

Affirmed and Memorandum Opinion filed December 2, 2010.



In The

Fourteenth Court of Appeals

NO. 14-10-00248-CV

DENNIS LAVIAGE AND CYNTHIA LAVIAGE, Appellants

V.

CHAMPION LANDSCAPE SUPPLIES, INC, Appellee

**On Appeal from the County Civil Court at Law No. 4
Harris County, Texas
Trial Court Cause No. 941218**

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

In this contract dispute, appellants Dennis and Cynthia Laviage appeal a judgment entered in favor of Champion Landscape Supplies, Inc. In two issues, appellants contend the trial court erred in (1) finding they breached a contract with appellee, and (2) awarding attorney's fees because appellants did not breach a contract. We affirm.

Background

Appellee filed suit against appellants for breach of a contract to provide landscape services. Appellee alleged it entered into a contract to provide services to appellants; it

performed under the contract, but appellants refused to pay for services rendered under the contract. Appellee alleged that appellants owed \$11,890 on the landscape contract. Appellee requested attorney's fees pursuant to chapter 38 of the Texas Civil Practice and Remedies Code. Appellants answered appellee's suit and filed a counterclaim for breach of contract alleging that appellee did not fully perform under the contract.

A bench trial was held at which the court considered exhibits from both parties and testimony from appellee's representative, appellee's attorney, and appellant Dennis Laviage. The trial court entered findings of fact in which it found:

A. Defendants [appellants] own the real property and improvements located at [address omitted] (hereafter, "the Property").

B. On or about February, 2008, Defendants hired Champion Landscape Supplies, Inc. to provide certain landscaping services to improve the Property.

C. At Defendants' request, Champion Landscape Supplies, Inc. subsequently provided all of the requested services and/or materials to improve the Property.

D. Upon completion of the job on April 28, 2008, Champion Landscape Supplies, Inc. sent Defendants the invoice attached hereto as Exhibit "A." Payment was due upon receipt.

E. Defendants had requested and/or approved of all services and/or materials as described on Exhibit "A." The amounts charged by Plaintiff for those items were approved by Defendants and/or were the customary charge for those services and/or materials.

F. Notwithstanding the foregoing, Defendants have failed and refused to pay for the labor and materials provided despite repeated requests to do so.

G. On or about May 8, 2008, Champion Landscape Supplies, Inc. sent a

written notice of default and demand for payment to Defendants via certified mail, return receipt requested and first class mail. Defendants received that written demand on May 9, 2008.

H. Notwithstanding, Defendants have failed and refused to pay their past due account balance owed to Plaintiff.

I. After the application of all payments, offsets and credits to which Defendants are entitled, Plaintiff is still owed the following from Defendants:

Total Balance Owed	\$ 22,890.00
Less: Payment 1	< 8,000.00>
TOTAL	\$ 14,890.00

plus interest, attorney fees, and court costs.

J. All conditions precedent have occurred, have been performed or have been waived.

K. Prejudgment interest at 18% per annum on damages of \$14,890.00 from April 28, 2008 through date of trial, November 16, 2009, is \$4,179.45.

L. Plaintiff incurred and paid reasonable and necessary attorney fees of \$5,194.46 in order to bring this claim.

After having considered all of the above evidence, the court made the following conclusions of law:

A. This court has personal jurisdiction over Defendants in that they resided and/or conducted business in Harris County, Texas at all times material to this lawsuit.

B. Harris County, Texas is proper venue for this lawsuit because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in Harris County, Texas.

C. Defendants breached their contract with Plaintiff which proximately caused damages to Plaintiff of \$14,890.00.

D. Per Tex. Prop. Code §28.004, Plaintiff is entitled to recover pre-judgment interest of 18% per annum from date of job completion, April 28, 2008, through date of judgment.

E. Plaintiff is entitled to recover \$14,890.00 in damages from Defendants, plus pre-judgment interest of \$4,179.45. plus reasonable and necessary attorney fees of \$5,193.46, plus court costs, plus post judgment interest from November 16, 2009 until paid of [sic] at the rate of 18.00% per annum.

Analysis

In two issues, appellants challenge the trial court's findings alleging they did not breach the contract, nor are they liable for attorney's fees. Appellants, however, failed to file a reporter's record from the bench trial. Unless an appellant arranges for the filing of a complete reporter's record (or partial reporter's record and accompanying statement of issues),¹ we must presume that the proceedings support the trial court's judgment. *See Bennett v. Cochran*, 96 S.W.3d 227, 229 (Tex.2002); *Sam Houston Hotel, L.P. v. Mockingbird Restaurant, Inc.*, 191 S.W.3d 720, 721 (Tex. App.—Houston [14th Dist.] 2006, no pet.). Appellants' issues in this case require reference to the evidence and testimony that was admitted at trial. Because we have no record of what that evidence consisted of, we have no basis to review the trial court's decisions based on that evidence.

On July 8, 2010, this court notified appellants that the reporter's record had not been filed, and that, unless appellants made arrangements to pay for the record, this court would consider and decide only those issues not requiring a reporter's record. *See Tex. R. App. P. 37.3(c).*² Because appellants did not elect to file a reporter's record, their two

¹ *See Tex. R. App. P. 34.6(c).*

² Appellants attached several documents, presumably from trial, as an appendix to their brief. An

issues challenging the trial court's decisions based on the proceedings at trial afford no basis for relief. Accordingly, the issues are overruled.

The judgment of the trial court is affirmed.

PER CURIAM

Panel consists of Justices Anderson, Frost, and Brown.

appellate court cannot consider documents attached to briefs that do not appear in the appellate record. *Mitchison v. Houston Indep. Sch. Dist.*, 803 S.W.2d 769, 771 (Tex. App.—Houston [14th Dist.] 1991, writ denied).