

Opinion issued April 16, 2009



In The
Court of Appeals
For The
First District of Texas

NO. 01-08-00042-CV

CROWN ASSET MANAGEMENT, LLC, Appellant

V.

CHRISTOPHER SHORT, Appellee

On Appeal from County Civil Court at Law No. 1
Harris County, Texas
Trial Court Cause No. 889892

MEMORANDUM OPINION

Appellant, Crown Asset Management, LLC, (“Crown”) filed a breach-of-contract suit against appellee, Christopher Short, (“Short”) for failure to make payments on a car note. In two points of error, Crown contends that: (1) the trial court erred in granting Short’s motion for summary judgment and denying Crown’s motion for summary judgment; and (2) the evidence supporting the trial court’s declaratory judgment that Short had superior title to the car and the trial court’s award of attorney’s fees was legally and factually insufficient. In a cross-point, Short contends that, when calculating its award of attorney’s fees in the declaratory judgment action, the trial court erroneously segregated the fees Short incurred in pursuing summary judgment from those he incurred in prosecuting the declaratory judgment action.

We affirm the trial court’s summary judgment in Short’s favor. As to Short’s declaratory judgment action, we reverse, render judgment for Crown, and vacate the award of attorney’s fees to Short.

Background

Short bought a car from David McDavid Pontiac on December 29, 1995. On April 9, 2007, Crown, claiming that it had been assigned the payment contract, sued Short for breach of contract. Short counterclaimed under the Texas Debt Collection Act (“TDCA”) as a tie-in statute to the Deceptive Trade Practices Act (“DTPA”) and also sought a declaratory judgment declaring that he had exclusive title to the car.

Short then filed a combination traditional and no-evidence motion for summary judgment, stating as his grounds that: (1) Crown's claim was barred by the statute of limitations; (2) there was no evidence of a contract between the parties; (3) there was no evidence that he breached the contract; and (4) there was no evidence that all true and just credits and set-offs had been afforded him.

Crown filed two responses to Short's summary judgment motion, a motion for summary judgment on its own breach-of-contract claim, and a no-evidence motion for summary judgment on Short's counterclaim under the TDCA and DTPA. The trial court granted Short's motion for summary judgment on Crown's breach-of-contract claim. Short then nonsuited his counterclaim under the TDCA and DTPA.

The parties proceeded to a bench trial on Short's declaratory judgment action, in which Short sought a declaration that he had superior title to the car. At trial, counsel for Crown informed the court that, unless it wished to "redecide the issue on the motion for summary judgment" on Crown's breach-of-contract claim, he was of the opinion that there was "no issue left to litigate" with regard to ownership of the car. After hearing evidence solely on the issue of attorney's fees, the court entered a judgment declaring that "Short holds superior title to the [car] against Crown Asset Management, LLC, as well as its predecessors and successors." The judgment also awarded Short \$1,500 in attorney's fees.

Summary Judgment

In its first point of error, Crown contends that the trial court erred by granting Short's motion for summary judgment and denying Crown's motion for summary judgment on Crown's breach-of-contract claim against Short.¹

Standard of Review

We review all summary judgments *de novo*. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005). When, as here, both sides move for summary judgment, and the trial court grants one motion but denies the other, a reviewing court should review both sides' summary judgment evidence, determine all questions presented, and render the judgment that the trial court should have rendered. *FM Props. Operating Co. v. City of Austin*, 22 S.W.3d 868, 872 (Tex. 2000). When a summary judgment does not specify or state the grounds on which the trial court relied, the non-movant on appeal must negate any grounds on which the trial court could have relied, and we will affirm the summary judgment on appeal if any of the grounds presented in the motion is meritorious. *Harwell v. State Farm Mut. Auto. Ins. Co.*, 896 S.W.2d 170, 173 (Tex. 1995). A non-movant is required to show that each ground alleged in the motion for summary judgment was insufficient to support summary judgment. *Star-Telegram, Inc. v. Doe*, 915 S.W.2d 471, 473 (Tex. 1995).

¹ Although the record contains no order denying Crown's motion, the trial court's findings of fact and conclusions of law state, and neither party disputes, that Crown's motion was denied.

Specificity

At the outset, we note the extremely cursory nature of Crown's responses to Short's no-evidence motion for summary judgment. When presenting summary judgment proof, a party must specifically identify the supporting proof on file that it seeks to have considered by the trial court. *See Arredondo v. Rodriguez*, 198 S.W.3d 236, 238 (Tex. App.—San Antonio 2006, no pet.) (citing *Boeker v. Syptak*, 916 S.W.2d 59, 61 (Tex. App.—Houston [1st Dist.] 1996, no writ)). Further, “[a]ttaching entire documents and depositions to a motion for summary judgment or to a response and referencing them only generally does not relieve the party of pointing out to the trial court where in the documents the issues set forth in the motion or response are raised.” *See Arredondo*, 198 S.W.3d at 238-39 (citing *Guthrie v. Suiter*, 934 S.W.2d 820, 826 (Tex. App.—Houston [1st Dist.] 1996, no writ)).

Crown's first response to Short's no-evidence motion simply states that “the evidence indicates” that fact questions exist on the three issues raised. The response refers to one piece of summary judgment evidence, an affidavit by Crown's managing member. Several purchase agreements and spreadsheets are attached to the affidavit as exhibits, but no explanation is given as to how the attached documents raise fact issues. One document, a lengthy payment history purporting to show Short's breach of the contract, is indecipherable because of the numerous payment codes listed next to the various amounts and dates. No key describing the meaning of these codes is

given, and neither the affidavit nor the response clarifies why, for instance, two large transactions are listed on the spreadsheet after the date on which Short supposedly made his last payment. Another of the exhibits attached to the affidavit, described in the affidavit only as “documentation showing the transfer of ownership to [Crown]” and discussed no further, is nothing more than what appears to be a spreadsheet containing no titles or column headings and simply listing information about Short and the car at issue, along with various undefined dates and dollar amounts and the name of the original financing company.

Crown’s second response and Crown’s own traditional summary judgment motion are only slightly less vague, particularly on the element of breach. Additionally, between the three pleadings, approximately 500 pages of documents are either attached or incorporated by reference. None of the pleadings gives any indication as to how the summary judgment evidence creates a fact issue on the breach element. Neither this court nor the trial court is required to wade through a voluminous record to marshal a party’s summary judgment proof. *See Arredondo*, 198 S.W.3d at 238.

Accordingly, the trial court did not err in rendering summary judgment for Short on Crown’s breach-of-contract claim. We overrule Crown’s first point of error.

Declaratory Judgment

In its second point of error, Crown contends that the evidence supporting the trial court's declaratory judgment that Short had superior title to the car and the trial court's award of attorney's fees was legally and factually insufficient.

Standard of Review—Legal Sufficiency

We must sustain a legal sufficiency point: (1) when there is a complete absence of a vital fact; (2) when rules of law or evidence preclude according weight to the only evidence offered to prove a vital fact; (3) when the evidence offered to prove a vital fact is no more than a scintilla; or (4) when the evidence conclusively establishes the opposite of the vital fact. *El-Khoury v. Kheir*, 241 S.W.3d 82, 86 (Tex. App.—Houston [1st Dist.] 2007, pet. denied) (citing *City of Keller v. Wilson*, 168 S.W.3d 802, 810 & nn. 15-16 (Tex. 2005)). “The final test for legal sufficiency must always be whether the evidence at trial would enable reasonable and fair-minded people to reach the verdict under review.” *City of Keller*, 241 S.W.3d at 827.

Title

Crown argues that “[n]o evidence was presented at all by Short that would substantiate any claim with regard to ownership.” In response, Short argues that the comments made by counsel for Crown in his opening statement indicating that there was “nothing left to litigate” constituted a judicial stipulation by Crown and thus excused Short from presenting evidence to support his claim for declaratory relief.

We disagree with Short. “A judicial admission must be a clear, deliberate, and unequivocal statement.” *Regency Advantage Ltd. Partnership v. Bingo Idea-Watauga, Inc.*, 936 S.W.2d 275, 278 (Tex. 1996). In his opening statement, counsel for Crown also said that Crown was “ready and willing to proceed with [its] case as if the summary judgment had not been granted” if the court wished to “open that [the issue of ownership] for consideration.” Essentially, Crown’s counsel indicated that he wished to try the issue of ownership but felt that the court’s ruling on the parties’ summary judgment motions forestalled litigation of that issue in the trial on Short’s declaratory judgment action.

Reviewing the statement in context, Crown’s counsel’s statements were not “clear, deliberate, and unequivocal” enough to constitute a judicial admission that Short did in fact have superior title to the car against Crown and “its predecessors and successors.” *Id.*; *Horizon/CMS Healthcare Corporation v. Auld*, 34 S.W.3d 887, 905 (Tex. 2000).

Short further contends that adequate evidence exists in the record to support the declaratory judgment. We disagree. Short did not present any evidence on the issue of title at the declaratory judgment proceeding. The summary judgment on Crown’s breach-of-contract action indicates only that the court found no genuine issue of material fact on that particular cause of action, not that Short has superior title to the car.

Attorney's Fees

A trial court may, in its discretion, award “reasonable and necessary attorney’s fees as are equitable and just” to either the prevailing or the nonprevailing party in a declaratory judgment action. TEX. CIV. PRAC. & REM. CODE ANN. § 37.009 (Vernon 2008); *see also Barshop v. Medina County Underground Water Conservation Dist.*, 925 S.W.2d 618, 637-38 (Tex. 1996). The requirements that fees be reasonable and necessary are matters of fact, while the requirements that fees be equitable and just are matters of law. *Bouquet v. Herring*, 972 S.W.2d 19, 21 (Tex. 1998). “Therefore, in reviewing an attorney fee award under the Act, the court of appeals must determine whether the trial court abused its discretion by awarding fees when there was insufficient evidence that the fees were reasonable and necessary, or when the award was inequitable or unjust.” *Id.*

In the instant case, the trial court’s award of attorney’s fees to Short for his declaratory judgment action was inequitable and unjust because, as noted above, Short produced no evidence to support his claim for declaratory judgment. The only evidence adduced by Short at the trial on his declaratory judgment action related to the reasonableness and necessity of his attorney’s fees. We sustain Crown’s second

point of error, reverse the declaratory judgment in favor of Short, and vacate the trial court's award of attorney's fees to Short.²

Conclusion

We affirm the trial court's summary judgment in favor of Short on Crown's breach-of-contract claim. We reverse the trial court's judgment on Short's declaratory judgment action, render judgment on that claim for Crown, and vacate the award of attorney's fees to Short.

George C. Hanks, Jr.
Justice

Panel consists of Chief Justice Radack and Justices Alcala and Hanks

² In a cross-point, Short contends that, when calculating its award of attorney's fees in the declaratory judgment action, the trial court erroneously segregated the fees Short incurred in pursuing summary judgment from those he incurred in prosecuting the declaratory judgment action. Because the record does not reflect that Short filed a notice of appeal, we do not reach Short's cross-point. *See* TEX. R. APP. P. 25.1(c); *Wagner & Brown, Ltd. v. Horwood*, 58 S.W.3d 732, 737-38 (Tex. 2001).