



COURT OF APPEALS  
EIGHTH DISTRICT OF TEXAS  
EL PASO, TEXAS

JASON LEE SACKETT,	§	No. 08-22-00072-CV
Appellant,	§	Appeal from the
v.	§	County Court of Law
CORY JOLLY AND JUSTIN JOLLY,	§	of Williamson, Texas
Appellees.	§	(TC#20-1683-C368)

**MEMORANDUM OPINION**

Appellant Jason Lee Sackett sued Appellees Cory Jolly and Justin Jolly, alleging common law and statutory claims arising from a contract for deed. Under the contract, Sackett sought to purchase the Jollys' home. The Jollys counterclaimed for breach of the contract and for unjust enrichment, contending that Sackett failed to make the agreed-upon payments in the contract, refused to leave the property after he stopped making payments, and damaged the property. The trial court granted the Jollys' motion for summary judgment dismissing Sackett's claim and awarding the Jollys damages on their counterclaim along with attorney's fees. Sackett contends that the trial court erred by denying his oral request for a continuance of the summary judgment hearing and by granting the Jollys' summary judgment motion. For the reasons set forth below,

we affirm the trial court's judgment.<sup>1</sup>

## **I. BACKGROUND**

### **A. The Parties' Contract for Deed**

The origin of the parties' dispute is a September 2019 contract for deed for Sackett to purchase the Jollys' house "as is" for \$540,000. The parties attached a promissory note to the contract in which Sackett agreed to make a "nonrefundable" down payment of \$25,000, and agreed to pay the Jollys \$5,000 a month beginning in November 2019 for the next twelve months. These payments were to be applied toward the purchase price at the time of closing. Sackett was to then arrange "permanent financing" to pay off the balance of the purchase price. The note also provided that Sackett would vacate the premises and pay a \$10,000 fee if he could not secure financing or was otherwise unable to complete the sale.

Sackett made the first four monthly payments (from November 2019 through February 2020). At Sackett's request, the Jollys deferred the March 2020 payment due to the Covid-19 pandemic and Sackett losing his job. Sackett then made a full payment in April and a partial payment in May. It is undisputed, however, that Sackett made no further payments and he also failed to vacate the premises as agreed to in the contract.

In June 2020, after the Jollys threatened eviction, Sackett's attorney sent a demand letter, claiming that the Sacketts: (1) had made misrepresentations about the condition of the property; (2) were in violation of several statutes, including Texas Property Code provisions relating to

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<sup>1</sup> This case was transferred from our sister court in Austin, and we decide it in accordance with the precedent of that court to the extent required by TEX.R.APP.P. 41.3.

disclosures and accountings required for executory contracts.<sup>2</sup> Sackett's attorney requested a refund of all amounts Sackett had paid them, the costs he incurred in making repairs to the property, and his attorney's fees to date. In exchange, Sackett stated that he would vacate the premises and forgo suing them.

## **B. The Justice Court Proceedings**

Soon after, the Jollys filed eviction proceedings in a Williamson County Justice of the Peace Court. The judge of that court granted the Jollys possession of the house and ordered Sackett to pay the Jollys' attorney's fees.<sup>3</sup> The parties then entered into a Rule 11 agreement, in which the Jollys agreed not to serve a writ of possession on Sackett in exchange for his agreement to move out of the house by a date certain, to leave the house in "broom-clean condition," to update all utilities, and to pay the Jollys' attorney's fees.

Sackett acknowledged that he did not comply with the terms of the agreement, as he did not update the utilities and did not pay the attorney's fees owed. The Jollys further claim that Sackett failed to vacate the premises, requiring them to obtain a writ of possession to force him to leave. And they claim that when they regained possession of the property they discovered that Sackett had left the house in a "mess," and had damaged the property.

## **C. The District Court Proceedings**

### **1. Sackett files his lawsuit and the Jollys file their counterclaim**

In the Rule 11 agreement, Sackett agreed that he would not appeal the justice court's

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<sup>2</sup> See generally TEX.PROP.CODE ANN. § 5.062, *et seq* (governing executory contracts for the conveyance of real property).

<sup>3</sup> In his brief, Appellant contends that the eviction was "unlawful," and that the justice court ruled in his favor. Although we do not have the full record of the proceedings before us, the limited record we have shows that Sackett is incorrect on that count.

judgment of eviction, but that he could pursue this litigation against the Jollys which was already on file. Sackett, who was represented by counsel then, alleged in his district court petition that the Jollys had committed both common law and statutory fraud in the contract for deed by (1) allegedly misrepresenting the size of the lot, (2) failing to disclose that there were encumbrances on the property, and (3) falsely representing that the property was in “good working order.” According to Sackett, the house had an inoperable septic system, busted sewer lines, an HVAC system that did not work, and he further claimed that the house flooded during heavy rains. Sackett also alleged that the Jollys had committed violations of the Texas Deceptive Practices Act by failing to disclose the above-described information, misrepresenting the “goods or services” provided, and by breaching the implied warranty of habitability. And finally, Sackett alleged that the Jollys had violated the Texas Property Code by failing to provide him with an annual accounting as required in contract-for-deed transactions. *See* TEX.PROP.CODE § 5.077(c)(1).

The Jollys answered Sackett’s petition, generally denying Sackett’s allegations, and requested attorney’s fees under TEX.CIV.PRAC. & REM. CODE § 10.001 et seq., contending that Sackett’s lawsuit was “baseless” and “frivolously filed.” The Jollys later counterclaimed against Sackett bringing claims for breach of contract and unjust enrichment, seeking \$535,000 for the amount owed on the contract, or alternatively, damages of \$5,000 for each month Sackett was in possession of the property after he stopped making payments. They also sought compensation for the damage to the property they claimed Sackett has caused.

## **2. The Jollys take Sackett’s deposition**

The Jollys took Sackett’s deposition in October 2021. In his deposition, Sackett admitted that (contrary to the allegations in his lawsuit), he was aware of the true size of the lot when he

signed the contract for deed; that he stopped paying on the contract in June 2020 despite having agreed to make eighteen payments; that he remained on the property until June 2021; that he had dug up the septic system and failed to cover it before vacating the premises, that he failed to make repairs to the HVAC system; that he left an unpaid water bill; and that he did not pay the attorney's fees he owed the Jollys from the justice court proceedings.

### **3. Sackett's attorney withdraws**

Soon after, on October 20, 2021, Sackett and his attorney (Sackett's ex-wife) filed an agreed motion allowing her to withdraw. In the motion, which Sackett signed, he listed his "last known address" at a specified address on Bianca Drive in Round Rock, Texas. The trial court granted the motion the next day, and Sackett signed the order acknowledging that he had received a copy of it.

### **4. The Jollys file their motion for summary judgment**

Almost three months later, on January 13, 2022, the Jollys filed a no-evidence and traditional motion for summary judgment, seeking dismissal of Sackett's lawsuit and an award of damages of \$64,257.40 on their counterclaim, together with an award of attorney's fees. In their motion, the Jollys attached several exhibits, including the parties' contract and promissory note, documents from the justice court proceedings, the parties' Rule 11 agreement, and excerpts from Sackett's deposition.

In addition, Cory Jolly provided an affidavit detailing the parties' dealings, acknowledging that he and his wife received the \$25,000 down payment from Sackett, and that they received the \$5,000 monthly payments—with the exception of the March 2020 payment—from November 2019 through May 2020, but he stated that Sackett thereafter lived in their house without making

payments until June 2021. The Jollys also filed an affidavit from a local realtor, attesting that the fair market rental value of the property during the time that Sackett occupied the premises was between \$5,000 and \$5,500 a month. Cory also claimed that Sackett had paid none of the taxes or insurance on the property as agreed to in their contract and had left an unpaid water bill in the amount of \$222.96. He also chronicled the damage that he and his wife discovered when they regained possession of the house and the cost of repairing the damage. Cory attached invoices that they paid for the following: (1) \$5,000 for services related to cleaning the property and hauling off debris; (2) \$5,800 in services related to repairing damage to the “framing members” in the attic due to unauthorized alterations Sackett allegedly made to the house; (3) \$5,200 for the installation of a new HVAC system, which the Jollys claimed Sackett had destroyed; and (4) various receipts from hardware stores for items needed to repaint areas of the home that Sackett had painted black. And finally, the Jollys presented an affidavit and billing records from their attorney showing that the Jollys had “incurred \$25,327.50 in attorney’s fees as well as \$1,898.53 in costs of court in this matter.”

The motion contained a certificate of service from the Jollys’ attorney, stating that he had sent the summary judgment motion “via email, certified mail, return receipt requested . . . and first class mail, on the 13th day of January 2022 to the following: Jason Sackett [street number] Bianca Dr. Round Rock, TX 78665,” and to Sackett’s email address.

#### **4. The Summary Judgment Hearing**

Sackett did not file a response to the motion, but did appear at the summary judgment hearing on February 17, 2022. At the hearing, Sackett, who was acting pro se, claimed that he had not received a copy of the Jollys’ summary judgment motion, but admitted that he had received

notice of the hearing at least one week before the actual hearing date.<sup>4</sup> In response to Sackett's claim that he did not receive notice of the motion, the Jollys' attorney pointed to the certificate of service on the motion that stated a copy of the motion was sent to Sackett's last known address on Bianca Drive in Round Rock by both by first class mail and certified mail, with return receipt requested, and that he had also emailed it to Sackett's last known email address. Sackett acknowledged that the email listed on the certificate of service was his current email address and the email address on file with the court, but claimed that he never received a copy of the motion via email.<sup>5</sup> Sackett also claimed that he never lived at the Bianca Drive address—which he believed was his sister's address—but acknowledged that his attorney had listed this address in her motion to withdraw as his last known address, and that he had signed the motion at her instruction.

When advised by the trial court that his summary judgment response was due the week before the hearing, Sackett responded that he was unaware of the need to file a response, stating that he believed “everything [had been] handled up to the court date” when his attorney withdrew. He then orally asked for a continuance of the hearing, claiming that his attorney had not provided him with copies of his file (despite his repeated requests), which he claimed he needed to respond.

In denying the continuance, the trial court found it significant that the Jollys' attorney had received a green card—albeit unsigned—indicating that the summary judgment motion mailed to

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<sup>4</sup> The record reflects that the hearing had originally been scheduled for two weeks before, on February 2, 2021, but as Sackett points out in his brief, it was rescheduled after a storm closed the courthouse on that date. Sackett acknowledges in his brief that the court sent him notice of the closure and offered him two dates from which to choose for a new hearing date.

<sup>5</sup> In his brief, Sackett acknowledges that he received emails from the Jollys' attorneys on several prior occasions at that same email address and had an “active line” of communication via email.

Sackett at the Round Rock address had been delivered. The court also noted that the Round Rock address was the last address that the court had on file for Sackett. In addition, the court observed that its records reflected that the motion was sent by email through the state's e-file system and showed that it had been "delivered" to Sackett's email address.<sup>6</sup> And finally, the court pointed out that although Sackett's attorney may not have returned Sackett's file to him, he believed that Sackett would have had the original of documents in her file, which he could have used to respond to the summary judgment motion.

### **5. The Trial Court's Final Judgment**

Over a month after the hearing, the trial court entered a final judgment, granting the Jollys' motion for summary judgment. In its judgment, the trial court entered a take-nothing judgment on Sackett's claims and awarded the Jollys \$64,257.40 in actual damages on their counterclaim. The court also found that Sackett's claims were frivolous and devoid of evidentiary support and awarded the Jollys \$25,857.50 in reasonable and necessary attorney's fees under TEX.CIV.PRAC. & REM.CODE § 10.001(1) & (3), as well as court costs.

Following the trial court's entry of judgment, Sackett filed what he labeled as "Plaintiff Response In Opposition to Defendant's Cory Jolly and Justin Jolly's No Evidence and Traditional Motions For Summary Judgment" (the Response). In the Response, Sackett argued that the trial court erred by refusing his request for a continuance and by granting the motion, contending that the Jollys did not have a "scintilla of probative evidence" to support their counterclaim, and that

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<sup>6</sup> The appellate record also contains evidence that Sackett had received other pleadings through the court's e-file system.



he had additional evidence to support his claim against them. Sackett, however, did not specify what that evidence was, and did not attach any supporting evidence to the Response. Sackett also filed a notice of appeal that same day.<sup>7</sup>

## II. ISSUES ON APPEAL

On appeal, Sackett contends that the trial court erred in denying his request for a continuance of the summary judgment hearing, alleging that (1) he did not receive notice of the summary judgment motion; and (2) that he established good cause for a continuance because his attorney had not provided him with his case file before the hearing. He also makes a broad argument that the trial court erred by granting the Jollys' summary judgment motion.

## III. DISCUSSION

### A. Sackett's pro se status

Although we liberally construe a pro se litigant's pleadings, a pro se litigant is held to the same standards as a licensed attorney when representing themselves, and must therefore comply with all applicable laws and rules of procedure in doing so. *See Zavala v. Franco*, 622 S.W.3d 612, 617–18 (Tex.App.--El Paso 2021, pet. denied); *see also Wheeler v. Green*, 157 S.W.3d 439, 444 (Tex. 2005)(recognizing that pro se litigants are not exempt from the rules of procedure). As we

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<sup>7</sup> In his notice of appeal, Sackett asserted that the district court judge had developed a bias against him due to his "prior business dealings" with the judge, and that the judge should have recused himself. In his appellate brief, Sackett contends that the trial court's decision to deny his oral motion for a continuance "could have been influenced by [this] prior interaction," and that his decision seems "like pay back" for that interaction. But Sackett never moved to recuse the judge and cannot be heard to complain at this time about any possible bias the judge may have harbored against him. *See Aguilar v. Anderson*, 855 S.W.2d 799, 810 (Tex.App.--El Paso 1993, writ denied)(recognizing that a "party waives its right to recusal of a judge if it does not raise the issue in a proper motion"); *Randolph v. Texaco Expl. & Prod., Inc.*, 319 S.W.3d 831, 834 (Tex.App.--El Paso 2010, pet. denied)(claims of recusal can be "waived if not raised by proper motion").

have recognized, if pro se litigants were not required to comply with applicable laws and rules of procedure, they would be given an unfair advantage over parties represented by counsel. *Id.* at 617. And “[h]aving two sets of rules--a strict set for attorneys and a lenient set for pro se parties--might encourage litigants to discard their valuable right to the advice and assistance of counsel.” *Id.* at 617-18, quoting *Wheeler*, 157 S.W.3d at 444. So we judge Sackett’s actions in the trial court, as well as his briefing on appeal, by the same standards that we would apply to an attorney under the same circumstances. See *Zhao v. Sea Rock Inc.*, No. 08-20-00209-CV, 2022 WL 2256317, at \*6 (Tex.App.--El Paso June 23, 2022, pet. denied)(finding that plaintiff’s pro se status and his alleged misunderstanding of the laws cannot be considered in determining whether plaintiff adequately established his case in the trial court and whether he made adequate arguments on appeal).

**B. Applicable law: the need for a written motion supported by affidavits**

Except on leave of court, a party opposing a motion for summary judgment, must file and serve “opposing affidavits or other written response” not later than seven days before the day of hearing. TEX.R.CIV.P. 166a (c). That said, Rule 166a(g) provides that a trial court may order a continuance of a summary judgment hearing if it appears “from the *affidavits* of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition (emphasis added).” TEX.R.CIV.P. 166a(g). “An affidavit seeking a continuance to obtain additional evidence must describe the evidence sought, explain its materiality, and demonstrate that the party requesting the continuance has used due diligence to timely obtain the evidence.” *Stierwalt v. FFE Transportation Services, Inc.*, 499 S.W.3d 181, 189 (Tex.App.--El Paso 2016, no pet.); see also TEX. R. CIV. P. 251 (providing that “[n]o application for a continuance shall . . . be granted except for sufficient cause supported by affidavit, or by consent of the parties,

or by operation of law”).

If a party files a timely and proper motion for a continuance of summary judgment hearing, the trial court’s decision denying the motion is reviewed for an abuse of discretion. *See Villegas v. Carter*, 711 S.W.2d 624, 626 (Tex. 1986)(recognizing that the granting or denial of a motion for continuance of a summary judgment hearing is within the trial court’s sound discretion). Under that standard of review, we do not substitute our judgment for that of the trial court. *See In re Nitla S.A. de C.V.*, 92 S.W.3d 419, 422 (Tex. 2002)(orig. proceeding). Instead, we determine whether the trial court’s action “was so arbitrary and unreasonable as to amount to a clear and prejudicial error of law.” *See Joe v. Two Thirty Nine Joint Venture*, 145 S.W.3d 150, 161 (Tex. 2004).

As explained below, however, we conclude that because Sackett did not file a proper written motion for a continuance, nor file any affidavits in support of his request for a continuance, he did not preserve this issue for our review (and the trial court could not abuse its discretion in failing to grant a defective motion).

### **C. Sackett’s oral motion did not suffice to preserve error**

At the summary judgment hearing, Sackett made an oral motion for a continuance of the hearing—he failed to file a written motion for a continuance, and never submitted any supporting affidavits or evidence to support his request. In *Buholtz v. Field*, the Austin Court of Appeals—whose precedent we must follow—was faced with a factually similar situation. The defendant filed a no-evidence motion for summary judgment and the plaintiff, who was acting pro se, did not file a response, but did appear at the summary judgment hearing. *Buholtz v. Field*, No. 03-17-00232-CV, 2018 WL 700058, at \*1 (Tex.App.--Austin Jan. 31, 2018, pet. denied)(mem. op.). At the hearing, the plaintiff acknowledged that he had received notice of the hearing, but claimed that he

had not received a copy of the motion. *Id.* The plaintiff, however, did not file a written motion for a continuance of the hearing or other written motion complaining about the lack of notice until after the summary judgment hearing when he filed a post-hearing motion to set aside the summary judgment, which the trial court denied. *Id.*

On appeal, the Austin court held that because the plaintiff was timely served with notice of the hearing but alleged that he had not been served with the motion itself, it would apply the case law on untimely service, rather than case law pertaining to situations in which no notice was given. *Id.* at \*2. And the court held that in that event, when a nonmovant receives notice of a summary judgment hearing sufficient to enable to the party to attend the hearing, the party must file a written motion for continuance or otherwise “raise the complaint of late notice in writing, supported by affidavit evidence, *and* raise the issue before the trial court during the summary judgment hearing (emphasis added).” *Id.*, quoting *Nguyen v. Short, How, Frels & Heitz, P.C.*, 108 S.W.3d 558, 560 (Tex.App.--Dallas 2003, pet. denied); see also *Fertic v. Spencer*, 247 S.W.3d 242, 247 (Tex.App.--El Paso 2007, pet. denied)(same). The court further observed that a nonmovant who fails to follow those steps “waives any complaint regarding notice.”<sup>8</sup> *Buholtz*, 2018 WL 700058, at \*3. The court therefore concluded that the plaintiff did not preserve his complaint “concerning notice” for appellate review due to his failure to file a timely written motion for continuance, supported by affidavits, before the summary judgment hearing. *Id.* In reaching this conclusion, the Austin court further noted that the plaintiff, despite representing himself, was

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<sup>8</sup> The Austin court cited several cases for this proposition, including this Court’s opinion in *Fertic v. Spencer*, 247 S.W.3d 242, 248 & n.4 (Tex.App.--El Paso 2007, pet. denied)(holding that where nonmovant appeared at hearing but did not file motion for continuance or otherwise raise issue of late notice in writing and raised issue for first time in motion for new trial, error was not preserved).

held to the same standard as a licensed attorney and was therefore required to comply with the applicable laws and rules of procedure, including the requirement of filing a written motion for continuance. *Id.*

As in *Buholtz*, Sackett admittedly received notice of the summary judgment hearing the week before it was held, giving him ample time to file a written motion for a continuance. Yet he failed to file a written motion or any affidavits to support the granting of a continuance before the hearing. Moreover, although Sackett raised notice at the hearing and orally moved for a continuance, an oral request cannot preserve the issue for our review. *See Fertic*, 247 S.W.3d at 248 (recognizing that plaintiff failed to preserve error when he raised the notice issue orally at the summary judgment hearing, but he had “enough time to file a motion for continuance or otherwise raise the issue of late notice in writing before or at the hearing”); *see also Edwards v. Phillips*, No. 04- 13-00725-CV, 2015 WL 1938873, at \*4 (Tex.App.--San Antonio Apr. 29, 2015, no pet.)(mem. op.)(where pro se plaintiff attended the summary judgment hearing and orally raised the issue that he was not given notice of the defendant’s summary judgment motion, he failed to file a written motion for continuance or otherwise raise the complaint in writing, supported by affidavit evidence, and therefore “waived any complaint with regard to insufficient notice.”).

In addition, Sackett’s post-trial written response to the summary motion, which he filed after the trial court entered its final judgment, was not sufficient to preserve error. Not only did Sackett fail to provide any affidavits or other evidence in support of his response, but a post-trial motion cannot substitute for a timely filed motion for continuance, and does not preserve error unless the party complains that he was “given no notice of the summary judgment hearing or that [he] was deprived of [his] right to seek leave to file additional affidavits or other written response.”

*Fertic* 247 S.W.3d at 248, n. 4. Sackett acknowledged that he received notice of the summary judgment hearing at least a week before the hearing, giving him time to file a written motion and any necessary affidavits, and he was therefore not deprived of his right to seek leave to file a summary judgment response.

Finally, we note that the importance of filing a timely written motion with supporting affidavits in this case. The Jollys' attorney provided evidence that he served Sackett with a copy of the summary judgment motion, including the attorney's certificate of service showing that he served the motion on Sackett by both mail and email. As the Texas Supreme Court has recognized, an attorney's certificate of service is prima facie evidence of service, and creates a rebuttable presumption that service was made. *See Cliff v. Huggins*, 724 S.W.2d 778, 780 (Tex. 1987), citing Tex.R.Civ. P. 21a) ("A certificate by a party or an attorney of record, or the return of the officer, or the affidavit of any other person showing service of a notice shall be prima facie evidence of the fact of service."). Although a party may rebut the presumption by making an "offer of proof of nonreceipt. . . . [in] the absence of evidence to the contrary, the presumption has the force of a rule of law." *Id.* Sackett presented no such evidence, and instead only made unsworn statements at the summary judgment hearing to support his claim that he did not receive timely notice of the motion. These statements cannot be considered evidence, and therefore, there is no evidence in the record to rebut the presumption. *See generally Duchene v. Hernandez*, 535 S.W.3d 251, 256–57 (Tex.App.--El Paso 2017, no pet.) (unsworn statements of attorney at summary judgment hearing on his excuse for failing to file a timely summary judgment response, could not be considered as evidence to excuse the failure).

Moreover, even if the trial court were entitled to consider as evidence Sackett's unsworn statements on his lack of notice and his inability to obtain his file from his former attorney, the court was still free to conclude that his statements were not credible or that they otherwise did not support a finding of good cause to continue the hearing. *See Carpenter*, 98 S.W.3d at 688 (trial court retained discretion to reject unsworn argument made by the nonmovant's attorney at the summary judgment hearing that he had failed to file a timely response to the movant's summary judgment motion due to a "calendaring error"); *see generally Heredia v. Zimprich*, 559 S.W.3d 223, 230 (Tex.App.--El Paso 2018, no pet.)(recognizing that the trial court is the "sole judge of the credibility of the witnesses and the weight to be assigned to their testimony.").

Accordingly, for the reasons set forth above, we conclude that because Sackett failed to properly move for continuance with supporting affidavits before the summary judgment hearing setting forth good cause for granting a continuance, he did not preserve this issue for our review.

**D. The trial court's decision to grant summary judgment**

Sackett makes several statements in his brief that the trial court erred in granting summary judgment in the Jollys' favor. And in his conclusion and prayer, Sackett asks that this Court reverse the trial court's summary judgment order, and remand to the trial court to allow him to have his "proper day in court" to prove his claims. The Jollys respond in part that Sackett has failed to adequately brief the question of whether the trial court's judgment properly granted their motion. We agree.

Although Sackett is representing himself on appeal, he is still held to the same briefing standards as a licensed attorney. *See Robb*, 417 S.W.3d at 590 (recognizing that a pro se litigant is held to the same standard in determining whether his appellate brief complied with the applicable

rules of appellate procedure). To preserve error on appeal, the Texas Rules of Appellate Procedure require adequate briefing, which includes making a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record. *See ERI Consulting Engineers, Inc. v. Swinnea*, 318 S.W.3d 867, 880–81 (Tex. 2010), *citing* TEX.R.APP. P. 38.1(i). In reviewing for briefing waiver, we are required to construe briefs liberally—whether filed by pro se litigants or licensed attorneys so that the right to appellate review is not lost by waiver. *Robb*, 417 S.W.3d at 590, *citing Perry v. Cohen*, 272 S.W.3d 585, 587 (Tex. 2008)(per curiam). We keep in mind that substantial compliance with the rules is sufficient. *Id.*, *citing* TEX.R.APP.P. 38.9. Here, we find no such substantial compliance.

The party moving for summary judgment carries the burden of establishing that no material fact issue exists and that it is entitled to judgment as a matter of law. *See M.D. Anderson Hosp. & Tumor Inst. v. Willrich*, 28 S.W.3d 22, 23 (Tex. 2000)(per curiam), *citing* TEX.R.CIV.P. 166a(c). Thus, the nonmovant has no burden to respond to a summary judgment motion unless the movant conclusively establishes its cause of action or defense. *Id.* In his brief, however, Sackett completely fails to explain why he believes the Jollys’ summary judgment evidence was insufficient to support their defenses to his lawsuit, or why he believes the evidence did not support their counterclaim. Instead, while Sackett argues in his brief that he alleged a valid claim against the Jollys for violating the Property Code, he points to nothing in the summary judgment record to support that claim and he provides no citation to any supporting legal authority. In addition, he fails to challenge the Jollys’ evidence that supported their counterclaim for breach of contract and unjust enrichment—which not only included Cory’s affidavit describing the breach, but Sackett’s own admissions at his deposition that he did not fulfill the terms of their contract.



Finally, although Sackett asserts that the record does not support the “dollar amount” of damages that the trial court awarded on the counterclaim, Sackett provided no legal or factual arguments to support this assertion. As set forth above, the Jollys presented un rebutted evidence to support the amount of the award, including evidence that: (1) Sackett remained in the house for twelve months without making the \$5,000 a month payment specified in the parties’ contract; (2) they incurred over \$16,000 in expenses to repair the property after Sackett vacated the premises; and (3) Sackett admittedly never paid the \$3,150.00 in attorney’s fees that the Jollys incurred in the eviction proceedings, which the justice court ordered him to pay. Sackett provides no argument in his brief explaining why he believes this evidence was not sufficient to support the trial court’s damages award.

Accordingly, Sackett’s argument that the trial court erred by granting summary judgment disregards the most basic of briefing standards. We therefore overrule this issue as being inadequately briefed. *See Serrano v. Francis Properties I, Ltd.*, 411 S.W.3d 661, 667 (Tex.App.-- El Paso 2013, pet. dismissed w.o.j.)(finding briefing waiver under Tex.R.App. P. 38.1, where appellants provided no citation to the record and made no legal arguments in support of their issues).

Sackett’s Issues are overruled.

#### **IV. CONCLUSION**

We affirm the trial court’s judgment.

Jeff Alley, Justice

December 5, 2022

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