

Reversed and Remanded and Memorandum Opinion filed July 7, 2020.



In The
Fourteenth Court of Appeals

NO. 14-19-00018-CV

STANLEY ANEMELU AND ASHLEY ANEMELU, Appellants

V.

**JOSE IRAHETA D/B/A JOSE AUTO REPAIR AND JOSE AUTO REPAIR,
LLC, Appellees**

**On Appeal from the County Civil Court at Law No. 2
Harris County, Texas
Trial Court Cause No. 1106376**

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

Stanley and Ashley Anemelu (collectively, the “Anemelus”) purchased a car and took it to Jose Auto Repair, LLC (“JAR”) for repairs. After a disagreement regarding the amount owed for the repairs, the Anemelus sued JAR and Jose Iraheta d/b/a Jose Auto Repair (collectively, “Appellees”). Appellees asserted counterclaims and the parties proceeded to a bench trial.

After the conclusion of trial, the trial court signed a final judgment ordering

(1) a judgment in favor of Iraheta, and (2) take-nothing judgments against JAR and the Anemelus. The Anemelus and Appellees appealed. For the reasons below, we reverse the trial court’s final judgment and remand for a new trial.

BACKGROUND

In 2016, the Anemelus purchased a car at an auction and took it to JAR for repairs. The repairs were completed in January 2018, but the parties disagreed about the balance owed. The Anemelus sued Appellees and Appellees asserted counterclaims. The parties proceeded to a bench trial in December 2018.

Before the bench trial began, the Anemelus’ counsel asserted JAR lacked capacity to pursue its claims because its corporate charter had been forfeited. The Anemelus’ counsel offered into evidence a document from the Texas Secretary of State showing that JAR’s corporate charter was forfeited on January 27, 2017. The Anemelus’ challenge to JAR’s capacity was not raised in a verified pleading.

Appearing to agree with the Anemelus’ capacity challenge, the trial court made the following statements to Appellees’ counsel:

And then the charter was forfeited and that’s when things happened else, so they are both parties, okay. The individual is going to be responsible as continuing the business as a d/b/a of the corporation and therefore I think that sort of answers your defense unless you’re seeking time to reinstate the charter and get that reinstated, which is usually is often the request [A]fter it’s forfeited until it’s reinstated, it is a d/b/a, okay, individual liability.

* * *

[F]rom the time of January [2017] until reinstatement, it’s individual liability.

The trial court then ordered a ten-minute recess to permit Appellees’ counsel to discuss the issue with his client. Appellees chose to proceed with trial and the trial court heard testimony from Stanley Anemelu and Iraheta.

After the close of evidence, the trial court signed a final judgment awarding Iraheta \$14,523.12 in actual damages and denying the relief requested by JAR and the Anemelus. The trial court issued the following conclusions of law regarding JAR's capacity:

COL 2.6 "Defendant, [JAR], cannot maintain any causes of action accruing after January 27, 2017, as its charter was forfeited."

COL 2.7 "Judgment Creditor, JOSE IRAHETA *d/b/a* JOSE AUTO REPAIR, may maintain, in his individual capacity, all causes of action claimed and demand all rights available."

The Anemelus and Appellees timely appealed.

ANALYSIS

Appellees raise a single issue on appeal and assert the trial court erred in concluding that JAR lacked capacity to pursue its claims. The Anemelus raise six issues and 26 sub-issues challenging the trial court's final judgment and its findings of fact and conclusions of law. Many of the Anemelus' issues stem from the trial court's determination regarding JAR's capacity and its implications with respect to the other parties and their theories of liability. Because our determination regarding the Appellees' issue bears upon the issues raised in the Anemelus' appeal, we address the Appellees' issue first.

I. JAR Could Properly Maintain Its Claims After the Forfeiture of Its Corporate Charter.

Appellees assert the trial court's conclusions of law 2.6 and 2.7 are incorrect because (1) the Anemelus waived their challenge to JAR's capacity by failing to raise it in a verified pleading; and (2) Texas Business Organizations Code section 11.356 grants a three-year reprieve that permits JAR to pursue its claims despite the forfeiture of its corporate charter. *See* Tex. Bus. Orgs. Code Ann. § 11.356(a)(1) ("Notwithstanding the termination of a domestic filing entity under

this chapter, the terminated filing entity continues in existence until the third anniversary of the effective date of the entity’s termination only for purposes of: (1) prosecuting or defending in the terminated filing entity’s name an action or proceeding brought by or against the terminated entity”). Appellees ask that we “reverse the Judgment of the Trial Court and render judgment for [JAR] in the same terms as the Judgment.”

We presume without deciding that the Anemelus’ failure to raise their capacity challenge in a verified pleading is not fatal to the challenged conclusions of law.¹ We conclude the trial court erred in its determination that JAR could not maintain its claims after the forfeiture of its corporate charter.

On appeal, a trial court’s conclusions of law are reviewed *de novo* to determine if the court drew the correct legal conclusions from the facts. *BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002); *Kennebrew v. Harris*, 425 S.W.3d 588, 594 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). An incorrect conclusion of law does not warrant reversal if the judgment is otherwise correct on the merits. *Yazdani-Beioky v. Sharifan*, 550 S.W.3d 808, 822

¹ Pursuant to Texas Rule of Civil Procedure 93, a pleading challenging a plaintiff’s legal capacity to sue or a plaintiff’s entitlement to recover in the capacity in which he sues “shall be verified by affidavit” “unless the truth of such matters appear of record.” Tex. R. Civ. P. 93(1), (2). Accordingly, a party “may properly raise the issue of capacity in an unverified pleading if ‘the truth of such matters appear of record.’” *Haase v. Gim Res., Inc.*, No. 01-09-00696-CV, 2010 WL 3294247, at *4 (Tex. App.—Houston [1st Dist.] Aug. 19, 2010, no pet.) (mem. op.) (quoting Tex. R. Civ. P. 93); *see, e.g., InvestIN.com Corp. v. Europa Int’l, Ltd.*, 293 S.W.3d 819, 825 (Tex. App.—Dallas 2009, pet. denied) (an unverified supplemental answer properly raised the issue of a party’s capacity to be sued when the “unambiguous language” of a settlement agreement included in the summary judgment record demonstrated that the party did not assume personal liability).

Here, although they did not raise the issue of JAR’s capacity in a verified pleading, the Anemelus offered into evidence a document from the Texas Secretary of State showing that JAR’s corporate charter was forfeited on January 27, 2017. Appellees did not object to the submission of this evidence, which was the basis for the conclusions of law they now challenge on appeal.

(Tex. App.—Houston [14th Dist.] 2018, pet. denied).

A plaintiff must have both standing and capacity to pursue a lawsuit. *Austin Nursing Ctr., Inc. v. Lovato*, 171 S.W.3d 845, 848 (Tex. 2005); *Tandan v. Affordable Power, L.P.*, 377 S.W.3d 889, 893 (Tex. App.—Houston [14th Dist.] 2012, no pet.). “The issue of standing focuses on whether a party has a sufficient relationship with the lawsuit so as to have a justiciable interest in its outcome, whereas the issue of capacity is conceived as a procedural issue dealing with the personal qualifications of a party to litigate.” *Austin Nursing Ctr., Inc.*, 171 S.W.3d at 848 (internal quotation omitted). A party has capacity to sue when it has legal authority to act, regardless of whether it has a justiciable interest in the controversy. *Coastal Liquids Transp., L.P. v. Harris Cty. Appraisal Dist.*, 46 S.W.3d 880, 884 (Tex. 2001). As a general rule, corporations whose charters have been forfeited and not reinstated lack capacity to sue or defend themselves in Texas courts. *See Transamerica Corp. v. Braes Woods Condo Assoc., Inc.*, 580 S.W.3d 733, 736 (Tex. App.—Houston [14th Dist.] 2019, no pet.).

This general rule is subject to an exception found in Texas Business Organizations Code section 11.356(a). Under this section, an entity that has forfeited its charter — *i.e.*, a “terminated entity” — continues in existence for three years from the effective date of its termination for several purposes, including prosecuting or defending, in its own name, a legal action brought by or against it. *See* Tex. Bus. Orgs. Code Ann. §§ 1.002(22), 11.001(4)(B), (5), 11.356(a)(1); *see also In re Brothers Oil & Equip., Inc.*, No. 03-17-00349-CV, 2017 WL 3902617, at *4 n.6 (Tex. App.—Austin Aug. 22, 2017, orig. proceeding) (mem. op.) (company’s corporate charter was forfeited in January 2016, nine months before company’s claims were filed in October 2016; claims could proceed under section 11.356 despite company’s forfeited charter); *Cohen Acquisition Corp. v. EEPB*,

P.C., No. 14-14-00330-CV, 2015 WL 2404869, at *2 (Tex. App.—Houston [14th Dist.] May 19, 2015, pet. denied) (mem. op.) (because plaintiff company brought suit on its claims more than three years after its charter was forfeited, its claims were outside the three-year grace period afforded by section 11.356).

Here, the evidence shows that JAR’s corporate charter was forfeited in January 2017 “pursuant to Section 171.309 of the Texas Tax Code.” In its conclusion of law 2.6, the trial court states that this forfeiture precludes JAR from pursuing any claims after January 2017. This conclusion is incorrect because section 11.356 of the Texas Business Organizations Code granted a three-year reprieve for JAR to pursue its claims after the termination of its corporate charter. *See* Tex. Bus. Orgs. Code Ann. § 11.356; *see also In re Brothers Oil & Equip., Inc.*, 2017 WL 3902617, at *4 n.6; *Cohen Acquisition Corp.*, 2015 WL 2404869, at *2. Because this conclusion of law underlies the trial court’s take-nothing judgment against JAR, the judgment must be reversed. *See BMC Software Belg., N.V.*, 83 S.W.3d at 794; *Yazdani-Beioky*, 550 S.W.3d at 822.

When reversing a trial court’s judgment, a court of appeals must render the judgment that the trial court should have rendered unless a remand is necessary for further proceedings or the interests of justice require a remand for another trial. *See* Tex. R. App. P. 43.3. This court has broad discretion to remand in the interest of justice. *See Ahmed v. Ahmed*, 261 S.W.3d 190, 196 (Tex. App.—Houston [14th Dist.] 2008, no pet.). Appellate courts have remanded a case in the interest of justice “when a decision has clarified the way in which a claim should be submitted” to the factfinder. *See Berkel & Co. Contractors, Inc. v. Lee*, 543 S.W.3d 288, 308 (Tex. App.—Houston [14th Dist.] 2018, pet. denied) (citing *Torrington Co. v. Stutzman*, 46 S.W.3d 829, 840-41 (Tex. 2000)). Courts also have remanded in the interest of justice if a case was “tried on an incorrect legal

theory or to establish and present evidence regarding an alternate legal theory.” *Id.*; *see also Morrow v. Shotwell*, 477 S.W.2d 538, 541-42 (Tex. 1972).

Under the circumstances presented here, the interests of justice require a remand for a new trial.² *See* Tex. R. App. P. 43.3. Before trial commenced, the trial court agreed with the Anemelus’ objection that JAR lacked capacity to pursue its claims — impeding Appellees’ ability to try the case on the theory that JAR could properly recover for its causes of action. The trial court’s liability determinations were also predicated on its conclusion regarding JAR’s lack of capacity: the trial court determined that only Iraheta in his individual capacity could recover on Appellees’ claims and that JAR’s claims were precluded altogether. Because our decision clarifies and permits the development of alternative legal theories, a new trial is warranted. *See Berkel & Co. Contractors, Inc.*, 543 S.W.3d at 308.

We sustain Appellees’ sole issue on appeal. Because of our resolution of Appellees’ issue, we need not address the challenges raised in the Anemelus’ appeal.

CONCLUSION

We reverse the trial court’s January 2, 2019 final judgment and remand for a new trial.

² Appellees requested that we render judgment for JAR. An appellate court generally can “grant parties less relief than requested,” but it cannot grant more. *Zaidi v. Shah*, 502 S.W.3d 434, 445 (Tex. App.—Houston [14th Dist.] 2016, pet. denied).

/s/ Meagan Hassan
Justice

Panel consists of Justices Bourliot, Hassan, and Poissant.