

Opinion issued November 13, 2008



In The
Court of Appeals
For The
First District of Texas

NO. 01-08-00230-CV

JUAN LARA-ROBLEDO, Appellant

V.

ROBERT SALMONS d/b/a SAGA CITY DEVELOPMENT CO., Appellee

**On Appeal from the 333rd District Court
Harris County, Texas
Trial Court Cause No. 2006-44442**

MEMORANDUM OPINION

The trial court granted the combined traditional and no-evidence motion for summary judgment of appellee, Robert Salmons. In his sole issue, appellant, Juan Lara-Robledo, contends that he presented sufficient evidence to create a genuine issue of material fact on the issue of partnership liability. We affirm.

Facts

Lara-Robledo cut his hand with a saw while working on a residential remodeling job. He sued both Aurelio Ramirez, who had hired him, and Salmons “d/b/a Saga City Development Co.” Salmons answered, specifically denying that Saga City, a general partnership in which Salmons and Ramirez were partners, had been involved in the project on which Lara-Robledo had been hurt. Lara-Robledo took a default judgment against Ramirez. The trial court severed the actions, and Salmons filed a combined traditional and no-evidence motion for summary judgment. The trial court granted the motion.

In his sole issue, Lara-Robledo contends that the trial court erred because the default judgment he obtained against Aurelio Ramirez constitutes a judgment against the Saga City partnership for which Salmons is jointly and severally liable. We disagree. A partnership is an entity legally distinct from its partners. *See Texas Westheimer Corp. v. 5647 Westheimer Associates*, 68 S.W.3d 15, 21 (Tex. App.—Houston [1st Dist.] 2001, pet. denied) (citing *Haney v. Fenley, Bate, Deaton*,

and Porter, 618 S.W.2d 541, 542 (Tex. 1981)); TEX. REV. CIV. STAT. ANN. art. 6132b, § 2.01 (Vernon Supp. 2008). In order to assert a cause of action against a partnership, a petition must allege that a partnership exists and state the name of the partnership; it then must list all of the partners and state that they are being sued in their capacity as partners. *See Ben Fitzgerald Realty Co. v. Muller*, 846 S.W.2d 110, 115 (Tex. App.—Tyler 1993, writ denied); *see also Texaco, Inc. v. Wolfe*, 601 S.W.2d 737, 740 (Tex. Civ. App.—Houston [1st Dist.] 1980, writ ref’d n.r.e.). A judgment may be entered against a partner who has been served with process in a suit against the partnership. *See* TEX. REV. CIV. STAT. ANN. art. 6132b, § 3.05(c) (Vernon Supp. 2008). While appellant served both Ramirez and appellee, his original petition did not allege a partnership. Appellant’s later pleadings, while they discuss the Saga City partnership, do not allege a cause of action against the partnership, name the partnership as a defendant, or state that the partners are being sued in their capacity as partners.

Appellant named Ramirez and Salmons as defendants “d/b/a Saga City Development Co.” in his original petition, but alleging that a person is doing business as an entity does not make that entity a party to the lawsuit unless the entity is also named as a defendant. *See Wolfe*, 601 S.W.2d at 741-42 (suing individual partners “doing business as Wolfe Construction Company ... jointly and severally” did not make Wolfe Construction Company a party to the suit). Because Lara-Robledo failed

to file suit against the Saga City partnership, we hold that Salmons cannot be held liable on the basis of Lara-Robledo's default judgment against Ramirez.

We overrule Lara-Robledo's sole issue.

Conclusion

We affirm the judgment of the trial court.

George C. Hanks, Jr.
Justice

Panel consists of Justices Jennings, Hanks, and Bland