

Opinion issued December 11, 2008



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-07-00796-CV

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**DAVID LOWRY, Appellant**

**V.**

**LIBERTY LLOYDS OF TEXAS INSURANCE COMPANY, Appellee**

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**On Appeal from County Civil Court at Law No. 3  
Harris County, Texas  
Trial Court Cause No. 824393**

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**MEMORANDUM OPINION**

Appellant, David Lowry, appeals the summary judgment rendered in favor of

appellee, Liberty Lloyd's of Texas Insurance Company (Liberty), that claimed Lowry's causes of action were barred by statutes of limitations and that Lowry's claims had been released by a class action settlement in *William Morris v. Liberty Mutual Fire Ins. Co.*, No. CJ-03-714 (Dist. Ct., Pottawatomie County, Okla. Feb 22, 2005). The trial court granted Liberty's motion for summary judgment without stating the ground on which it granted the motion and dismissed Lowry's claims against Liberty with prejudice. On appeal, Lowry's two issues challenge the limitations ruling and res judicata, but he does not challenge the summary-judgment ground of release, which was one of the alternative grounds on which the summary judgment order in favor of Liberty was rendered. "If summary judgment may have been rendered, properly or improperly, on a ground not challenged, the judgment must be affirmed." *Ellis v. Precision Engine Rebuilders, Inc.*, 68 S.W.3d 894, 898 (Tex. App.—Houston [1st Dist.] 2002, no pet.); *see also Jacobs v. Satterwhite*, 65 S.W.3d 653, 655 (Tex. 2001) (holding appellate court may not reverse judgment on grounds not raised and argued on appeal). Because Lowry does not challenge the ground of release, we must uphold the trial court's summary judgment in favor of Liberty.

We deny Liberty's motion to dismiss the appeal due to Lowry's failure to name Liberty as an appellee in the notice of appeal and Lowry's failure to comply with

rules of appellate procedure. *See Warwick Towers Council of Co-Owners v. Park Warwick, L.P.*, 244 S.W.3d 838, 839 (Tex. 2008) (holding insurer should have been permitted to amend notice to name itself as appellant and merits of appeal should have been addressed). We grant Lowry's motion to correct the caption of the appeal and we have changed the style of this opinion to conform with the amended style.

### **Conclusion**

We affirm the judgment of the trial court.

Elsa Alcala  
Justice

Panel consists of Justices Taft, Alcala, and Hanks.