



appellant's complaint. Therefore, we now hold, pursuant to Rule 36, T.R.A.P., that the judgment of the trial court in this case is erroneous, and hereby vacate same and remand this case to the trial court for further proceedings not inconsistent with this order.

Our earlier opinion and judgment as to the costs on appeal are also vacated and held for naught. We re-tax the costs on appeal to the appellee.

IT IS SO ORDERED.

ENTER:

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Charles D. Susano, Jr., J.

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Houston M. Goddard, J.

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Don T. McMurray, J.