randy Phillip Hoff; Steven Derrick Walker;  
Michael Lee Cobb; and Edward Cooke, Appellants**

**v.**

**Ram Kris Netaji; Balijepalli Netaji, MD.; and Prabha Murthy, Appellees**

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**FROM THE 53RD DISTRICT COURT OF TRAVIS COUNTY  
NO. D-1-GN-21-006180, HONORABLE MARIA CANTÚ HEXSEL, JUDGE PRESIDING**

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**MEMORANDUM OPINION**

**PER CURIAM**

Appellants/Cross Appellees John Roberts Austin I, LP d/b/a Lexus of Austin and d/b/a Lexus of Lakeway; Vicki Roberts; Abby Elizabeth Argo; Randy Phillip Hoff; Steven Derrick Walker; Michael Lee Cobb; and Edward Cooke (the Roberts Appellants) filed a motion to consolidate the appeals in these two causes in the interest of judicial economy. They contend

that both appeals derive from the same core of operative facts in the underlying litigation and that the appeals involve the “non-recognition of the aiding and abetting of a tort cause of action.”

The Roberts Appellants sued Ram Kris Netaji in trial court cause number D-1-GN-17-004970, alleging that he engaged in a course of conduct to harass, intimidate, threaten, and stalk them. They also sued Ram Netaji’s parents, Balijepalli Netaji and Prabha Murthy, and Ram Netaji’s brother, Vijay Netaji, for “assisting and encouraging” that conduct. The first appeal, cause number 03-21-00032-CV, is from the district court’s December 21, 2020 order granting partial summary judgment in favor of Appellee/Cross Appellant Vijay Netaji as to the Roberts Appellants’ “aiding or abetting cause of action” against him in trial court cause number D-1-GN-17-004970, *John Roberts Austin I, LP d/b/a Lexus of Austin and d/b/a Lexus of Lakeway, Vicki Roberts, Abby Elizabeth Argo, Randy Phillip Hoff, Steven Derrick Walker, Michael Lee Cobb, and Edward Cooke v. Ram Kris Netaji, Balijepalli Netaji, M.D., Prabha Murthy, and Vijay Netaji*, in the 53rd Judicial District Court of Travis County, Texas. This interlocutory order became final on February 3, 2021, when the district court entered an agreed order severing these claims against Vijay Netaji into trial court cause number D-1-GN-21-000568.<sup>1</sup>

The second appeal, cause number 03-21-00540-CV, is from the district court’s January 26, 2021 order granting Balijepalli Netaji, M.D. and Prabha Murthy’s special exceptions concerning the Roberts Appellants’ claims against them for “Participatory Liability-Assisting or Encouraging-Aiding and Abetting” in the same trial court cause, D-1-GN-17-004970. This interlocutory order became final on September 28, 2021, when the district court granted a partial

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<sup>1</sup> This severance order specifies that “the December 21, 2020 Order granting Defendant Vijay Netaji’s First Amended Traditional Motion for Summary Judgment finally disposes of all claims and causes of action brought against Vijay Netaji,” that the Roberts Appellants “take nothing against him,” and that “all relief requested by the Plaintiffs [the Roberts Appellants] against Vijay Netaji is DENIED.”

summary judgment that dismissed with prejudice the Roberts Appellants’ “causes of action as set forth in Count 10 [Participatory Liability of Dr. Netaji and Prabha Murthy–Principal-Agent Liability],” and severed the Roberts Appellants’ claims against BaliJepalli Netaji, M.D. and Prabha Murthy for “participatory liability for assisting or encouraging (aiding and abetting)” into trial court cause number D-1-GN-21-006180.<sup>2</sup>

Appellee/Cross Appellant Vijay Netaji filed a response opposing the motion to consolidate, noting that the Roberts Appellants filed a motion to sever their claims against him in the original trial court cause D-1-GN-17-004970 and contending that consolidation should be denied “as these appeals have two separate and pending cause numbers in the trial court.”<sup>3</sup> We are unpersuaded by the opposition to consolidation of these appeals. Vijay Netaji did not oppose the Roberts Appellants’ motion for severance below, which separated their “aiding and abetting” claims against him and finalized the district court’s partial summary judgment on those claims.

Given the dispute about the viability of the Roberts Appellants’ aiding-and-abetting claims, we abated the appeal involving Vijay Netaji in cause number 03-21-00032-CV pending review of our decision in *Hampton v. Equity Trust Company*, 607 S.W.3d 1 (Tex. App.—Austin 2020, pet. denied), which declined to recognize “aiding and abetting” as an intentional tort cause of action in Texas. *See John Roberts Austin I LP v. Netaji*, No. 03-21-00032-CV, 2021 Tex. App. LEXIS 1800, at \*1 (Tex. App.—Austin Mar. 11, 2021)

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<sup>2</sup> This severance order specifies that “the January 26, 2021 Order Granting Special Exceptions of BaliJepalli Netaji and Prabha Murthy and this Order finally dispose of all claims and causes of action brought against BaliJepalli Netaji and Prabha Murthy,” that the Roberts Appellants “take nothing against them,” that “all relief requested by the Plaintiffs against BaliJepalli Netaji and Prabha Murthy is DENIED,” and “[a]ccordingly, this is a final judgment as to Defendants BaliJepalli Netaji and Prabha Murthy, and is appealable.”

<sup>3</sup> BaliJepalli Netaji, M.D. and Prabha Murthy did not file a response but the certificate of conference for the motion to consolidate states that they oppose the motion.

(mem. op.).<sup>4</sup> The Texas Supreme Court denied the petition for review in *Hampton*, and we issued our mandate. *See Hampton*, 607 S.W.3d at 1. Accordingly, abatement of the appeal in 03-21-00032-CV is no longer necessary.

We reinstate the abated appeal in cause number 03-21-00032-CV, grant the Roberts Appellants' motion, and consolidate the two appeals for all purposes in the interest of judicial economy. The record and all filings from cause number 03-21-00032-CV are consolidated into cause number 03-21-00540-CV. The consolidated appeal will proceed under cause number 03-21-00540-CV, and cause number 03-21-00032-CV is dismissed.

Appellants' briefs are due thirty days from the date that this opinion issues. After that filing, the parties' briefing will proceed in accordance with the Texas Rules of Appellate Procedure.<sup>5</sup> *See* Tex. R. App. P. 38.6(b), (c).

Before Chief Justice Byrne, Justices Triana and Smith

03-21-00032-CV Dismissed

03-21-00540-CV Consolidated

Filed: December 17, 2021

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<sup>4</sup> The appeal in 03-21-00540-CV involving Balijepalli Netaji, M.D. and Prabha Murthy had not been filed when we granted the motion to abate.

<sup>5</sup> The Roberts Appellants' motions to expedite affirmance of the district court's orders in 03-21-00032-CV and 03-21-00540-CV are denied, and the motions to extend time to file their briefs in both appeals are dismissed as moot.