

AFFIRM; and Opinion Filed March 19, 2018.



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

No. 05-16-01042-CV

SYED RAHMAN AND SABRINA RAHMAN, Appellants

V.

CHARLENE N. FOSTER, Appellee

**On Appeal from the 219th Judicial District Court
Collin County, Texas
Trial Court Cause No. 219-03078-2015**

MEMORANDUM OPINION

Before Justices Lang-Miers, Fillmore, and Stoddart
Opinion by Justice Lang-Miers

Appellants Syed Rahman and Sabrina Rahman¹ appeal the trial court's grant of summary judgment to appellee Charlene N. Foster on her claim of breach of contract. We affirm.

BACKGROUND

On April 30, 2015, Foster and Syed Rahman² entered into a commercial lease agreement. They also entered into a financing agreement for Foster to purchase certain equipment located on the leased property from Rahman. Foster paid Rahman \$7,500 as a deposit. On May 8, 2015,

¹ For clarity, we refer to Syed Rahman as Rahman and Sabrina Rahman as Sabrina Rahman. We refer to them jointly as the Rahmans.

² The lease listed the parties as Tim Rahman as lessor and Charlene N. Foster dba Southern Goodness and Brian Foster as lessees. Syed T. Rahman executed the lease as lessor and Charlene N. Foster dba Southern Goodness executed the lease as lessee.

Foster and Rahman entered into a lease addendum, which changed the “L[EA]SE DATE” to June 1, 2015 and listed actions that Rahman “will perform” “within 2 weeks of lease sign date or lease is null and void.” On June 15, 2015, Foster’s lawyer³ sent a demand letter to Rahman that stated Rahman had not completed the tasks within two weeks of the “lease sign date” as required by the addendum and, as a result, the lease was null and void. The letter also said that Rahman had orally terminated the lease and equipment financing agreement and orally agreed to return the \$7,500 deposit and Rahman had materially breached the terms of the lease and the equipment financing agreement. The letter demanded the return of the \$7,500 deposit and sought a mutual release of all claims and future liabilities and obligations under the lease, addendum, and equipment financing agreement, in the event that they were not terminated. The record reflects that Rahman did not return the \$7,500 to Foster.

Foster sued the Rahmans for breach of contract, fraud, and violations of the deceptive trade practices act. Foster sought actual damages, exemplary damages, treble damages for violations of the deceptive trade practices act, attorney’s fees, and costs of court. The Rahmans answered with a general denial.

Foster subsequently filed a motion for traditional summary judgment. In the motion, Foster quoted the following from the Rahmans’ response to Foster’s request for admissions:

- 1) On or about April 30, 2015, FOSTER and RAHMAN⁴ executed and entered into a Commercial Lease (“Lease”) for property located at 5301 Alma Drive, Suite A, Plano, Texas 75023 (the “Property”) and an Equipment Financing Agreement for the purchase and sole possession of certain equipment located on the Property (“Equipment Agreement”).

RESPONSE: Admit

- 2) On or about April 30, 2015, as a deposit and down payment on the Lease and Equipment Agreement, FOSTER paid to RAHMAN \$7,500.00 (“Deposit”).

³ The letter stated that Charlene Foster d/b/a Southern Goodness and Brian Foster retained the lawyer and law firm that sent the letter.

⁴ Foster’s Original Petition with Discovery and Amended Petition with Discovery, to which the request for admissions was attached, referred to Syed Rahman and Sabrina Rahman collectively as “RAHMAN[.]”

RESPONSE: Admit

....

25) Shortly thereafter, on or about June 1, 2015, RAHMAN stated to FOSTER, by and through a text: “I am still trying to get your down payment. I do not have it yet. I am talking to a few people who was [sic] ready to lease before but they are going to come and see the place again, so I need a little more time.”

RESPONSE: Admit

Foster argued there was no genuine issue of material fact in this case and, as a result, judgment should be entered in Foster’s favor against the Rahmans.⁵ In an affidavit attached to the motion, Foster testified that, in addition to the \$7,500 deposit, she “paid a contractor the sum of \$300.00 for work at the property location” and she had suffered actual damages of \$7,800. The record does not contain a response by Rahman or the Rahmans to Foster’s motion for summary judgment.⁶

After a hearing, the trial court granted summary judgment in part for \$7,800 in actual damages for breach of contract, \$4,500 for attorney’s fees, pre- and post-judgment interest, and costs. The court granted Foster a non-suit of her remaining claims without prejudice. The Rahmans appealed.

PRESERVATION AND WAIVER

The Rahmans did not file a response to Foster’s motion for summary judgment. “A non-movant must present its objections to a summary judgment motion expressly by written answer or other written response to the motion in the trial court or that objection is waived.” *D.R. Horton-Tex., Ltd. v. Markel Int’l Ins. Co.*, 300 S.W.3d 740, 743 (Tex. 2009); *see* TEX. R. CIV. P. 166a(c) (“Issues not expressly presented to the trial court by written motion, answer or other response shall

⁵ Foster also argued that, because the Rahmans did not respond to her request for disclosure, they could not offer any evidence concerning the requested information.

⁶ Foster also testified by affidavit that “RAHMAN, also on or about May 29, 2015, during a telephone conversation with me stated that he was waiting until his wife, and co-defendant herein, was paid to return the Deposit to me.”

not be considered on appeal as grounds for reversal.”). However, “on appeal, the non[-]movant need not have answered or responded to the motion to contend that the movant’s summary judgment proof is insufficient as a matter of law to support [a traditional] summary judgment.” *Rhone-Poulenc, Inc. v. Steel*, 997 S.W.2d 217, 223 (Tex. 1999); see *City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 678 (Tex. 1979) (stating the non-movant need not file a summary judgment response to attack on appeal “the legal sufficiency of the grounds expressly raised by the movant in his motion for summary judgment”).

As a result, because the Rahmans did not file a response to Foster’s summary judgment motion, the only argument that they can make on appeal is a challenge to the legal sufficiency of the evidence supporting summary judgment. See *Teter v. Comm’n for Lawyer Discipline*, 261 S.W.3d 796, 799 (Tex. App.—Dallas 2008, no pet.). The Rahmans argue for the first time on appeal that “there is no evidential ground upon which it can be determined that [the] Rahman[s] ha[ve] intentionally breached the contract[.]”⁷ They contend that “[i]t is rather Foster who has terminated the Lease and so she should be made liable for this suit and that [the] Rahman[s] should be repaid for the mishaps and expenses that they had to suffer so far.” In their statement of facts in their appellate brief, the Rahmans discuss the actions that they contend each party took with respect to the leased property, lease agreement, financing agreement, and addendum. But they do not analyze how the evidence in this case was insufficient, do not cite any legal authority addressing a sufficiency complaint, and do not provide citations to the record that support a sufficiency complaint. See TEX. R. APP. P. 38.1(i); *Teter*, 261 S.W.3d at 799. Consequently, to the extent that any issue in the Rahmans’ appellate brief could be construed as a legal-sufficiency challenge, we conclude that it is inadequately briefed. TEX. R. APP. P. 38.1(i) (“The brief must

⁷ The Rahmans also argue that the “district court impermissibly charged [them] for being fraudulent and deceptive.” The district court did not find that the Rahmans were fraudulent or deceptive.

contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record.”); *Brown v. Bank of Am., N.A.*, No. 01-14-00725-CV, 2015 WL 4760201, at *5–6 (Tex. App.—Houston [1st Dist.] Aug. 13, 2015, no pet.) (mem. op.) (holding any issue in the appellants’ brief that could be construed as legal-sufficiency challenge to no-evidence summary judgment was inadequately briefed); *Teter*, 261 S.W.3d at 799 (concluding appellant waived legal sufficiency complaints to traditional summary judgment).

Because the Rahmans did not file a written response or answer to Foster’s motion for summary judgment and have not raised a legal sufficiency argument on appeal, the Rahmans have presented nothing for this Court to review on appeal. See TEX. R. CIV. P. 166a(c); *D.R. Horton-Tex., Ltd.*, 300 S.W.3d at 743; *Rhone-Poulenc, Inc.*, 997 S.W.2d at 223; *Brown*, 2015 WL 4760201, at *5–6; *Teter*, 261 S.W.3d at 799.

We resolve the Rahmans’ issues against them.

CONCLUSION

We resolve the Rahmans’ issues against them and affirm the trial court’s order.

/Elizabeth Lang-Miers/
ELIZABETH LANG-MIERS
JUSTICE

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

JUDGMENT

SYED RAHMAN AND SABRINA
RAHMAN, Appellants

No. 05-16-01042-CV V.

CHARLENE N. FOSTER, Appellee

On Appeal from the 219th Judicial District
Court, Collin County, Texas
Trial Court Cause No. 219-03078-2015.
Opinion delivered by Justice Lang-Miers,
Justices Fillmore and Stoddart participating.

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

It is **ORDERED** that appellee CHARLENE N. FOSTER recover her costs of this appeal from appellants SYED RAHMAN AND SABRINA RAHMAN.

Judgment entered this 19th day of March, 2018.