

Affirmed and Opinion Filed August 3, 2016



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-14-00874-CV

**HASSAN PARSA, Appellant
V.
VINCENT WALKER, Appellee**

**On Appeal from the 14th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-13-11870**

MEMORANDUM OPINION

Before Justices Bridges, Fillmore, and Stoddart
Opinion by Justice Bridges

Hassan Parsa appeals the trial court's judgment granting summary judgment in favor of Vincent Walker and denying Parsa's motion for summary judgment. In five issues, Parsa argues the trial court erred in concluding Parsa was judicially estopped from denying Walker's lien on certain property based on Parsa's positions in a prior lawsuit; Parsa's positions in the underlying suit and the prior suit were not inconsistent; Parsa obtained complete equitable title to the property before Walker's lien was filed, and Walker's subsequently filed lien could not be used to take the property away; Parsa's open and obvious use of the property created a fact issue whether Walker was on notice of a competing claim to title; and Walker's abstract of judgment was fatally defective, and the lien never attached because the abstract of judgment contains the address of Walker's attorney, not Walker. We affirm the trial court's judgment.

On March 12, 2008, Parsa purchased the subject property from Eclat Private Equity, Inc. The contract for deed stated that the only existing lien against the property was a promissory note payable to Preston National Bank. However, at the time of the purchase, Southwestern Bell Yellow Pages had a lien on the property. On March 19, 2010, Walker obtained a judgment against Eclat, and the Dallas County Clerk issued an abstract of judgment on April 21, 2010, which was filed in the Dallas County Records Department the next day. Parsa did not record the warranty deed conveying the property to him until August 3, 2010.

On May 7, 2012, Parsa sued Eclat and its officers (collectively, “Eclat”), alleging they had refused to provide Parsa with title to the property free and clear of all liens that existed at the time the contract for deed was signed and had “allowed further liens to encumber title” to the property thereafter. On August 14, 2012, Parsa filed a motion for summary judgment alleging, among other things, that Eclat contracted with Parsa for the purchase of the property and agreed Eclat would not create or permit additional liens on the property after March 12, 2008. The motion, however, alleged multiple liens, including Walker’s abstract of judgment against Eclat, were filed and recorded with Dallas County. As with other liens, the motion alleged Walker’s abstract of judgment “ha[d] not been released.” After listing in further detail the liens that had attached to the property after March 12, 2008, the motion stated the following:

Fourth, Vincent Walker filed and recorded with Dallas Co Texas and Abstract of Judgment against [Eclat] for \$15,000 and the amount of costs on April 22, 2010. *See Murray [v. Cadle Co.]*, 257 S.W.3d [291,] at 296 [(Tex. App.—Dallas 2008, pet. denied)] (acknowledging that a lien is created by the recording and indexing of an abstract of judgment). Furthermore, the Abstract of Judgment by Vincent Walker has not been released. *See id.* Therefore, as the above liens remain attached to the Property, [Eclat] further materially breached the Contract by failing to deliver to [Parsa] clear title to the Property. *See Murray*, 257 S.W.3d at 296; *First Nat’l Bank of Seminole [v. Hooper]*, 104 S.W.3d [83,] at 84-87 [Tex. 2003)]; *Wicker [v. Texas Bank of Garland, N.A.]*, No. 05-94-01109-CV, 1995 WL 141152, at *3 [(Tex. App.—Dallas Mar. 31, 1995, writ denied)].

The record shows the trial court entered a “modified final judgment” on June 25, 2013 containing the court’s finding that Parsa was entitled to recover from Eclat and its officers “the amount of outstanding liens against the property.” The judgment awarded Parsa \$73,950.88 plus interest and attorney’s fees.

On October 2, 2013, Walker filed his original petition seeking a declaration that the lien created by his abstract of judgment took precedence over any interest in the property claimed by Parsa. Parsa filed a general denial and a motion for summary judgment in which he argued Walker’s lien was not superior to Parsa’s claim because Parsa obtained an equitable interest in the property on March 12, 2008, and this equitable interest was superior to Walker’s lien. Quoting *Texas American Bank/Levelland v. Resendez*, 706 S.W.2d 343, 347 (Tex. App.—Amarillo 1986, no writ), Parsa argued that “equitable title acquired independent of legal title is not subject to or governed by the registration statute and the superiority of such title may be asserted against a judgment lien creditor even though [the judgment lien creditor] had no notice of the equitable title at the time of fixing his lien.” Parsa argued that, even if the recordation statute applied, his open, exclusive, and visible possession of the property put Walker on notice of the unrecorded contract for deed and made it “incumbent on Walker to make an inquiry as to the nature of Parsa’s possession of the property.” In addition, Parsa argued, Walker’s lien was invalid because the abstract of judgment did not show the judgment debtor’s address.

On December 23, 2013, Walker filed a motion for partial traditional summary judgment asserting, among other things, that judicial estoppel prevented Parsa from asserting a position contrary to his position in the earlier judicial proceeding against Eclat. Specifically, Walker argued Parsa argued in the case against Eclat that the liens, including Walker’s lien, had attached to the property and Parsa was required to satisfy those liens. Walker pointed out that the court rendered judgment in favor of Parsa in the amount of the outstanding liens. Walker argued Parsa

was therefore judicially estopped from taking a position contrary to his position in the suit against Eclat.

On April 16, 2014, the trial court entered an order granting Walker's motion for partial summary judgment, declaring that the lien created by Walker's abstract of judgment takes precedence over any interest claimed by Parsa, and granting Walker the right to foreclose his lien. On June 9, 2014, the trial court signed a final judgment ordering that Parsa take nothing on his claims against Walker and that Walker recover his attorney's fees. This appeal followed.

In his first issue, Parsa argues judicial estoppel does not apply in this case. Specifically, he argues judicial estoppel applies only to sworn statements, and the statements which Walker relied upon were unsworn. In addition, Parsa argues his position in this case is not inconsistent with his position in the case against Eclat. Parsa characterizes his position in this case as a challenge to whether Walker's lien takes precedence over Parsa's equitable title and whether Walker's lien comports with statutory requirements. Parsa argues these were not issues in his case against Eclat.

We review the trial court's granting of summary judgment de novo. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005); *Cohen v. Landry's Inc.*, 442 S.W.3d 818, 821 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). In reviewing either a no-evidence or a traditional summary judgment motion, all evidence favorable to the nonmovant is taken as true, and we draw every reasonable inference and resolve all doubts in favor of the nonmovant. *Cohen*, 442 S.W.3d at 821. A party moving for traditional summary judgment bears the burden of showing no genuine issue of material fact exists and it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009). When reviewing a traditional summary judgment, we take as true

all evidence favorable to the nonmovant, indulging every reasonable inference and resolving any doubt in the nonmovant's favor. *Valence Operating Co.*, 164 S.W.3d at 661.

The doctrine of judicial estoppel is designed to protect the integrity of the judicial process by preventing a party from “playing fast and loose with the courts” to suit his own purposes. *Bailey-Mason v. Mason*, 334 S.W.3d 39, 43 (Tex. App.—Dallas 2008, pet. denied); *Webb v. City of Dallas*, 211 S.W.3d 808, 820 (Tex. App.—Dallas 2006, pet. denied). Specifically, judicial estoppel bars a party from successfully maintaining a position in one action and then maintaining an inconsistent position in a subsequent action. *Pleasant Glade Assembly of God v. Schubert*, 264 S.W.3d 1, 6 (Tex. 2008); *Mason*, 334 S.W.3d at 43. Stated differently, if a party prevails in one action after asserting the truth of one version of the facts, he cannot attempt to prevail in a later proceeding by asserting those same facts are not true. *Mason*, 334 S.W.3d at 43. In Texas, the elements of judicial estoppel are: (1) a sworn, prior inconsistent statement made in a judicial proceeding; (2) which was successfully maintained in the prior proceeding; (3) not made inadvertently or by mistake, or pursuant to fraud or duress; and (4) which is deliberate, clear, and unequivocal. *Nine Syllables, LLC v. Evans*, No. 05–13–01677–CV, 2015 WL 3932751, at *4 (Tex. App.—Dallas June 26, 2015, no pet.); *DeWoody v. Rippley*, 951 S.W.2d 935, 944 (Tex. App.—Fort Worth 1997, no writ). Pursuant to this doctrine, a fact admitted by a prevailing party in a judicial proceeding is established as a matter of law; the admitting party may not in a second proceeding dispute the admission or introduce evidence contrary to it. *Schubert*, 264 S.W.3d at 6. Judicial estoppel is not, strictly speaking, estoppel; it is actually a rule of procedure that is based on justice and sound public policy. *Id.*; *Mason*, 334 S.W.3d at 43. It operates to prevent the use of intentional self-contradiction as a means of obtaining unfair advantage. *Schubert*, 264 S.W.3d at 6; *Mason*, 334 S.W.3d at 43.

Here, Parsa’s position in the case against Eclat was that, among other liens, Walker’s lien attached to the property, the lien had not been released, and Parsa did not, therefore, have clear title to the property. Parsa testified under oath that he continued paying Eclat without knowing there were liens against the property, including the abstract of judgment filed by Walker. Parsa testified he would not have made the final \$70,000 payment to Eclat if he had “known of the liens that were on the property.” Parsa successfully maintained the position that liens, including Walker’s abstract of judgment, burdened the property in his suit against Eclat, and he prevailed in that case. In this case, Parsa attempted to prevail against Walker by taking the position that Walker did not have an enforceable lien and/or the lien was invalid. Under these circumstances, we conclude judicial estoppel barred Parsa from successfully maintaining his contradictory position in the case against Walker. *See Nine Syllables, LLC*, 2015 WL 3932751, at *4; *Ferguson*, 295 S.W.3d at 643; *Schubert*, 264 S.W.3d at 6; *Mason*, 334 S.W.3d at 43. Accordingly, the trial court properly granted Walker’s summary judgment motion on the grounds judicial estoppel barred Parsa’s claims. *See* TEX. R. CIV. P. 166a(c); *Fielding*, 289 S.W.3d at 848; *Valence Operating Co.*, 164 S.W.3d at 661. We overrule Parsa’s first issue. Because of our disposition of Parsa’s first issue, we need not address his remaining issues.

We affirm the trial court’s judgment.

/David L. Bridges/
DAVID L. BRIDGES
JUSTICE

140874F.P05



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

HASSAN PARSA, Appellant

No. 05-14-00874-CV V.

VINCENT WALKER, Appellee

On Appeal from the 14th Judicial District
Court, Dallas County, Texas

Trial Court Cause No. DC-13-11870.

Opinion delivered by Justice Bridges.

Justices Fillmore and Stoddart participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee VINCENT WALKER recover his costs of this appeal from appellant HASSAN PARSA.

Judgment entered August 3, 2016.