

**AFFIRM; and Opinion Filed April 12, 2018.**



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

---

**No. 05-16-00912-CV**

---

**ASHVIN REDDY ADMAL, Appellant  
V.  
VENTURES TRUST 2013 I-H-R AND BSI FINANCIAL SERVICES, Appellees**

---

**On Appeal from the 134th Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. DC-15-14365**

---

**MEMORANDUM OPINION**

Before Justices Francis, Brown, and Stoddart  
Opinion by Justice Brown

Ashvin Reddy Admal appeals the trial court's summary judgment in favor of appellees Ventures Trust 2013 I-H-R and BSI Financial Services. Admal contends (1) he was not provided adequate time for discovery prior to summary judgment, and (2) the trial court erred in granting summary judgment under the economic loss rule. We affirm the trial court's order granting summary judgment.

On November 30, 2015, a few days before a scheduled foreclosure sale on his property, Admal sued appellees. He alleged that Ventures Trust was the successor in interest to the original mortgagee and current holder of the note secured by his property and that BSI was the loan servicer. Admal alleged he had made numerous requests to verify the amount he owed on his property, but appellees had not provided the information. He asserted causes of action for violation

of section 51.0025 of the property code, violation of section 392.301 of the finance code, and negligence. He also sought a temporary restraining order and injunctive relief. The trial court granted a temporary restraining order prohibiting the foreclosure sale from taking place as scheduled. (According to Admal's brief, appellees foreclosed on his home in January 2017.) Appellees answered with a general denial and asserted various affirmative defenses.

In April 2016, appellees filed a combined traditional and no-evidence motion for summary judgment. They asserted that each of Admal's claims failed as a matter of law. They specifically alleged his negligence claim was barred by the economic loss rule. In addition, appellees alleged that Admal could not prevail on any of his claims because he had no evidence of damages. The trial court granted the motion for summary judgment and ordered that Admal take nothing. The summary judgment order does not specify the grounds on which it was granted. This appeal followed.

The appellate record does not include any reporter's record. According to a letter from the court reporter, Admal did not request preparation of the reporter's record. Appellees contend the lack of a reporter's record is fatal to Admal's appeal. While the absence of a reporter's record plays some role in our disposition of Admal's first issue involving the time for discovery, we can review the merits of a summary judgment on the clerk's record alone. *See Schneider Nat'l Carriers, Inc. v. Bates*, 147 S.W.3d 264, 291 n.141 (Tex. 2004); *Strachan v. FIA Card Servs.*, No. 14-09-01004-CV, 2011 WL 794958, at \*3 (Tex. App.—Houston [14th Dist.] Mar. 8, 2011, pet. denied) (mem. op.).

In his first issue, Admal contends the trial court erred in granting appellees' motion for summary judgment because he was not afforded a reasonable amount of time to conduct discovery. Appellees moved for summary judgment about four months after Admal filed suit, and a hearing was initially set for May 2, 2016. On April 28, 2016, Admal filed a response to the summary

judgment motion and also filed a motion seeking a continuance of the hearing on grounds he had not had adequate time for discovery. Our record does not contain a ruling on the motion for continuance. The summary judgment hearing was ultimately held on June 13, 2016, and the trial court signed the order granting summary judgment on June 28, 2016.

Although Admal does not frame his issue in terms of the trial court's ruling on his motion for continuance, that is what we must examine in considering his complaint. A party who contends he has not had adequate time for discovery before a summary judgment hearing must file either an affidavit explaining the need for additional discovery or a verified motion for continuance. *Killingsworth v. Housing Auth. of City of Dallas*, 447 S.W.3d 480, 495 (Tex. App.—Dallas 2014, pet. denied). The affidavit must describe the evidence sought, explain its materiality, and set forth facts showing the due diligence used to obtain the evidence prior to the hearing. *Expert Tool & Machine, Inc. v. Petras*, No. 05-14-00605-CV, 2015 WL 5093251, at \*4 (Tex. App.—Dallas Aug. 28, 2015, no pet.) (mem. op.). Although attached to Admal's motion for continuance was a notarized "verification" that the facts contained in the motion were true and correct, neither the motion nor the verification contains a discussion of the evidence Admal needed a continuance to seek. In addition, nothing in the record shows Admal brought his motion for continuance to the attention of the trial court. The mere filing of the motion does not show that it was presented to the court. *See Smith v. El Paso Veterans Transitional Living Ctr.*, No. 08-17-00181-CV, 2018 WL 1407087, at \*1 (Tex. App.—El Paso Mar. 21, 2018, no pet. h.). There is also nothing in the record to show the court ruled on the motion. Admal has failed to preserve this complaint for our review. *See* TEX. R. APP. P. 33.1(a) (as prerequisite to presenting complaint for appellate review, record must show complaint was made to trial court and trial court ruled on it); *Gonerway v. Corrections Corp. of Am.*, 442 S.W.3d 443, 446 (Tex. App.—Dallas 2013, no pet.); *Hightower v. Baylor Univ.*

*Med. Ctr.*, 251 S.W.3d 218, 224–25 (Tex. App.—Dallas 2008, no pet.). We overrule Admal’s first issue.

In his second issue, Admal contends the trial court erred in granting summary judgment for appellees under the economic loss rule. The economic loss rule generally precludes recovery in tort for economic losses resulting from a party’s failure to perform under a contract when the harm consists only of the economic loss of a contractual expectancy. *Chapman Custom Homes, Inc. v. Dallas Plumbing Co.*, 445 S.W.3d 716, 718 (Tex. 2014). This issue involves Admal’s negligence claim only. He has not challenged the merits of summary judgment for appellees on his other claims.

Appellees moved for summary judgment on Admal’s negligence claim under the economic loss rule. But they also asserted as no-evidence grounds that Admal had no evidence of damages for any of his claims. Admal has failed to challenge this ground for summary judgment on appeal. We will affirm a summary judgment as to a particular claim if an appellant does not present argument challenging all grounds on which the summary judgment could have been granted. *Berthelot v. Brinkmann*, 322 S.W.3d 365, 370 (Tex. App.—Dallas 2010, pet. denied); see *Malooly Bros., Inc. v. Napier*, 461 S.W.2d 119, 121 (Tex. 1970). Because Admal has failed to challenge all grounds raised below that could support the summary judgment on his negligence claim, we overrule his second issue.

We affirm the trial court’s order.

/Ada Brown/  
\_\_\_\_\_  
ADA BROWN  
JUSTICE



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

ASHVIN REDDY ADMAL, Appellant

No. 05-16-00912-CV      V.

VENTURES TRUST 2013 I-H-R AND  
BSI FINANCIAL SERVICES, Appellees

On Appeal from the 134th Judicial District  
Court, Dallas County, Texas

Trial Court Cause No. DC-15-14365.

Opinion delivered by Justice Brown,  
Justices Francis and Stoddart participating.

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

It is **ORDERED** that appellees VENTURES TRUST 2013 I-H-R and BSI FINANCIAL SERVICES recover their costs of this appeal from appellant ASHVIN REDDY ADMAL.

Judgment entered this 12th day of April, 2018.