**AFFIRMED; Opinion Filed May 9, 2016.**

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

**No. 05-15-00643-CV**

**COOKSEY OH, Appellant**
**V.**
**ROBERT C. HWANG, P.C. AND ROBERT HWANG, Appellees**

**On Appeal from the 134th Judicial District Court**
**Dallas County, Texas**
**Trial Court Cause No. DC-14-03128-G**

## MEMORANDUM OPINION

Before Justices Francis, Lang-Miers, and Myers
Opinion by Justice Myers

Cooksey Oh appeals the trial court's judgment that he take nothing in his lawsuit against Robert C. Hwang, P.C. and Robert Hwang for fraud, conspiracy, and violations of the Texas Theft Liability Act. Oh brings two issues on appeal contending (1) the trial court's findings of fact do not support the judgment in favor of appellees and require reversal, and (2) the trial court's conclusion of law that appellees are not liable to Oh is not supported by the weight of the evidence. We affirm the trial court's judgment.

### BACKGROUND

Appellant speaks Korean but does not speak English. On October 9, 2008, Won Jo, an elder in the church appellant attends, approached appellant and asked to borrow $150,000. Appellant agreed to loan Won Jo the money, and they went to appellant's bank to obtain the funds. Won Jo speaks English, and he did all the talking at appellant's bank. The bank issued a

cashier's check drawn on appellant's account for $150,000. The payee on the check was "ROBERT HWSNG, P.C." [sic]. Won Jo separated the "customer copy" from the cashier's check and gave the customer copy to appellant, who folded it and put it in his pocket without noticing that the payee was not Won Jo.

On October 13, 2008, Won Jo and Do Young Cho took the cashier's check to Hwang, who was Do Young Cho's attorney. Do Young Cho told Hwang they wanted him to deposit the check into his trust account and write one check for $30,000 payable to Do Young Cho and a second check for $120,000 payable to Jeong Yeon Cho. Hwang wrote out a check on his firm's trust account for $30,000 payable to Do Young Cho, and he provided a cashier's check for $120,000 payable to Jeong Yeon Cho. Won Jo later declared bankruptcy. Appellant testified Won Jo never paid back any of the $150,000 loan.

In 2014, appellant sued appellees as well as Do Young Cho, Auto Korica, Inc., and Jeong Yeon Cho. Appellant was unable to serve Jeong Yeon Cho, and appellant's allegations against Jeong Yeon Cho were severed from the allegations against the other defendants. Appellant alleged appellees committed fraud and violated the Texas Theft Liability Act concerning the $150,000 cashier's check.

Before the trial of appellant's case, appellant and appellees filed proposed findings of fact and conclusions of law. Do Young Cho and Auto Korica did not appear at the trial, and the trial court rendered default judgments against them. Appellees appeared at the trial, and appellant and appellees tried the case before the court. After the trial, the court rendered judgment for appellant on his claims against Do Young Cho and Auto Korica, but the court ordered that appellant take nothing on his claims against appellees. Appellant timely requested findings of fact and conclusions of law "only as to Defendants Robert Hwang and Robert C. Hwang, P.C." When the trial court failed to file findings of fact and conclusions of law within twenty days,

appellant timely filed "Notice of Past Due Findings of Fact and Conclusions of Law Only as to Defendants Robert Hwang and Robert C. Hwang, P.C." The trial court signed findings of fact and conclusions of law the next day. The findings of fact addressed appellant's claims against the defaulted defendants, but they did not address appellant's claims against appellees. The only conclusion of law mentioning appellees stated, "Plaintiff, Cooksey Oh, takes nothing by this action against Robert Hwang and Robert C. Hwang, P.C." No one objected to the trial court's failure to file findings of fact concerning appellees, nor did anyone request additional findings of fact.

**FINDINGS OF FACT**

In his first issue, appellant contends the findings of fact fail to support a judgment in favor of appellees and require the judgment be reversed.

In an appeal from a nonjury trial, the trial court's findings of fact form the basis of the judgment. TEX. R. CIV. P. 299. If the findings do not address an element of a claim or defense, that element may be provided by presumption in support of the judgment if the trial court has made a finding of fact on any other element of the claim or defense. *Id.* However, if the trial court has made no finding on any element of the claim or defense, then the elements may not be supplied by presumption. *Id.* After the trial court enters its findings and conclusions, the parties have ten days to request additional findings or conclusions. TEX. R. CIV. P. 298. If a party requests an additional finding of fact, but the trial court does not make the requested finding, then the finding may not be provided by presumption in support of the judgment. *See* TEX. R. CIV. P. 298, 299.

The trial court's findings of fact in this case make no mention of appellees. Only one conclusion of law addresses appellant's claims against appellees, and it states that appellant "takes nothing by this action against" appellees. Appellant argues that the judgment must be

reversed because the trial court's findings do not address any element of appellant's claims against appellees or appellees' defenses. Appellant also argues that no findings may be presumed in favor of the judgment because the trial court refused to make appellees' proposed findings.

The party asserting a ground of recovery or an affirmative defense must request findings in support of the ground of recovery or the defense to avoid waiver. *Cooper v. Cochran*, 288 S.W.3d 522, 531 (Tex. App.—Dallas 2009, no pet.); *Briggs Equip. Trust v. Harris County Appraisal Dist.*, 294 S.W.3d 667, 674 (Tex. App.—Houston [1st Dist.] 2009, pet. denied). If the trial court's findings of fact do not include any elements of the ground of recovery or affirmative defense, then the party relying on the ground of recovery must specifically request additional findings on the ground of recovery or affirmative defense; the failure to request the additional findings results in the waiver of any complaint regarding the lack of findings or the sufficiency of the evidence to support the ground of recovery or the defense. *See Cooper*, 288 S.W.3d at 531; *Briggs*, 294 S.W.3d at 674. Requests for additional findings of fact must be filed after the trial court files its findings of fact and conclusions of law. *See* TEX. R. CIV. P. 298 ("*After* the court files original findings of fact and conclusions of law" [emphasis added] parties may request additional findings and conclusions). Proposed findings of fact filed before trial are not a proper request for additional findings. *See Mohnke v. Greenwood*, 915 S.W.2d 585, 590 (Tex. App.—Houston [14th Dist.] 1996, no writ); *Balderama v. W. Cas. Life Ins. Co.* 794 S.W.2d 84, 89 (Tex. App.—San Antonio 1990), *rev'd on other grounds*, 825 S.W.2d 432 (Tex. 1991).

In this case, the trial court's findings of fact make no mention of appellant's causes of action against appellees. No party requested additional findings of fact. Therefore, appellant's complaints on appeal concerning the lack of findings of fact to support the judgment that appellant take nothing on his claims against appellees are waived. *See Bayview Loan Servicing,*

*LLC v. Martinez*, 05-14-00835-CV, 2016 WL 825670, at *5 n.3 (Tex. App.—Dallas Mar. 3, 2016, no pet. h.) (plaintiff "waived those claims" for breach of contract on which trial court did not make findings of fact by not requesting additional findings of fact on those alleged breaches); *Briggs*, 294 S.W.3d at 674 (plaintiff "waives any complaint" about the alternative theories of tax calculation by not requesting additional findings on those theories); *Johnson v. Chandler*, No. 14-03-00123-CV, 2004 WL 1946077, at *5–6 (Tex. App.—Houston [14th Dist.] Sept. 2, 2004, no pet.) (petitioner waived any error that judgment was not supported by the findings of fact and conclusions of law that did not address her additional ground of recovery because she failed to request additional findings and conclusions on that ground of recovery). We overrule appellant's first issue.

**CONCLUSION OF LAW**

In his second issue, appellant contends the trial court's conclusion of law, that appellant "takes nothing by this action against" appellees, is erroneous because "the weight of the evidence demonstrates that Robert Hwang conspired to defraud [appellant] and violated the Texas Theft Liability Act." Appellant does not assert in this issue that appellees' liability was established as a matter of law. Appellant acknowledges Hwang testified he had no knowledge of any fraud being perpetrated against appellant, but appellant argues Hwang's testimony was not credible. We interpret appellant's issue as purporting to attack the factual sufficiency of the evidence to support the conclusion of law. *See City of Keller v. Wilson*, 168 S.W.3d 802, 826 (Tex. 2005) (in factual sufficiency review, court considers whether decision is so against the great weight and preponderance of the evidence that it is clearly wrong and unjust). Conclusions of law are reviewed as legal questions; they cannot be challenged on factual sufficiency grounds. *Johnson*, 2004 WL 1946077 at *5; *Texmarc Conveyor Co. v. Arts*, 857 S.W.2d 743, 744–45 (Tex. App.—Houston [14th Dist.] 1993 writ denied). Therefore, we cannot consider whether the trial court's

conclusion of law is supported by "the weight of the evidence." We overrule appellant's second issue.

## CONCLUSION

We affirm the trial court's judgment.

/Lana Myers/
LANA MYERS
JUSTICE

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# Court of Appeals
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## JUDGMENT

COOKSEY OH, Appellant

No. 05-15-00643-CV V.

ROBERT C. HWANG, P.C. AND ROBERT HWANG, Appellees

On Appeal from the 134th Judicial District Court, Dallas County, Texas
Trial Court Cause No. DC-14-03128-G.
Opinion delivered by Justice Myers. Justices Francis and Lang-Miers participating.

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

It is **ORDERED** that appellees ROBERT C. HWANG, P.C. AND ROBERT HWANG recover their costs of this appeal from appellant COOKSEY OH.

Judgment entered this 9th day of May, 2016.