COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

GETOSA, INC.,		§	No. 08-20-00079-CV
	Appellant,	§	Appeal from the
v.		§	327th District Court
CITY OF EL PASO,		§	of El Paso County, Texas
	Appellee.	§	(TC# 2016DTX0641)

O P I N I O N

Following a bench trial, the trial court entered a judgment in favor of Appellee, the City of El Paso (the City), finding that Appellant, Getosa, Inc. (Getosa) was liable for taxes for personal property it utilized in the operation of a locksmith business located in El Paso. Getosa operated under the trade name "Saucedo Brothers, Inc." for tax years 2012-2018. The primary issue on appeal is whether Getosa could be held liable for the taxes even though the tax records named a distinct, and previously-dissolved corporation, Saucedo Brothers, Inc., as the party liable for the taxes incurred. Because we conclude that the City submitted sufficient evidence to support a finding of Getosa's liability, we affirm the trial court's judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. The City's Claim against Getosa

The City filed its original petition naming "Saucedo Brothers, Inc., aka Getosa Inc., dba

Saucedo Brothers Locksmith," as the defendant claiming that it owed taxes on certain items of personal property used in the operation of its locksmith business, located at 1220 Texas Avenue in El Paso from 2011 to 2015. After determining that Saucedo Brothers, Inc. had previously been dissolved and therefore could not be served, the City amended its petition to name "Getosa, Inc., dba Saucedo Brothers Locksmith aka Saucedo Brothers, A Texas Corporation," as the defendant (later shortened to simply "Getosa, Inc."). The petition again stated that the City was seeking to collect taxes on property used at 1220 Texas Avenue, but in its second and final amended petition, the City sought to collect delinquent taxes from 2010 to 2016. At trial, however, the City acknowledged that the statute of limitations barred its claim for 2010 and sought to collect delinquent taxes for the years 2011 to 2018.[1]

In response, Getosa, Inc., generally denied the City's allegations, and raised the affirmative defense that it did not own the personal property on which the City was seeking to collect the taxes. Getosa asserted that Saucedo Brothers, Inc., which admittedly operated a locksmith business under the trade name "Saucedo Brothers" at 1220 Texas Avenue, had dissolved in 2009, and was incapable of owning assets or operating a business after that time. Getosa further asserted that, although it began operating a similar locksmith business at 1309 Texas Avenue under the same trade name, it never operated the business at the 1220 Texas Avenue location, as alleged in the City's petition. Getosa further claimed that all of the property that Saucedo Brothers, Inc. had used in its operations had been seized by the IRS, and that Getosa was using different property at the 1309 Texas Avenue location. Getosa therefore argued that it could not be held liable for any

[1] Getosa did not object to this variance at trial and does not raise it as an issue on appeal. We therefore do not consider it in our analysis. *See generally Ron Craft Chevrolet, Inc. v. Davis*, 836 S.W.2d 672, 675 (Tex.App.--El Paso 1992, writ denied) (party waived its right to complain about a variance between opposing party's pleading and its proof by failing to lodge a specific objection on that basis at trial), *citing Brown v. American Transfer and Storage Company*, 601 S.W.2d 931, 938 (Tex. 1980) (in lodging an objection that there is a variance between pleading and proof, "the distinct and specific variance or other defect must be stated in the objection or it is waived.").

alleged tax debt owed by Saucedo Brothers, Inc. at the 1220 Texas Avenue location.

B. The Evidence at Trial

At trial, the undisputed evidence reflected that Saucedo Brothers, Inc. was first incorporated in 1982, and was in the business of operating a locksmith business at 1220 Texas Avenue in El Paso under the trade name "Saucedo Brothers" until its dissolution in 2009. Victor Saucedo and his brother George were both shareholders in the corporation and were responsible for operating the business in the years preceding its dissolution, with Victor serving as the corporation's secretary, while his brother served as its president. In addition, the record reflects that the real property located at 1220 Texas Avenue was owned by another corporation, G&T Investments, of which both Victor and his brother were shareholders.

1. The IRS Debt and the Demise of Saucedo Brothers, Inc.

At trial Victor testified that Saucedo Brothers, Inc. ran into financial problems as early as 2007, and because it was delinquent on its federal taxes, the IRS seized all of its assets in either February or March of 2009. The written evidence Getosa submitted at trial in support of its claim that a seizure had taken place only indicated that the IRS had notified Saucedo Brothers, Inc. of the tax debt on three separate occasions, and had threatened to seize its assets.[2] Victor acknowledged that he had no written documentation from the IRS to support the claim that a seizure actually took place, claiming that his brother handled the financial aspect of the business

[2] The record contains a Notice of Tax Lien from the IRS dated November 6, 2007, for taxes owed in the amount of $22,448.25 from 3/31/2007 to 7/02/2007; a second notice dated April 15, 2008, stating the amount owed was $32,877.68 for the tax period of 6/30/2007 to 9/30/2007; and a third notice dated November 24, 2008, stating the amount owed was $931.73 for the period of 3/31/2008 to 6/23/2008. Getosa also submitted two documents entitled "Summary of Taxpayer Contact," appearing to be a summary of communications that an IRS revenue officer had with representatives of Saucedo Brothers, Inc. In the first summary, dated December 11, 2008, the revenue officer indicates that Saucedo Brothers, Inc. did not agree to a "discharge" of its debt by allowing the IRS to seize its assets, and that a new revenue officer would need to schedule a "pre-seizure meeting to seize assets." In the second summary, dated February 6, 2009, a new revenue officer indicated that Saucedo Brothers, Inc. was agreeing to certain conditions, including dissolution of its corporation and payment of certain funds, stating that the failure to comply with the conditions by March 2, 2009, would result in "levy/seizure." The record does not contain any written documentation of what occurred after that time.

at the time. However, he testified that he witnessed IRS agents seizing all of the assets located at the 1220 Texas Avenue location to satisfy the tax debt.

According to Victor, the IRS seizure did not completely satisfy the IRS debt, and Saucedo Brothers, Inc. was required to pay an additional unspecified but "substantial" amount of money to the IRS. And according to Victor's testimony, this left Saucedo Brothers, Inc. with no assets, and no way to continue operating its business. Although it is not entirely clear exactly when Saucedo Brothers, Inc. ceased its operations at the 1220 Texas Avenue location, the record reflects that G&T Investments gave Paso Brown Reality a warranty deed to the property that was recorded in November 2008. And finally, the record reflects that the Texas Secretary of State involuntarily dissolved Saucedo Brothers, Inc. on October 5, 2009, due to its failure to maintain a registered agent in the state.

2. The Creation of Getosa, Inc.

On March 16, 2009, Victor and George Saucedo, as directors, filed Articles of Incorporation for the creation of Getosa, Inc. which, according to Victor, was similarly formed to conduct a locksmith business. The Articles of Incorporation listed the addresses for both Victor and George as being 1220 Texas Avenue. Getosa thereafter filed various documents, sometimes listing 1220 Texas Avenue as its business location, and sometimes listing 1309 Texas Avenue. In particular, Getosa obtained a sales tax permit to begin its operations on March 1, 2009, under the name of "Saucedo Brothers" specifying the location at 1309 Texas Avenue. George, as president of Getosa, Inc., also filed a Texas Franchise Tax Public Information Report dated October 15, 2010, listing its principal place of business at 1309 Texas Avenue. However, on March 17, 2009, Getosa filed a certificate of assumed name, stating that it intended to use the trade name "Saucedo Brothers," listing the business location at 1220 Texas Avenue, and stating that the certificate was intended to last for ten years.

Victor testified that he was uncertain why the 2009 assumed name certificate listed the 1220 Texas Avenue address, but claimed that Getosa never operated at that address, and instead always operated at 1309 Texas Avenue. He further pointed out that Getosa withdrew its first assumed name certificate in August of 2016, and filed a new certificate, still using the trade name Saucedo Brothers, but listing the 1309 Texas Avenue location as its business address.

According to Victor, Getosa began its operations at the new location in 2009 or 2010, after the alleged IRS seizure had taken place, and therefore could not have used any of Saucedo Brothers, Inc.'s assets at the 1309 Texas Avenue location. He testified that he and his brother instead used equipment that their relatives had donated to them, as well as their personal vehicles, to operate the business at the new location.[3] However, as discussed in more detail below, Victor acknowledged that the IRS did not seize three vehicles that were registered to Saucedo Brothers, Inc., explaining that they were not running at the time and although the vehicles were parked in Getosa's parking lot at 1309 Texas Avenue, Getosa never used them in its business.

3. The City's Tax Records

At trial, the City submitted various records, including a document entitled, "Certified Delinquent Tax Statement Detail" for tax years 2012 through 2018, listing the parcel address as 1309 Texas Avenue, and the "certified owner" as Saucedo Brothers, Inc., indicating that Saucedo Brothers, Inc. owed a total of $184,828.34 for all seven years. The City also submitted "Business Personal Property Cards" for tax years 2011 through 2018, together with the Certified Appraisal Rolls for the same years, all of which listed Saucedo Brothers, Inc. as the owner of business personal property located at 1309 Texas Avenue, including computer equipment, furniture and fixtures, inventory, machinery and other unspecified equipment.

[3] Victor testified that although he and his brother started the business, his brother was no longer involved as he bought out his shares on an undisclosed date.

Entries on those Business Personal Property Cards suggest that an employee from the Central Appraisal District (CAD) assessed the property at the 1309 Texas Avenue address on a yearly basis. The card for 2012, for instance, recites an inspection date of January 27, 2011, by appraiser "T57". The card describes four classes of assets with assigned values: Computer Equipment ($7,251); Furniture & Fixtures ($24,171); Inventory ($241,715) and Machinery & Equipment ($24,171). The total taxable value of assets for 2012 was listed as $297,308. The form lists the "situs" of those assets at "1309 Texas Ave El Paso, Tx" with an assigned Property ID of "P.514317." The owner is listed as Saucedo Brothers, Inc. c/o Fritz Saucedo with a listed post office box.

For each succeeding year the Business Personal Property Cards reflect the same situs (1309 Texas Ave.), and the same Property Identification number and owner. The market value of the four asset classes changes each year.[4] Also, the inspection dates change for each succeeding year, as does the appraiser identification for many of the years.

At trial, Victor acknowledged that he received tax bills from the City during the years in questions, but essentially ignored them believing they were sent by mistake, as they listed Saucedo Brothers, Inc. as the owner of the property, even though Saucedo Brothers, Inc. had already been dissolved and no longer had any assets due to the IRS seizure.[5] He further believed they were

[4] It is not lost on us, however, that the Central Appraisal District uniformly increased the value of each asset class by approximately 15% for each year, with a compounding effect. For instance, the value of the inventory increased from $241,715 in 2012 to $559,101 by 2018, with each successive year in the interim reflecting a 15% increase from the last (2013, $277,972; 2014, $319,668; 2015, $367,618; 2016, $422,761; 2017, $486,175). The other assets classes were similarly increased in the same fashion. Thus, the total taxable value of all the four asset classes rose from $297,308 in 2012 to $687,694 by 2018. Of course, if the CAD over appraises the value of property, the Tax Code provides a set of procedures for challenging appraisals that from our record were never invoked here. *See* TEX.TAX CODE ANN. § 41.41(a) et. seq (detailing right of protest); TEX.TAX CODE ANN. § 42.25 (authority of district court to remedy excessive appraisal).

[5] The tax bills were sent to a post office box, addressed to Saucedo Brothers, Inc., c/o Fritz Saucedo, Victor's father, who had since passed away.

incorrect because Saucedo Brothers, Inc. never operated its business at 1309 Texas Avenue.

Victor also acknowledged that in 2011, he received a notice of personal property seizure from a law firm representing the City, which had been addressed to Saucedo Brothers, Inc., warning that the City had the authority to seize Saucedo Brothers, Inc.'s personal property to satisfy its tax delinquencies. In response, Getosa's attorney sent the law firm a letter dated July 12, 2011, stating that Saucedo Brothers, Inc. was no longer in operation and had no assets due to the IRS seizure that took place on February 28, 2009, which included all the assets listed on the notice of personal property seizure and the various tax records.[6]

Sometime prior to April of 2016, the City's law firm sent Saucedo Brothers, Inc. a second notice of personal property seizure for its tax delinquencies for tax years 2009 to 2015. In August of 2016, an employee of the law firm, Roger Licon, visited the property located at 1309 Texas Avenue to discuss the delinquency with Victor. Victor recalled that during the visit, he provided Licon with "paperwork" to demonstrate that Saucedo Brothers, Inc. had dissolved in 2009. In addition, Getosa's attorney sent a second letter to the law firm, dated September 19, 2016, that he was representing "Mr. Saucedo, who was the former owner of Saucedo Brothers, Inc.," and that Saucedo Brothers, Inc. had been dissolved in 2009, and therefore could not be held responsible for any tax liability. Victor admitted, however, that he did not contact the CAD to apprise them of the dissolution of Saucedo Brothers, Inc., or to inform CAD that Getosa was now operating the business at 1309 Texas Avenue. He testified, however, that he was not certain whether his brother had contacted CAD, as his brother was primarily responsible for running the business at that time.

4. Getosa's 2018 Rendition of Personal Property

At trial, the City introduced evidence that Victor Saucedo had filed a document with CAD

[6] Although the attorney's response to the notice is included in the record, the notice itself is not.

on April 17, 2018, entitled "Confidential Business Personal Property Rendition of Taxable Property" for the locksmith business located at 1309 Texas Avenue. The rendition listed the owner's name as Victor Saucedo, and the business name as "Getosa, Inc. dba Saucedo Brothers." The rendition included the same property identification number--514317--that was reflected in each of the tax records submitted by the City. The rendition listed various items of personal property used at the location, including computers, furniture, key-making machinery, and other related equipment used in the locksmith business with a claimed total value of $723. Victor testified that none of the property listed in the 2018 rendition previously belonged to Saucedo Brothers, Inc., as it was all donated by family members after the IRS seizure. Although Victor recalled filing the 2018 rendition on Getosa's behalf, he could not recall if he or his brother had filed renditions for any other tax years on Getosa's behalf, or if Getosa had paid any property taxes for any of the tax years in question.

5. The Trial Court's Judgment

The trial court's judgment addresses only the 2012 to 2018 tax years. The judgment favors the City for those tax years, finding that Getosa owned personal property, consisting of furniture, fixtures, inventory, signs, machinery and equipment used "in the operation of Saucedo Brothers, Inc., located at 1309 Texas Avenue" in the adjudged value of $790,849. The trial court further found that Getosa was the owner of the property on the first of January for tax years 2012 to 2018, and that Getosa owed taxes, penalties, interest and costs for the seven years in question, in the total amount of $187,988.32. The court therefore entered judgment in that amount in favor of the City.[7] This appeal followed.

[7] Although the parties each submitted proposed Findings of Fact and Conclusions of Law, the trial court did not sign either of them.

II. ISSUES ON APPEAL

Getosa raises three issues on appeal. In Issue One, Getosa contends that the evidence was both legally and factually insufficient to support a conclusion that it was liable for what it characterizes as Saucedo Brothers, Inc.'s tax debt. In Issue Two, Getosa contends that the trial court improperly based its judgment on the fact that Getosa did not notify CAD that Saucedo Brothers, Inc. had dissolved in 2009, arguing that Getosa had no duty to provide any such notification. And in Issue Three, Getosa argues that the trial court erred in allowing the City to solicit testimony from Victor Saucedo regarding the IRS's failure to seize the three vehicles owned by Saucedo Brothers, Inc., at the time of the seizure, contending that the City failed to disclose its intent to use that information during discovery.

III. THE SUFFICIENCY OF THE EVIDENCE CHALLENGE

A. Standard of Review

Legal and factual sufficiency arguments both challenge the sufficiency of the evidence to support determinations by the fact finder; each invoke a different standard of review. *Wolf v. Starr*, 617 S.W.3d 898, 903 (Tex.App.--El Paso 2020, no pet.). The standard of review in a legal sufficiency or "no evidence" challenge requires us to uphold a trial court's finding if it is supported by "[a]nything more than a scintilla of evidence." *In re K.M.L.*, 443 S.W.3d 101, 112 (Tex. 2014), *quoting Formosa Plastics Corp. U.S.A. v. Presidio Eng'rs & Contractors, Inc.*, 960 S.W.2d 41, 48 (Tex. 1998). More than a scintilla exists when the evidence would enable reasonable and fair-minded people to reach the finding or judgment being challenged. *See Burbage v. Burbage*, 447 S.W.3d 249, 259 (Tex. 2014); *see also City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005) (the test for legal sufficiency is "whether the evidence at trial would enable reasonable and fair-minded people to reach the verdict under review."). On the other hand, if the evidence is so weak

that it only creates a "mere surmise or suspicion" of the existence of a vital fact, "it is regarded as no evidence." *Waste Mgmt. of Texas, Inc. v. Texas Disposal Sys. Landfill, Inc.*, 434 S.W.3d 142, 156 (Tex. 2014).

In resolving a no evidence challenge, we view the evidence in the light most favorable to the finding or judgment, and "indulge every reasonable inference that would support it," crediting favorable evidence if a reasonable fact finder could and disregarding contrary evidence unless a reasonable fact finder could not. *City of Keller*, 168 S.W.3d at 822. Moreover, it is the province of the trier of fact to draw from the evidence whatever inferences it wishes, so long as more than one inference is possible; however, if the evidence allows only one inference, neither the trier of fact nor the reviewing court may disregard it. *Id.* at 821-22. Accordingly, we will sustain a legal sufficiency or "no evidence" challenge only if the record shows: "(1) the complete absence of a vital fact; (2) the court is barred by rules of law or evidence from giving weight to the only evidence offered to prove a vital fact; (3) the evidence offered to prove a vital fact is no more than a scintilla; or (4) the evidence establishes conclusively the opposite of the vital fact." *City of Keller*, 168 S.W.3d at 810.

When a party challenges the factual sufficiency of the evidence, it concedes that conflicting evidence was presented at trial, but argues that the evidence against a finding or judgment is "so great" that to find the opposite was erroneous. *See Wolf*, 617 S.W.3d at 903. Factual sufficiency challenges require courts of appeals to weigh all of the evidence in the record. *See Eggemeyer v. Hughes*, 621 S.W.3d 883, 890 (Tex.App.--El Paso 2021, no pet.), *citing Ortiz v. Jones*, 917 S.W.2d 770, 772 (Tex. 1996). We sustain a factual sufficiency challenge only when the evidence supporting the finding is so weak "as to be clearly wrong and unjust," or when the finding is "manifestly unjust," "shock[s] the conscience," or "clearly demonstrated bias." *Id.*; *Windrum v. Kareh*, 581 S.W.3d 761, 781 (Tex. 2019); *see also Golden Eagle Archery, Inc. v. Jackson*, 116

S.W.3d 757, 761 (Tex. 2003) (requiring appellate court that overturns a verdict on factual insufficiency grounds to explain why evidentiary discrepancy is "manifestly unjust; why it shocks the conscience; or clearly demonstrates bias").

In applying either standard, we remain mindful that the trier of fact is the sole judge of the credibility of witnesses and the weight to be given their testimony. *In re Estate of Scott*, 601 S.W.3d 77, 88-89 (Tex.App.--El Paso 2020, no pet.); *see also McGalliard v. Kuhlmann*, 722 S.W.2d 694, 696 (Tex. 1986). The trier of fact may choose to believe one witness and disbelieve another, and resolve conflicts, and we must not impose our opinion to the contrary, as long as the trier of fact's resolution "falls within this zone of reasonable disagreement." *City of Keller*, 168 S.W.3d at 822. When, as here, the trial court has not entered any findings of fact, we will imply the findings necessary to support the judgment to the extent that they are supported by the record. *See Mendoza v. Bazan*, 574 S.W.3d 594, 606 (Tex.App.--El Paso 2019, pet. denied); *see also Roberson v. Robinson*, 768 S.W.2d 280, 281 (Tex. 1989).

B. The Errors in the Tax Records did not Affect Getosa's Tax Liability

A centerpiece of Getosa's argument is that the City's Certified Delinquent Tax Statement and other documents all refer to Saucedo Brothers, Inc. (a defunct entity) and not Getosa (the named defendant). We begin there.

Several sections in the Texas Tax Code govern the right of the State and its political subdivisions to collect taxes on tangible personal property, also known as "ad valorem" taxes. Section 11.01 of the Tax Code provides that "[a]ll real and tangible personal property that this state has jurisdiction to tax is taxable unless exempt by law." TEX.TAX CODE ANN. § 11.01(a); *see also* TEX. CONST. ART. VIII, § 1(b) ("All real property and tangible personal property in this State . . . shall be taxed in proportion to its value[.]"). Subject to exceptions not applicable here, a taxing unit in the state may tax tangible personal property if it is "located in the unit on January 1

for more than a temporary period . . . ." TEX.TAX CODE ANN. § 21.02(a)(1). In addition, section 32.07 of the Code provides that, with exceptions not at issue here, "property taxes are the personal obligation of the person who owns or acquires the property on January 1 of the year for which the tax is imposed . . . ." *Id.* § 32.07(a).

As the Texas Supreme Court recognized in *Willacy County Appraisal Dist. v. Sebastian Cotton & Grain, Ltd.*, 555 S.W.3d 29 (Tex. 2018), the Tax Code is focused on levying taxes on the true owner of property, and therefore, the key question in determining liability for property taxes under the code is who owned the property on January 1 of the taxing year. *Id.* at 43, *citing* TEX.TAX CODE ANN. §§ 32.01(a); 32.07(a). Importantly, the court recognized that a property owner's tax liability exists solely by virtue of ownership, independent of the appraisal roll or tax bill, pointing out that the Tax Code expressly provides that mistakes in identifying the property's owner in the tax or appraisal rolls does not excuse the owner's tax liability.[8] *Id.* at 43-44, *citing* TEX.TAX CODE ANN. § 25.02(b) ("A mistake in the name or address of an owner does not affect the validity of the appraisal records, of any appraisal or tax roll based on them, or of the tax imposed."); *Atlantic. Shippers of Texas, Inc. v. Jefferson Cty.*, 363 S.W.3d 276, 285 (Tex.App.--Beaumont 2012, no pet.) (holding that the appraisal district's failure to correct the appraisal roll to identify the true owner of the property had no effect on the delinquency date of the tax); *see also MEI Investments, L.P. v. Dallas County*, No. 05-18-00197-CV, 2019 WL 1449779, at *4 (Tex.App.--Dallas Apr. 2, 2019, no pet.) (mem. op.) (recognizing that property taxes are the personal obligation of the person who owns or acquires the property on January 1 of the tax year, and that this remains true regardless of whether the person's name is listed on the appraisal roll or

[8] The Code provides that the chief appraiser for an appraisal district is required to prepare appraisal records listing all property that is taxable in the district and stating the appraised value of each, with sufficient certainty to identify it. TEX.TAX CODE ANN. §§ 25.01(a); 25.03(b). The appraisal records must contain, among other things, the name and address of the owner, the personal property that it being taxed; the appraised value of the personal property; any applicable exemptions; and the taxing year in question. *Id.* § 25.02(a)(1), (4), (8)-(10).

the tax bill). The *Willacy County* court also found it significant that the Code provides that the failure of a taxing authority to send a tax bill to the owner, as well as the owner's failure to receive the bill, "does not affect the validity of the tax, penalty, or interest, the due date, the existence of a tax lien, or any procedure instituted to collect a tax." *Willacy County Appraisal Dist.*, 555 S.W.3d at 43-44, *citing* TEX.TAX CODE ANN. § 31.01(g). Accordingly, the court expressly found that a person's liability for ad valorem taxes exists regardless of errors in the tax records, and instead depends on whether the taxing authority can establish that the person is the true owner of the property in question. *Id.* at 44-45.

And finally, the court recognized that it is the responsibility of the property owner to ensure that the appraisal records accurately reflect the owner's name, address, and property, which can be accomplished by filing a rendition with the district containing that information, as well as the owner's opinion of the property's value on file.[9] *Willacy County Appraisal Dist*, 555 S.W.3d at 44. Although the court noted that the failure to file a rendition or to take any other steps to ensure that the appraisal district records contain accurate information may result in errors on the appraisal and tax rolls, it expressly held that such errors do not relieve the property owner of its tax liability. *Id.* at 44-45.

Accordingly, the fact that the tax records in this case incorrectly identified "Saucedo Brothers, Inc." as the owner of the property did not affect Getosa's tax liability, and Getosa could still be held liable for the tax debt if there was sufficient evidence to support a finding that Getosa

[9] The Code provides that with certain exceptions not at issue here, a person who owns tangible personal property used for the production of income as of January 1 of a taxing year must file a "rendition statement" with the chief appraiser in the district in which the property is located not later than April 15 of the taxing year, unless an extension is granted, and will be subject to penalties for the failure to do so. TEX.TAX CODE ANN. §§ 22.01(a);.22.23(a), (b); 22.25; 22.28. A rendition statement must contain "(1) the name and address of the property owner; (2) a description of the property by type or category; (3) if the property is inventory, a description of each type of inventory and a general estimate of the quantity of each type of inventory; (4) the physical location or taxable situs of the property; and (5) the property owner's good faith estimate of the market value of the property or, at the option of the property owner, the historical cost when new and the year of acquisition of the property." *Id.* § 22.01(a)(1-5).

was the true owner of the property being taxed. We therefore turn to Getosa's claim that the City did not present sufficient evidence to establish its ownership of the property.

C. The City Established a Prima Facie Case that Getosa was the Taxable Owner

Both parties acknowledge that the City had the initial burden of establishing a prima facie case that Getosa was personally responsible for the delinquent taxes, as well as the amount of those taxes, before the burden shifted to Getosa to establish any affirmative defenses, such as non-ownership.

The Tax Code provides that a taxing authority may meet this prima facie burden by introducing its current and delinquent tax rolls, or certified copies of the entries showing the property and the amount of the tax and penalties imposed and interest accrued. TEX.TAX CODE ANN. § 33.47(a); *see also Davis v. City of Austin*, 632 S.W.2d 331, 333 (Tex. 1982) (the introduction of section 33.47(a) evidence generally establishes a "prima facie case as to every material fact necessary to establish the cause of action[.]"). And section 33.47(b) adds that "[i]f the description of a property in the tax roll or delinquent tax roll is insufficient to identify the property, the records of the appraisal office are admissible to identify the property." TEX.TAX CODE ANN. § 33.47(b).

The introduction of such evidence creates a rebuttable presumption that the person named in the tax records is liable for the taxes in the amount stated, and the burden then shifts to the defendant to rebut that presumption. *See Barnett v. County of Dallas*, 175 S.W.3d 919, 923 (Tex.App.--Dallas 2005, no pet.); *Pete Dominguez Enterprises, Inc. v. County of Dallas*, 188 S.W.3d 385, 387 (Tex.App.--Dallas 2006, no pet.). However, this statutory presumption of ownership arises only if the defendant named in the lawsuit is the person or entity identified in the records. *See Felt v. Harris County*, No. 14-12-00327-CV, 2013 WL 1738604, at *3 (Tex.App.--Houston [14th Dist.] Apr. 23, 2013, no pet.) (mem. op.), *citing Pete Dominguez Enterprises, Inc.*,

188 S.W.3d at 387-88; *see also Maximum Med. Improvement, Inc. v. County of Dallas*, 272 S.W.3d 832, 835 (Tex.App.--Dallas 2008, no pet.). And, as Getosa correctly points out, because the tax records do not identify Getosa as the owner of the property, this statutory presumption does not exist in the present case. Accordingly, if the City had relied solely on this statutory presumption to establish its primary case, our inquiry would be over. *See, e.g.*, *Pete Dominguez Enterprises, Inc.*, 188 S.W.3d at 387, 388 n.1 (defendant had no obligation to present evidence of non-ownership, where taxing authorities case relied solely on tax records that did not identify the defendant as the owner of the taxed property, and it presented no other evidence of the defendant's ownership).

However, a taxing authority has other ways of establishing its prima facie case and is not required to rely solely on the statutory presumption. In *Felt v. Harris County*, for instance, the taxing authority introduced a warranty deed showing a transfer of the subject real property to the defendant tax-payer. 2013 WL 1738604, at *3; *see also Seiflein v. City of Houston*, No. 01-09-00361-CV, 2010 WL 376048, at *3 (Tex.App.--Houston [1st Dist.] Feb. 4, 2010, no pet.) (mem. op.) (affirming judgment where tax statements failed to identify the defendant as the property owner, but the taxing authorities introduced evidence of ownership, including a certified copy of a deed showing that the property was conveyed to the defendant); *Asymblix LLC v. Richardson Indep. Sch. Dist.*, No. 05-18-00433-CV, 2018 WL 3238013, at *5-6 (Tex.App.--Dallas July 3, 2018, no pet.) (mem. op.) (where taxing records misidentified owner of property, taxing authority established a prima facie case that the defendant owned the property being taxed, where it presented evidence that named owner had sold the property to an entity that later became the defendant LLC).

Here, the City presented some evidence that the property it was assessing was in the possession of Getosa. First, Victor Saucedo testified that Getosa has always operated out of the

1309 Texas Avenue address. It has done so using a DBA of Saucedo Brothers. Next, the City introduced the CAD's Business Personal Property Cards for the years 2011 to 2018 that assess the value of four classes of property *at 1309 Texas Avenue*. The forms suggest that on a specific date for each year, a designated appraiser performed an "inspection." A different value for the assets was assessed for each of those tax years. In turn, the certified tax roles for 2012 to 2018 were all based on the same values as assessed by the CAD on the property cards. There is an additional connection between the CAD appraisals and Getosa's business. When Getosa filed its own rendition of taxable property for January 1, 2018, it used the same property identification number--514317--that appears on each of the yearly CAD Business Personal Property Tax cards upon which the tax liability here is based. Because the City presented some evidence to support its claim that certain taxes were due on property located at 1309 Texas Avenue, and Getosa admits it runs its business out of that address, there was legally sufficient evidence to support the City's prima facie entitlement to a judgment in its favor.[10] We similarly conclude for the same reason that the evidence was factually sufficient to support that implied finding by the trial court.

We therefore conclude that the City met its initial burden of establishing a prima facie case that Getosa was the true owner of the property for tax purposes during the relevant tax years, and that the burden therefore shifted to Getosa to rebut that presumption and to establish its affirmative defense that it was not in fact the true owner of the property.

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[10] This is in fact the argument that the City made below. Its attorney argued:

> And so we are not proceeding on any kind of alter ego theory on this case. We are actually stating, Your Honor, that because we did name Getosa, Inc., as a defendant in this case, that they possessed the property and they should be liable for that. It is pretty evident, Your Honor, that there were no taxes paid by Getosa, Inc., when it was operating -- when it owned property, when it was operating as a locksmith; that it had to have machinery, that it had to have vehicles, it had to have stuff to operate. And so, as such, Your Honor, I am asking the Court to consider the theory that because of the possession of the personal property, although the tax rolls do not specifically state "Getosa," they should be held liable for those tax years that are in question.

D. The Trial Court Could Have Reasonably Rejected the Affirmative Defense

Getosa also argues, however, that it rebutted any presumption based on what it describes as the uncontroverted evidence that the IRS seized all of Saucedo Brothers, Inc.'s assets, which necessarily means they could not have been used in Getosa's business. The seizure took place according to Victor Saucedo's testimony in 2009. After that date, Getosa was started with different assets that were donated by other family members. To be sure, the name on the CAD property card is listed as Saucedo Brothers, Inc., which is the same entity that was closed in 2009. And the tax identification number assigned to Saucedo Brothers, Inc. and Getosa was the same, suggestive that the City might be basing the tax liability on what it assumed were Saucedo Brothers, Inc.'s already seized assets.

The City responds, however, that the record would support a finding that Saucedo Brothers, Inc.'s assets were never seized and simply passed through to Getosa. In support of that claim, it points to three vehicles originally titled with Saucedo Brothers, Inc. which are now in the possession of, or titled to Getosa. The City also notes that none of the IRS documents document that any assets were actually seized (as distinct from a threat to seize). The City further notes that several of the assumed name certificates inconsistently name Getosa's address as either the 1309 Texas or 1220 Texas Avenue address. The first assumed name certificate that Getosa filed stated that it intended to use the same trade name that Saucedo Brothers, Inc. had been using, and further stated that it would be operating out of Saucedo Brothers, Inc.'s address. Finally, the machinery and equipment listed on Getosa's own property rendition dates back several decades--some as old as 50 years--which made plausible their possible use by both entities.

Taken together with the CAD Business Personal Property Cards assessing property at the address that Getosa claims it operates, it is enough to say that this evidence supports the trial court's implied rejection of Getosa's affirmative defense. The trial court was free to consider the entire

record in determining whether Getosa successfully rebutted the presumption of ownership, including the evidence summarized above that the City relied upon to establish its prima facie case of ownership. *See generally Nat'l Med. Fin. Services, Inc. v. Irving Indep. Sch. Dist.*, 150 S.W.3d 901, 906 (Tex.App.--Dallas 2004, no pet.) (the evidence presented by the taxing authority to support its prima facie case of tax liability is still considered in determining whether the evidence was sufficient to uphold a finding of liability even where the defendant presented evidence in rebuttal), *citing D & M Vacuum Serv. v. Zavala County Appraisal Dist.*, 812 S.W.2d 435, 437 (Tex.App.--San Antonio 1991, no writ); *see also Maximum Med. Improvement, Inc.*, 272 S.W.3d at 835-36 (trial court could still consider evidence offered by county to support its prima facie case in determining whether taxpayer established its case of non-ownership).

We conclude that the evidence was both factually and legally sufficient for the trial court to reject Getosa's affirmative defense and make a reasonable inference that Getosa held property for use in its locksmith business at 1309 Texas Avenue upon which it owed ad valorem taxes in the amount reflected by the judgment.

Getosa's Issue One is overruled.

IV. GETOSA'S FAILURE TO NOTIFY CAD OF SAUCEDO BROTHERS, INC.'S DISSOLUTION WAS NOT RELEVANT TO THE JUDGMENT

In Issue Two, Getosa contends that it had no duty to notify CAD of Saucedo Brothers, Inc.'s dissolution, but that the trial court nevertheless improperly relied on that failure in arriving at its judgment. Although there is no indication in the trial court's written judgment that it relied on this failure in rendering its decision, Getosa points out that the trial court made comments at the close of the bench trial expressing concern that Victor had received tax bills for Saucedo Brothers, Inc., but had failed to notify CAD (as distinct from the City's attorney) that Saucedo Brothers, Inc. had already been dissolved and was no longer operating its business.

While true that the trial court orally expressed this concern, its oral comments do not reflect that this served as a basis for the judgment. To the contrary, it is well-established that a trial court's oral comments following a bench trial do not constitute findings of fact and conclusions of law. *See Gibson v. Bostick Roofing & Sheet Metal Co.*, 148 S.W.3d 482, 494 (Tex.App.--El Paso 2004, no pet.), *citing In re Doe 10*, 78 S.W.3d 338, 340 n.2 (Tex. 2002) ("Oral comments from the bench do not constitute findings of fact[.]"); *see also In Interest of W.E.R.*, 669 S.W.2d 716, 716 (Tex. 1984) (an appellate court is "not entitled to look to any comments that the judge may have made at the conclusion of a bench trial as being a substitute for findings of fact and conclusions of law."). Therefore, such comments do not necessarily reflect the basis for a trial court's judgment, and an appellate court is not required to treat them as such. *See In re Elamex, S.A. de C.V.*, 367 S.W.3d 879, 888 n.8 (Tex.App.--El Paso 2012, no pet.) (an appellate court is not required to accept a trial court's oral explanation from the bench as the trial court's reasoning in the absence of written findings); *see also Tamuno Ifiesimama v. Haile*, 522 S.W.3d 675, 684 (Tex.App.--Houston [1st Dist.] 2017, pet. denied) ("[s]tatements made by a trial court outside of properly filed written findings and conclusions do not limit an appellate court's review.") (internal quotation marks omitted).

Accordingly, regardless of any concern that the trial court expressed regarding Saucedo's failure to notify CAD about the dissolution of Saucedo Brothers, Inc., this does not affect our resolution of the key question in this case, i.e., whether the City demonstrated that Getosa had taxable assets at 1309 Texas Avenue that it used in its business.

Getosa's Issue Two is overruled.

V. THE ALLEGED DISCOVERY VIOLATION

In its final issue, Getosa argues that the trial court erred by allowing the City to question Victor Saucedo about the three vehicles that Saucedo Brothers, Inc. owned prior to its dissolution, because the City did not disclose this information in response to discovery requests. *See* TEX.R.CIV.P. 193.6(a) ("[a] party who fails to make, amend, or supplement a discovery response, including a required disclosure, in a timely manner may not introduce in evidence the material or information that was not timely disclosed, . . . unless the court finds that: (1) there was good cause for the failure . . .; or (2) the failure . . . will not unfairly surprise or unfairly prejudice the other parties."); *see also Phan v. Addison Spectrum, L.P.*, 244 S.W.3d 892, 899 (Tex.App.--Dallas 2008, no pet.) (recognizing the mandatory nature of Rule 193.6 in excluding evidence not disclosed during discovery).

Getosa served a request for production of documents on the City, requesting among other things, "[a]ll documents upon which [the City] relies or will rely to hold [Getosa] responsible for any property taxes assessed against 'SAUCEDO BROTHERS, INC.' at any time during the Taxable Years at issue." Getosa contends that this request was broad enough to include the information pertaining to the "use and ownership" of the vehicles which it claims the City failed to disclose during discovery. The evidence at issue consisted of the following: the City's attorney elicited testimony from Victor, without objection, that a 2002 Chevy cargo van had been registered to Saucedo Brothers, Inc. from 2002 to 2016, and that a 2002 GMC Yukon had been registered to Saucedo Brothers, Inc. for an unknown period of time after the Saucedo Brothers, Inc. was dissolved. Getosa did lodge an objection when the City's attorney asked Victor about the third vehicle, a Ford F-150. The City responded that it was not attempting to introduce any documents into evidence pertaining to the vehicles but was simply questioning Victor about the

vehicles for "impeachment" purposes. The trial court overruled the objection, and Getosa did not seek a running objection to the City's line of questioning.

Subsequently, in a separate line of questioning, the City's attorney questioned Victor about whether Getosa had claimed any vehicles in its 2018 rendition (which it had not). The City's attorney then asked Victor if it would "surprise" him to learn that the "vans" they had previously "talked about" passed from Saucedo Brothers, Inc. to Getosa in 2016. Getosa did not object to this line of questioning and, on redirect, questioned Victor about the vehicles' ownership in more depth. Victor also speculated that the IRS did not seize the vehicles because they were not running at the time, and were not "worth anything."

The City argues that it did not violate Rule 193.6 because Getosa only sought production of *documents* the City intended to use at trial to support its case, and the City did not introduce any documents pertaining to the automobiles into evidence. We need not resolve this line of argument, however, because we conclude the issue was not adequately preserved and would not amount to reversible error in any event.

To preserve error to the admission of evidence, a party must object each time the same or similar evidence is tendered, or alternatively, obtain a running objection to the allegedly erroneous admission of the evidence. *See Low v. Henry*, 221 S.W.3d 609, 619 (Tex. 2007) (where trial court overruled party's request for a running objection, party's attorney was required to object every time the allegedly inadmissible evidence was introduced at trial); *see also Rhey v. Redic*, 408 S.W.3d 440, 460 (Tex.App.--El Paso 2013, no pet.) (party did not preserve error where she failed to obtain a running objection to witness's testimony, and only made two relevancy objections during the course of the testimony). Because Getosa did not object to the City's continued questioning regarding ownership of the vehicles, and also pursued the same line of questioning on redirect, we conclude that Getosa failed to preserve this issue for our review.

Moreover, the ownership of the vehicles is only a single facet of the City's claim that Getosa obtained Saucedo Brothers, Inc.'s assets. And the larger point here is that the CAD property cards assessed the property at the very address that Getosa claimed to operate its business from, and for the each of the relevant tax years in question. Given that evidence, the testimony concerning the three vehicles, even if erroneous, would not be reasonably calculated to, nor probably caused, rendition of improper judgment. *See* TEX.R.APP.P. 44.1(a); *Gee v. Liberty Mut. Fire Ins. Co.*, 765 S.W.2d 394, 396 (Tex. 1989) (evidence admitted which was not disclosed in discovery required to meet reversible error standard).

Getosa's Issue Three is overruled.

VI. CONCLUSION

The trial court's judgment is affirmed.

JEFF ALLEY, Justice

March 4, 2022

Before Rodriguez, C.J., Palafox, and Alley, JJ.