**REVERSE and REMAND; and Opinion Filed July 27, 2016.**

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

**No. 05-15-00911-CV**

**CHRISTINA PAZ, Appellant**
**V.**
**FATIMA CONSTRUCTION & CLEANING COMPANY LLC AND SAIRA BRUSH, Appellees**

**On Appeal from the 191st Judicial District Court**
**Dallas County, Texas**
**Trial Court Cause No. DC-15-01369**

## MEMORANDUM OPINION

Before Justices Lang-Miers, Evans, and Brown
Opinion by Justice Brown

Appellant Christina Paz appeals a no-answer default judgment granted in favor of Fatima Construction and Cleaning Co., LLC ("Fatima") and Saira Brush. In four issues, Paz generally asserts (1) the trial court erred in denying her motion for new trial, (2) the pleadings are insufficient to support the default judgment, and (3) the trial court erred in failing to apportion responsibility amongst several defendants. For the following reasons, we reverse the trial court's judgment and remand for further proceedings.

Appellees Fatima and its owner and president Saira Brush sued Paz and three other defendants, Cosmo Personnel Services, LLC ("Cosmo"), Prisca Rodriquez, and Michael Davis asserting claims for breach of contract, fraud, and deceptive trade practices. In their petition, appellees alleged that Fatima entered into a Factoring and Security Agreement ("FSA") with

Cosmo whereby Cosmo agreed to sell all of its accounts receivable to Fatima in exchange for financing from Fatima.

Appellees asserted that, during the negotiations that led to the execution of the FSA, Cosmo, Rodriguez and Davis made material representations to Fatima about the quality and nature of Cosmo's accounts receivable and specifically that the accounts receivable had a value of at least the amount of funds Fatima was to provide to Cosmo in financing. Appellees asserted they would not have entered into the FSA but for the misrepresentations made by Cosmo, Rodriquez, and Davis.

With respect to Paz, appellees asserted (1) "Davis and Paz are the de facto president and manager of Cosmo, since they make almost all, if not all, material decisions on how to run the day to day business of Cosmo," (2) "Davis and Paz are also the primary agents of Cosmo in the business transactions made the basis of the accounts purchased by Fatima," and (3) "[u]pon information and belief, Paz obligated Cosmo to provide services to customers whom she knew had no intention of fully paying off their accounts, and Paz ensured those accounts became part of the [a]ccounts purchased by Fatima."

Appellees asserted a claim for breach of contract against Cosmo, Rodriguez, and Davis, but not Paz. Appellees also alleged claims for fraud and DTPA violations against all the defendants, including Paz. Appellees fraud and DTPA claims were based on their allegations that defendants had made misrepresentations which Fatima relied on in executing the FSA. As damages, appellees pleaded they were entitled to recover funds paid to defendants in connection with the FSA as well as "unliquidated" damages.

When the defendants failed to answer, appellees filed a motion for default judgment. In their motion, appellees asserted they were entitled to *liquidated* damages against all the defendants jointly and severally. To prove such damages, appellees relied on the affidavit of

Saira Brush and documents she attached to her affidavit. In her affidavit, Brush asserted she and Fatima were damaged in the amount of "at least $239,927.70 (unpaid amount of Cosmo accounts receivable as of August, 2014), $22,513.43 in unpaid factoring fees, and at least $219,000.00 in money paid directly by Fatima and/or Saira Brush to Cosmo in reliance on Cosmo's, Rodriguez's, and Davis's fraudulent representations." Brush also asserted she and Fatima paid at least $6,000 in attorney's fees to enforce the FSA.

The trial court granted appellees' motion and, without a hearing, rendered a default judgment against all defendants, including Paz, jointly and severally for $481,441.13 in actual damages, $1,444,323.39 in treble damages, and $6,000.00 in attorney's fees.

Paz subsequently filed a pro se motion for new trial generally asserting she did not have proper notice, she was not an owner of the business, she did not have a contract with Fatima, and she had a rule 11 agreement with appellees' counsel. Appellees opposed Paz's motion for new trial because it was unverified and was not supported by evidence. Appellees nevertheless admitted their attorneys met with Paz after they served her and that they gave her a proposed rule 11 agreement that would have extended her answer date. However, because Paz did not sign and return the letter, her answer date was not extended.[1] After a hearing, the trial court denied Paz's motion for new trial. This appeal followed.

In her second issue, Paz asserts the trial court erred in rendering the default judgment because it was not supported by the pleadings. We agree.

A default judgment must be supported by a petition which states a cause of action. *Fairdale Ltd. v. Sellers*, 651 S.W.2d 725, 725 (Tex. 1982). In determining if a cause of action has been pleaded, the trial court must be able to determine from the pleadings alone the elements

[1] Paz was not relying on the letter to show it was enforceable under Rule 11, but to show her failure to answer was not the result of conscious indifference. In that regard, we note that the letter states it was a "memorialization" of an agreement that had been reached between Paz and appellees. Under the terms of that agreement, Paz's answer date had not passed.

of the cause of action and the relief sought with reasonable certainty and without resorting to other sources. *Id*. The purpose of this rule is to ensure the defendant had fair notice of the basis of the plaintiff's cause of action. *Id*; *Stoner v. Thompson*, 578 S.W.2d 679, 683 (Tex. 1979).

In determining fair notice, the pleadings must provide the defendant with sufficient information to enable him to determine the basis of the claims and must not disclose any invalidity of the claim on its face. *Paramount Pipe & Supply Co. v. Muhr*, 749 S.W.2d 491, 494 (Tex. 1988). A pleading is sufficient if the defendant can ascertain the nature and basic issues of the controversy and what testimony will be relevant. *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 896-97 (Tex. 2000). A petition is sufficient if a cause of action reasonably may be inferred from what is stated in the petition, even if an element of the action is not specifically alleged. *Westcliffe, Inc. v. Bear Creek Const., Ltd.*, 105 S.W.3d 286, 292 (Tex. App.—Dallas 2003, no pet.); *see also* TEX. R. CIV. P. 45(b) ("That an allegation be evidentiary or be of legal conclusion shall not be grounds for objection when fair notice to the opponent is given by the allegations as a whole.").

Here, the trial court entered a judgment against Paz for nearly $2 million in actual and treble damages based on a DTPA claim.[2] Appellees DTPA claim, and their fraud claim, was based on their allegations that Cosmo, Rodriquez, and Davis made misrepresentations that induced Fatima to enter into the FSA. Appellees did not allege that Paz made any misrepresentations. Nor did they allege Paz was involved in the negotiation or execution of the FSA, or that any of her actions induced Fatima to enter into the FSA. Indeed, appellees did not allege they had any interactions with Paz whatsoever.

[2] Although the judgment was based on appellees' DTPA claim, it appears the judgment nevertheless also included breach of contract damages.

Appellees petition also failed to provide Paz with any information that would have enabled her to determine what legal or factual basis they relied on to show Paz was responsible for Cosmo, Rodriquez, or Davis's conduct. For example, appellees did not allege Cosmo or any other person was acting on *Paz's* behalf. *See, e.g., Paramount Pipe & Supply Co.*, 749 S.W.2d at 495. To the contrary, the petition alleged Paz was *Cosmo's* agent and thus Cosmo could be responsible for her conduct. *See id.*

The only facts alleged regarding Paz were that she allowed accounts to be created with customers whom she knew had no intention of paying in full and that she somehow ensured those accounts became part of the accounts purchased by Fatima. At the same time, Fatima asserted it purchased *all* of Cosmo's accounts. In any event, taking those facts as admitted, we are unable to discern how they assert a DTPA claim or fraudulent misrepresentation claim against Paz. *See, e.g.*, TEX. BUS. & COM. CODE ANN. § 17.50 (West) (claim for DTPA violations requires showing of detrimental reliance). We further conclude the pleadings failed to give Paz fair notice of another cause of action against her.[3] *See Stoner*, 578 S.W.2d at 683 (pleadings must allege claim upon which substantive law will give relief with sufficient particularity to give fair notice to defendant of basis of his complaint). Therefore, we sustain Paz's second issue.

Because of our disposition of this issue, we need not address Paz's complaints regarding the trial court's award of damages or that the trial court abused its discretion in denying her motion for new trial.

[3] Appellees have not filed a brief in this Court and thus have not attempted to identify a substantive claim they pleaded against Paz.

We reverse the trial court's judgment and remand for further proceedings consistent with this opinion.

/Ada Brown/
ADA BROWN
JUSTICE

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# Court of Appeals
# Fifth District of Texas at Dallas

## JUDGMENT

CHRISTINA PAZ, Appellant

No. 05-15-00911-CV V.

FATIMA CONSTRUCTION & CLEANING COMPANY LLC AND SAIRA BRUSH, Appellees

On Appeal from the 191st Judicial District Court, Dallas County, Texas
Trial Court Cause No. DC-15-01369.
Opinion delivered by Justice Brown. Justices Lang-Miers and Evans participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **REVERSED** and this cause is **REMANDED** to the trial court for further proceedings consistent with this opinion.

It is **ORDERED** that appellant CHRISTINA PAZ recover her costs of this appeal from appellees FATIMA CONSTRUCTION & CLEANING COMPANY LLC AND SAIRA BRUSH.

Judgment entered this 27th day of July, 2016.