

Opinion issued January 6, 2011.



In The
Court of Appeals
For The
First District of Texas

NO. 01-09-01088-CV

HOME LOAN CORP., Appellant

V.

SKH, L.L.P. & LAGEAN MEDEARIS, Appellees

**On Appeal from the 333rd District Court
Harris County, Texas
Trial Court Cause No. 2004-19989**

MEMORANDUM OPINION

Home Loan Corporation appeals a summary judgment entered in favor of SKH, L.L.P. and Lagean Medearis. In one issue, Home Loan contends that the trial court erred in granting summary judgment on claims not addressed in the

motion for summary judgment. We conclude that the trial court erred in granting judgment on Home Loan's negligence and negligent misrepresentation claims because SKH and Medearis did not move for summary judgment on these claims. We therefore affirm the trial court's summary judgment on the breach of fiduciary duty claim, but we reverse its judgment on the negligence and negligent misrepresentation claims and remand them for further proceedings.

Background

In 2004, Home Loan, a residential mortgage lender, funded two loans to a borrower for the purchase of real property. A title company, acting as the escrow agent, closed on the two loans; its fee agent for the closing was SKH, a law firm that in turn employed Medearis for this purpose. As the fee agent, Medearis oversaw the escrow of the closing money for the two loans. Several months after the closing, Home Loan filed suit against Medearis and vicariously SKH for breach of fiduciary duty, negligence and negligent misrepresentation, alleging that Medearis did not properly distribute the funds at the closing.

SKH and Medearis filed a traditional summary judgment motion. In the motion, they stated:

Defendants move for summary judgment on the following grounds:

1. The summary judgment evidence conclusively establishes that there was no breach of fiduciary duty on the part of Medearis; and
2. The summary judgment evidence conclusively established

that even if Medearis breached a fiduciary duty, any injuries that Home Loan is alleging, were caused by negligent and/or fraudulent acts of plaintiff and the fraud defendants. Home Loan does not deserve a remedy because it is not an innocent party injured by a guilty party.

Defendants are entitled to summary judgment as a matter of law on plaintiff's claims.

SKH and Medearis do not mention Home Loan's negligence and negligent misrepresentation causes of action in their summary judgment motion.

Home Loan failed to respond to the motion, and the trial court granted summary judgment on all of Home Loan's claims and dismissed its case against SKH and Medearis with prejudice. In response, Home Loan moved to vacate the judgment and for new trial, maintaining that Medearis and SKH were not entitled to final judgment because they filed only a partial motion for summary judgment that did not address Home Loan's negligence and negligent misrepresentation claims and thus had not sought to dispose of all claims against SKH and Medearis. The trial court denied Home Loan's motions and thereafter entered a final judgment on the case.

Discussion

On appeal, Home Loan contends that the trial court erroneously granted summary judgment on its negligence and negligent misrepresentation claims because SKH and Medearis did not expressly present grounds for summary judgment on those claims. According to Home Loan, SKH and Medearis only

presented grounds for summary judgment on the breach of fiduciary duty claim.

We agree.

Standard of Review

We review a trial court's summary judgment de novo. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005); *Provident Life & Accid. Ins. Co. v. Knott*, 128 S.W.3d 211, 215 (Tex. 2003). Under the traditional standard for summary judgment, the movant has the burden to show that no genuine issue of material fact exists and that the trial court should grant a judgment as a matter of law. TEX. R. CIV. P. 166a(c); *KPMG Peat Marwick v. Harrison Cnty. Hous. Fin. Corp.*, 988 S.W.2d 746, 748 (Tex. 1999). When reviewing a summary judgment motion, we take as true all evidence favorable to the nonmovant and indulge every reasonable inference and resolve any doubts in the nonmovant's favor. *Dorsett*, 164 S.W.3d at 661; *Knott*, 128 S.W.3d at 215; *Sci. Spectrum, Inc. v. Martinez*, 941 S.W.2d 910, 911 (Tex. 1997).

Traditional summary judgment is proper only if the movant establishes that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c). A defendant moving for traditional summary judgment must conclusively negate at least one essential element of each of the plaintiff's causes of action or conclusively establish each element of an affirmative defense. *Sci. Spectrum, Inc.*, 941 S.W.2d at 911.

“Summary judgments must stand on their own merits, and the non-movant’s failure to answer or respond cannot supply by default the summary judgment proof necessary to establish the movant’s right.” *City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 678 (Tex. 1979).

Excess Relief

A summary judgment motion must also “stand or fall on the grounds expressly presented in the motion.” *McConnell v. Southside Indep. Sch. Dist.*, 858 S.W.2d 337, 341 (Tex. 1993); TEX. R. CIV. P. 166a(c) (“The motion for summary judgment shall state the specific grounds therefor.”). “Grounds may be stated concisely, without detail or argument. But they must at least be listed in the motion.” *McConnell*, 858 S.W.2d at 340. If summary judgment on one or more claims is proper, but the summary judgment order grants more relief than the movant requests, we must reverse judgment on the claims not addressed in the summary judgment motion and must remand them to the trial court. *See Bandera Elec. Coop. v. Gilchrist*, 946 S.W.2d 336, 336 (Tex. 1997) (per curiam); *Sci. Spectrum, Inc.*, 941 S.W.2d 910, 912 (Tex. 1997); *Johnson v. Brewer & Pritchard, P.C.*, 73 S.W.3d 193, 204 (Tex. 2002); *Positive Feed, Inc. v. Guthmann*, 4 S.W.3d 879, 881 (Tex. App.—Houston [1st Dist.] 1999, no pet.) (“When, as here, a trial court grants more relief by summary judgment than requested, by disposing of issues never presented to it, the interests of judicial economy demand that we

reverse and remand as to those issues, but address the merits of the properly presented claims.”).

SKH and Medearis’s motion for summary judgment does not mention Home Loan’s negligence and negligent misrepresentation claims. Therefore, it does not expressly list grounds for summary judgment on those claims. *See McConnell*, 858 S.W.2d at 340; TEX. R. CIV. P. 166a(c). Because SKH and Medearis did not move for summary judgment on the negligence and negligent misrepresentation claims, the trial court erred in disposing of those issues. *See Speck v. First Evangelical Lutheran Church of Houston*, 235 S.W.3d 811, 819 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (trial court erred in granting summary judgment on all of non-movant’s claims, including sworn account and breach of contract claims, because motion challenged only evidence supporting non-movant’s quantum meruit claim).

In response, SKH and Medearis contend that summary judgment was proper on all of Home Loan’s claims, including negligence and negligent misrepresentation, because their motion provided fair notice that they sought relief on all claims. They point to the fact that in the motion they asked for summary judgment on “plaintiff’s claims” in the plural. In addition, they maintain that the motion presented grounds for summary judgment on negligence and negligent misrepresentation because the motion asserted that SKH and Medearis did not

cause Home Loan's injuries, and causation is an element of breach of fiduciary duty, negligence and negligent misrepresentation.

We find the arguments of SKH and Medearis unpersuasive. The fact that they asked for summary judgment on "plaintiff's claims" in their motion is immaterial because they did not expressly set out specific grounds for summary judgment on the negligence and negligent misrepresentation claims or reference them at all. *See Golden Triangle Energy v. Wickes Lumber*, 725 S.W.2d 439, 441 (Tex. App.—Beaumont 1987, no writ) (holding that prayer for general relief in motion for summary judgment was insufficient to justify trial court's granting judgment against non-movants on their counterclaim because summary judgment did not identify any grounds that might entitle movant to judgment on the counterclaim).

Further, although SKH and Medearis assert that summary judgment was proper on the negligence and negligent misrepresentation claims because their actions did not cause Home Loan's injuries, they did not present this argument to the trial court expressly in their summary judgment motion, and thus cannot raise it for the first time on appeal. *See* TEX. R. CIV. P. 166a(c); *see also Brewer & Pritchard*, 73 S.W.3d at 204 (holding that trial court erred in granting summary judgment on basis that movants did not breach their fiduciary duty to non-movants because movants did not include that ground in their summary judgment motion

although movants set forth facts in other parts of motion that they could have relied on to show they did not breach duty). Therefore, we remand the negligence and negligent misrepresentation claims not addressed in the summary judgment motion. *See Bandera Elec. Coop.*, 946 S.W.2d at 336.

Conclusion

We conclude that the trial court erred in granting summary judgment on Home Loan's negligence and negligent misrepresentation claims because SKH and Medearis did not move for judgment on these claims. We therefore affirm the trial court's summary judgment on the breach of fiduciary duty claim, but we reverse its judgment on the negligence and negligent misrepresentation claims, and remand them for further proceedings.

Jane Bland
Justice

Panel consists of Justices Keyes, Higley, and Bland.