

**Affirmed and Opinion Filed November 29, 2017**



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

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**No. 05-16-01093-CV**

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**MICHAEL D. WILSON, Appellant**

**V.**

**WOODLAND HILLS APARTMENTS AND LUMACORPS INCORPORATED, Appellees**

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**On Appeal from the County Court at Law No. 2  
Dallas County, Texas  
Trial Court Cause No. CC-15-05747-B**

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**MEMORANDUM OPINION**

Before Justices Francis, Myers, and Whitehill  
Opinion by Justice Francis

Michael D. Wilson appeals the trial court's take-nothing summary judgment on his claims against Woodland Hills Apartments and LumaCorps Incorporated, the landlord and property manager of the apartment from which he was evicted. Appellant raises three issues. We conclude they are without merit and affirm the trial court's judgment.

Appellant represented himself in the proceeding below and is representing himself on appeal. The record shows he leased an apartment at Woodland Hills Apartments under a one-year contract that began in December 2014. When appellant failed to pay the rent during the lease term, Woodland Hills gave him notice to vacate. Appellant did not leave, and Woodland Hills filed a forcible detainer action. Following a trial de novo in county court at law, Woodland Hills was awarded possession of appellant's leased premises. The trial court set a supersedeas

bond to be paid within ten days. Appellant did not pay the bond by the deadline, and Woodland Hills obtained a writ of possession. On the same day the writ of possession was executed, appellant filed his supersedeas bond.

Before the writ of possession was executed, appellant filed this lawsuit against appellees, alleging wrongful eviction, retaliation, statutory repair and remedy violations, and violations of the Texas Penal Code, the Texas Occupations Code, and various other federal statutory and constitutional provisions. Appellees generally denied the allegations and later filed special exceptions. Before the special exceptions were heard, appellant amended his petition to drop some allegations and replead others. Thereafter, appellees filed a motion for traditional and no-evidence summary judgment to which appellant responded on the day before the hearing. Appellees moved to strike the response as untimely. The trial court granted the motion and struck appellant's response. The trial court granted appellees' motion for summary judgment without stating the grounds and dismissed appellant's claims. This appeal followed.

Before turning to the merits of this appeal, we begin by addressing issues related to his brief. In general, a brief must state concisely all issues for review and reveal the legal questions we are called upon to decide. *See* TEX. R. APP. P. 38.1(f); *Bolling v. Farmers Branch Indep. Sch. Dist.*, 315 S.W.3d 893, 896 (Tex. App.—Dallas 2010, no pet.). The appellate rules also require a brief to contain a clear and concise argument for the contentions made with appropriate citations to the authorities and the record. TEX. R. APP. P. 38.1(i). We have no right or obligation to search through the record to find facts or research relevant law that might support an appellant's position because doing so would impermissibly transform this Court from neutral adjudicators to advocates. *Lau v. Reeder*, No. 05-14-01459-CV, 2016 WL 4371813, at \*2 (Tex. App.—Dallas Aug. 16, 2016, pet. denied) (mem. op.). We are not required to consider evidence attached as exhibits or appendices to the briefs where no citation to the record is provided. *See* TEX. R. APP.

P. 38.1(h); *Ranger Ins. Co. v. State*, 312 S.W.3d 266, 270 (Tex. App.—Dallas 2010, pet. dismissed, untimely filed) (explaining attachments to brief are not substitutes for citations to record).

Although appellant's brief lists two "Issues Presented," the body of his brief appears to identify three issues. The substantive briefing of these issues lacks clarity, and it is at times difficult to determine appellant's precise complaint. Additionally, he frequently cites to exhibits to his brief rather than the record to support various statements or positions. We have attempted to discern each of appellant's arguments and, where properly briefed, will address each in turn.

In his first issue, appellant complains the trial court erred by considering appellees' motion for summary judgment without first considering appellees' special exceptions. By doing so, he contends he was not permitted the opportunity to replead.

But appellant did replead. After appellees filed their special exceptions, appellant filed his first amended petition, thereby mooting appellees' special exceptions. *See Wang v. Univ. of Tex. at Austin*, No. 04-13-00065-CV, 2013 WL 5570824, at \*2 (Tex. App.—San Antonio Oct. 9, 2013, no pet.) (mem. op.). An amended pleading takes the place of the original pleading and all prior pleadings are superseded and are no longer a part of the live pleadings. TEX. R. CIV. P. 65; *Sheerin v. Exxon Corp.*, 923 S.W.2d 52, 55 (Tex. App.—Houston [1st Dist.] 1995, no pet.). Because the special exceptions were moot, the trial court did not err in failing to rule on them. *Wang*, 2013 WL 5570824, at \*2. Moreover, we note appellees did not move for traditional summary judgment on the basis that appellant failed to state a cause of action or any other pleading defect. Appellees instead moved for traditional summary judgment on appellant's claims for wrongful eviction, retaliation, and failure to repair and remedy violations by presenting evidence to establish their right to judgment on these claims as a matter of law. We overrule the first issue.

In his second issue, appellant argues appellees lacked standing to sue him for eviction because the apartment manager was not a licensed real estate broker, rendering the contract null and void. He relies on section 1101.351 of the occupations code to support his position. But as asserted by appellees in the motion for summary judgment and on appeal, the premise of appellant's argument is incorrect. The requirements of chapter 1101 of the occupations code, known as the Real Estate License Act, do not apply to on-site managers of apartment complexes. *See* TEX. OCC. CODE ANN. § 1101.005(7) (West Supp. 2016). We overrule the second issue.

In his third issue, appellant argues appellees retaliated against him in violation of sections 92.331 and 92.332 of the Texas Property Code because he made a complaint against them with a federal agency. We broadly construe this issue to challenge the summary judgment on his retaliation claim.

In their motion for traditional summary judgment, appellees raised two grounds on appellant's retaliation claim: (1) the claim is barred as a matter of law because appellant was delinquent in rent when the landlord gave notice to vacate and (2) the claim was barred by res judicata. But appellant has not challenged either ground on appeal. Accordingly, he cannot show error. *See Malooly Bros., Inc. v. Napier*, 461 S.W.2d 119, 120–21 (Tex. 1970) (appellant must challenge each ground asserted if trial court does not specify ground on which summary judgment is rendered); *See Worldwide Asset Purchasing, LLC v. Rent-A-Center E., Inc.*, 290 S.W.3d 554, 569 (Tex. App.—Dallas 2009, no pet.) (concluding that if party fails to challenge one of grounds for summary judgment, appellate court may affirm on unchallenged ground).

Regardless, evictions based on nonpayment of rent do not constitute retaliation if the tenant is delinquent in rent at the time the landlord gives notice to vacate or files an eviction action. TEX. PROP. CODE ANN. § 92.332(b)(1) (West 2014). Appellees' evidence shows that

appellant was delinquent in his rent at the time appellees gave notice to vacate. We overrule the third issue.

We affirm the trial court's judgment.

/Molly Francis/  
MOLLY FRANCIS  
JUSTICE

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

**JUDGMENT**

MICHAEL D. WILSON, Appellant

No. 05-16-01093-CV      V.

WOODLAND HILLS APARTMENTS  
AND LUMACORPS INCORPORATED,  
Appellees

On Appeal from the County Court at Law  
No. 2, Dallas County, Texas  
Trial Court Cause No. CC-15-05747-B.  
Opinion delivered by Justice Francis;  
Justices Myers and Whitehill participating.

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

It is **ORDERED** that appellees WOODLAND HILLS APARTMENTS AND LUMACORPS INCORPORATED recover their costs of this appeal from appellant MICHAEL D. WILSON.

Judgment entered November 29, 2017.