

AFFIRMED and Opinion Filed December 8, 2021



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

No. 05-20-00113-CV

GREAT HANS, LLC, Appellant

V.

**LIBERTY LIFE SERVICE CORP. AND BRADFORD A. PHILLIPS,
Appellees**

**On Appeal from the 192nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-16-05564**

MEMORANDUM OPINION

Before Justices Reichek, Nowell, and Carlyle
Opinion by Justice Reichek

Great Hans, LLC appeals the trial court's order granting summary judgment against it on its fraud, aiding and abetting fraud, and conspiracy claims against appellees Liberty Life Service Corp. (LLSC) and Bradford A. Phillips in connection with a failed land deal. In a single issue containing multiple subparts, Great Hans challenges the trial court's ruling. For reasons set out below, we overrule appellant's issue and affirm the trial court's order.

BACKGROUND

This is the second appeal involving Great Hans's failed attempt to purchase two private islands in the U.S. Virgin Islands. In the first appeal, we addressed the competing claims of Great Hans and Liberty Bankers Life Insurance Co. (Liberty), the seller of the property. This appeal involves Great Hans's claims against Liberty's subsidiary, LLSC, and Phillips, who is president of both companies. Our prior opinion contains a detailed recitation of the facts surrounding the transaction and the lawsuit that followed. *See Great Hans, LLC v. Liberty Bankers Life Ins. Co.*, No. 05-17-01144-CV, 2019 WL 1219110 (Tex. App.—Dallas Mar. 15, 2019, no pet.) (mem. op.).

Briefly, Great Hans contracted to purchase the islands from Liberty in November 2013. At the time the contract was executed, there were title issues regarding the property, and the Purchase and Sale Agreement (PSA) purported to address the parties' responsibilities with respect to those issues. Several months later, the sale had not closed, and Liberty sold the islands to another party, U.S. Virgin Island Properties, LLC (USVIP).

A month after the sale, Liberty sued Great Hans seeking a declaratory judgment that the PSA was not a valid, binding, or enforceable contract. Great Hans counterclaimed, alleging Liberty breached the PSA, engaged in fraud and conspiracy, and sought declarations regarding a jury waiver and limiting its liability.

Liberty took the position that the Great Hans contract was no longer valid when it sold the property to USVIP; Great Hans argued the contract was still in effect and Liberty defrauded it out of the property.

Several months into the litigation, Great Hans sought to add third-party claims against LLSC, Phillips, and USVIP. The trial court granted leave to add the parties but severed the claims into a separate suit, presumably because the parties were not subject to the jury waiver provision in the PSA. Liberty moved for summary judgment on Great Hans's counterclaims in the original lawsuit, and the trial court granted the motion. On appeal, we reversed the take-nothing judgment on the breach of contract claim, concluding the PSA had not terminated on the original closing date, but we affirmed the judgment on the tort claims. *Great Hans, LLC*, 2019 WL 1219110, at *1. Great Hans did not seek review of our judgment.

Once the mandate issued, appellees moved to reopen the severed lawsuit, which proceeded on Great Hans's claims against Phillips for statutory fraud and common law fraud; civil conspiracy against Phillips and LLSC; and aiding and abetting fraud against LLSC.¹ Appellees filed a 62-page amended combined traditional and no-evidence motion for summary judgment on Great Hans's claims, attaching several hundred pages of evidence. Great Hans filed a response. Although there was no evidence attached, the response stated it relied on portions of its

¹ Great Hans subsequently nonsuited USVIP, which is not a party to this appeal.

response to the summary judgment motion in the original lawsuit as well as summary judgment proof submitted by appellees. The trial court ultimately granted appellees' motion without specifying the grounds. This appeal ensued.

ANALYSIS

When the trial court's order fails to specify the grounds for its summary judgment, we will affirm if any of the theories presented to the trial court and preserved for appellate review are meritorious. *Provident Life & Accident Co. v. Knott*, 128 S.W.3d 211, 216 (Tex. 2003). If a party moves for summary judgment on both traditional and no-evidence grounds, we generally address the no-evidence motion first. *First United Pentecostal Church of Beaumont v. Parker*, 514 S.W.3d 214, 220 (Tex. 2017). If the challenge to the no-evidence summary judgment motion fails, we need not consider the traditional motion. *Id.*

To defeat a no-evidence motion, the nonmovant must produce evidence raising a genuine issue of material fact as to the challenged elements. *Id.* This burden requires the nonmovant to specifically identify the supporting proof it seeks to have considered by the trial court and explain why it demonstrates a fact issue exists. *White v. Calvache*, No. 05-17-00127-CV, 2018 WL 525684, at *4 (Tex. App.—Dallas Jan. 24, 2018, no pet.) (mem. op.); *Skrastina v. Breckinridge-Taylor Design, LLC*, No. 05-17-00796-CV, 2018 WL 3078689, at *4 (Tex. App.—Dallas June 20, 2018, no pet.) (mem. op.); *In the Interest of A.J.L.*, No. 14-16-00834-CV,

2017 WL 4844479, at *4 (Tex. App.—Houston [14th Dist.] Oct. 26, 2017, no pet.) (mem. op.). General citation to voluminous records is not a proper response to a no-evidence summary judgment. *In the Interest of A.J.L.*, 2017 WL 4844479, at *4. Nor is the trial court required to search through the record without more specific guidance from the nonmovant. *Id.*

As explained by our sister court:

The issue is whether the trial court must search through all of non-movant’s evidence to determine if a fact issue exists without any guidance concerning what evidence creates an issue on a particular element. Under the Rules of Civil Procedure, the party seeking to avoid the effects of a well-pleaded no-evidence motion for summary judgment bears the burden to file a written response that raises issues preventing summary judgment, and that points to evidence supporting those issues. Where the nonmovant fails to meet that burden, the trial court is not required to supply the deficiency, but instead must grant the motion.

Burns v. Canales, No. 14-04-00786-CV, 2006 WL 461518, at *4 (Tex. App.—Houston [14th Dist.] Feb. 28, 2006, pet. denied) (mem. op.); *Chambers v. Allstate Ins. Co.*, No. 05-15-01076-CV, 2016 WL 3208710, at *12 (Tex. App.—Dallas June 9, 2016, pet. denied) (mem. op.) In short, a trial court “does not abuse its discretion when it does not consider summary judgment proof to which a movant does not specifically direct the trial court’s attention.” *Burns*, 2006 WL 461518, at *4.

Here, appellees filed a combined traditional and no-evidence motion for summary judgment on appellant’s claims followed by several hundred pages of evidence. The traditional motion raised several affirmative defenses as well as

challenged various elements of the causes of action. In the no-evidence motion, appellees asserted there was no evidence of specific elements of statutory fraud, common law fraud, common law fraud by omission, conspiracy as to both Phillips and LLSC, and aiding and abetting against LLSC.

In its response to the no-evidence motion, Great Hans did not specifically identify the supporting proof it wanted considered by the trial court on any specific element nor make any argument or cite to any legal authority in support of its position. Rather, as to each element challenged on the various causes of action, Great Hans recited the element and provided the same response: “More than a scintilla of summary judgment evidence is submitted in the record as adopted by reference and as set out above in the traditional summary judgment motion argument on this ground.” Great Hans did not direct the court to where in its response to the traditional motion it could find the argument and evidence related to the specific element. Moreover, while we acknowledge Great Hans provided limited record citations in its response to the traditional motion, not all supported the factual assertion being made.²

² For example, in its response to the traditional motion, Great Hans cited to the deposition of its principal, James Eckel, for the propositions that “Phillips falsely said that his father was interested in buying the island,” Phillips asked Eckel to “give him a number,” and Eckel declined. This purportedly supported Great Hans’s assertion that “the existence of a buyer for the islands was not disclosed to Great Hans despite an existing, binding and enforceable contract for the purchase of the properties.” While the record shows that Phillips told Eckel that his father was interested in purchasing the island, there is nothing to indicate this statement was false. Further, we note that Phillips’s father did not purchase the islands. As for Great Hans’s assertion that, during this conversation, Phillips failed to disclose that he had been negotiating with USVIP, Great Hans cites no evidence that Phillips was negotiating with USVIP at that time.

We note that, in the prior appeal, we expressly noted that Great Hans employed a “scattershot” approach to the case, which left this Court with the task of “sorting through the argument to determine what issue has actually been raised.” *Great Hans*, 2019 WL 1219110, at *6 n.6. Great Hans’s approach in its summary judgment response in this case left the trial court in a similar position. Generally directing the trial court to the traditional summary judgment motion argument in this case was substantively the same as generally stating that evidence exists to raise a fact issue.

Under these circumstances, we conclude the trial court would not have erred by granting appellees’ no-evidence motion for summary judgment. *See White*, 2018 WL 525684, at * (concluding that in reviewing trial court’s grant of no-evidence summary judgment, appellate court would consider only evidence for which appellant provided trial court specific reference to where evidence was located in record); *Nguyen v. Allstate Ins. Co.*, 404 S.W.3d 770, 776–77 (Tex. App.—Dallas 2013, pet. denied) (trial court did not abuse discretion in concluding summary judgment response lacked specificity when nonmovant merely referenced groups of exhibits consisting of hundreds of pages and failed to cite, quote, or otherwise point out evidence relied upon); *Levine v. Unique Beverage Co.*, No. 05–11–01467–CV, 2013 WL 1281896, at *3 (Tex. App.—Dallas Mar. 19, 2013, pet. denied) (mem. op.) (concluding trial court was not required to search through ninety-eight pages of

evidence attached to plaintiff's response to locate summary judgment evidence raising genuine issue of material fact without more specific guidance from plaintiff); *Moon Sun Kang v. Derrick*, No. 14-13-00086-CV, 2014 WL 2048424, at *8 (Tex. App.—Houston [14th Dist.] May 15, 2014, pet. denied) (mem. op.) (affirming grant of no-evidence summary judgment when nonmovants' responses contained only general citations to incorporated affidavits and exhibits and failed to cite to specific evidence); *Leija v. Laredo Cmty. Coll.*, No. 04-10-00410-CV, 2011 WL 1499440, at *5 (Tex. App.—San Antonio, Apr. 20, 2011, no pet.) (mem. op.) (“When a summary judgment respondent fails to direct the reviewing court to specific summary judgment evidence, a fact issue cannot be raised sufficient to defeat summary judgment.”) *Stephens v. Precision Drilling Oilfield Servs. Corp.*, No. 01-11-00326-CV, 2013 WL 1928797, at *6 (Tex. App.—Houston [1st Dist.] May 9, 2013, no pet.) (mem. op.) (concluding nonmovant's general reference to materials incorporated by reference in summary judgment response was ineffective to point out any particular evidence for purpose of responding to movant's no-evidence summary judgment motion); *Norris v. Tenet Houston Health Sys.*, No. 14-04-01029-CV, 2006 WL 1459958, at *9-10 (Tex. App.—Houston [14th Dist.] May 30, 2006, no pet.) (mem. op.) (concluding that trial court did not err in granting no-evidence summary judgment when nonmovant globally stated facts, attached approximately a hundred pages of evidence, and did not explain how the evidence

supported any of the challenged elements of her causes of action). Having reached this conclusion, we need not address the traditional motion for summary judgment.

We affirm the trial court's order granting summary judgment in favor of appellees.

/Amanda L. Reichek/

AMANDA L. REICHEK
JUSTICE

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

JUDGMENT

GREAT HANS, LLC, Appellant

No. 05-20-00113-CV V.

LIBERTY LIFE SERVICE CORP.
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On Appeal from the 192nd Judicial
District Court, Dallas County, Texas
Trial Court Cause No. DC-16-05564.
Opinion delivered by Justice
Reichek; Justices Nowell and Carlyle
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 LIBERTY LIFE SERVICE CORP. and BRADFORD A. PHILLIPS recover their costs of this appeal from appellant GREAT HANS, LLC.

Judgment entered December 8, 2021.