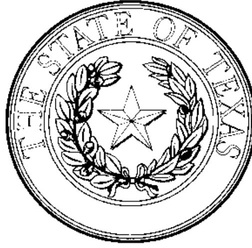
Opinion issued October 20, 2011.



In The

Court of Appeals

For The

First District of Texas

NO. 01-10-00474-CV

ALI POURMEMAR, Appellant

V.

CHASE HOME FINANCE, L.L.C., Appellee

On Appeal from the 113th District Court
Harris County, Texas
Trial Court Case No. 2008-74696

MEMORANDUM OPINION

Ali Pourmemar appeals the trial court's rendition of a summary judgment in favor of Chase Home Finance, L.L.C. Pourmemar brought suit against Chase alleging causes of action for breach of contract and violations of the Deceptive

Trade Practices Act.[1] Chase moved for summary judgment on no-evidence grounds on the breach of contract claim and both traditional and no-evidence grounds on the DTPA claims. The trial court granted Chase's motion for summary judgment, rendering a take nothing judgment against Pourmemar. In three issues, Pourmemar contends that the trial court erred by denying his motion for continuance, granting the traditional summary judgment, and granting the no-evidence summary judgment. We affirm.

Background

Pourmemar purchased a home at a foreclosure sale. To pay for the home, Pourmemar obtained a mortgage loan and executed a deed of trust to secure the loan. Shortly after the purchase, Chase became the mortgage loan servicer for Pourmemar's mortgage. Chase collected and escrowed funds from Pourmemar for the property taxes on the property. Chase was thus responsible for paying the property tax on the property; the payments, however, were made in error on a different tax account. In December 2008, Pourmemar sued Chase asserting claims for breach of contract and violations of the DTPA. After the case had been pending for over a year, Chase filed a motion for summary judgment, asserting

---

[1] *See* TEX. BUS. & COM. CODE ANN. § 17.41–.63 (West 2011).

traditional and no-evidence grounds on Pourmemar's DTPA claim and no-evidence grounds on his breach of contract claims.[2]

Summary Judgment

In his first and second issues, Pourmemar contends that the trial court erred by granting Chase's traditional motion for summary judgment and no-evidence motion for summary judgment.

We review a trial court's summary judgment de novo. *Travelers Ins. Co. v. Joachim*, 315 S.W.3d 860, 862 (Tex. 2010). If a trial court grants summary judgment without specifying the grounds for granting the motion, we must uphold the trial court's judgment if any of the grounds are meritorious. *Beverick v. Koch Power, Inc.*, 186 S.W.3d 145, 148 (Tex. App.—Houston [1st Dist.] 2005, pet. denied). When a party has filed both a traditional and no-evidence summary judgment motion and the order does not specify which motion was granted, we typically first review the propriety of the summary judgment under the no-evidence standard. *See* TEX. R. CIV. P. 166a(i); *see Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 600 (Tex. 2004). If the no-evidence summary judgment was properly granted, we need not reach arguments under the traditional motion for summary judgment. *Ford Motor Co.*, 135 S.W.3d at 600.

---

[2] Pourmemar also sued his title insurance company and the trial court also granted its motion for summary judgment. Pourmemar does not appeal the summary judgment in favor of the title insurance company.

To prevail on a no-evidence motion for summary judgment, the movant must establish that there is no evidence to support an essential element of the nonmovant's claim on which the nonmovant would have the burden of proof at trial. *See* TEX. R. CIV. P. 166a(i); *Hahn v. Love*, 321 S.W.3d 517, 523–24 (Tex. App.—Houston [1st Dist.] 2009, pet. denied). The burden then shifts to the nonmovant to present evidence raising a genuine issue of material fact as to each of the elements specified in the motion. *Mack Trucks*, 206 S.W.3d at 582; *Hahn*, 321 S.W.3d at 524.

In a traditional summary judgment motion, the movant has the burden to show that no genuine issue of material fact exists and that the trial court should grant 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). 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. v. Martinez*, 941 S.W.2d 910, 911 (Tex. 1997).

A. DTPA Claim

In its no-evidence motion concerning the DTPA claim, Chase asserted that no evidence supported (1) Pourmemar's status as a consumer, (2) that Chase

committed a deceptive practice prohibited by the DTPA, or (3) that Pourmemar had suffered damages due to a DTPA violation.

A consumer may bring a DTPA cause of action for either a violation of section 17.46(b) of the DTPA (the so-called "laundry list") relied on by the consumer to the consumer's detriment or for an unconscionable action or course of action if the violation or action "constitute[s] a producing cause of economic damages or damages for mental anguish." TEX. BUS. & COM. CODE ANN. § 17.50(a)(1), (3) (West 2011). As relevant to this case, the "laundry list" prohibits various types of misrepresentations. *See id.* § 17.46(b). The DTPA also defines an unconscionable action or course of actions as "an act or practice which, to a consumer's detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree." *Id.* § 17.45(5).

Concerning the deceptive practice element of Pourmemar's claim, on appeal he argues,

> Pourmemar submitted evidence which included his affidavit and the attachments to the motion filed by CHASE. The evidence supported all of the elements of his claims against CHASE.
>
> Therefore, the no-evidence summary judgment should be reversed and remanded to the trial court for consideration by the fact finder in this case.

Pourmemar's briefing identifies no act by Chase that could be considered a deceptive practice or unconscionable act. In his response to Chases' motion for summary judgment, Pourmemar asserted,

> Plaintiff's DTPA claims are based upon the unconscionable action, negligence and misrepresentation of Chase Home Finance, LLC in not timely paying real estate taxes from the escrow account established by him with Chase. The DTPA Action upon which Plaintiff sues is the misrepresentations made to him by his mortgage company concerning his escrow account.

However, Pourmemar did not produce evidence of a misrepresentation or unconscionable action. In his affidavit attached as summary judgment evidence, Pourmemar avers,

> . . . Chase had attached the wrong legal description to my deed and therefore had sold me the wrong property. As a result of this *mistake*, Chase made payments to the wrong account with the Tax assessor. I notified them of their mistake *but they were slow to correct it*. When they finally sent the payments to the correct property tax account, I had been sued by the tax authority. Chase agreed to pay the tax authority all of the delinquent taxes plus penalties and interest. Because Chase *failed to timely correct their error*, my credit score went down. Also, my home was posted for foreclosure even though I had made all of my mortgage payments on time. I was not delinquent in any of my payments to Chase.
>
> Even though Chase admitted that a mistake was made on my account, they *made a reversal of principal entry* on February 28, 2008 which added more than $5,000.00 to the principal balance of my loan. Chase *has been totally unprofessional* and has caused me considerable damages.

(Emphasis added).

Pourmemar's affidavit, however, does not identify any misrepresentation. Nor does it identify an unconscionable action—that is, one that took advantage of his lack of knowledge or experience "to a grossly unfair degree." Because Pourmemar produced no evidence of a deceptive practice or unconscionable action, the trial court properly granted Chase's no-evidence motion for summary judgment on Pourmemar's DTPA claims.[3]

B. Breach of Contract Claim

Chase also moved for no-evidence summary judgment on Pourmemar's breach of contract claim. Specifically, Chase asserted that Pourmemar had no evidence that Chase had breached a term of the deed of trust or that Pourmemar had suffered damages as a result.

On appeal, Pourmemar asserts he suffered two types of damages as follows:

> CHASE breached the contract by failing to make the property tax payments to the HARRIS COUNTY taxing authority when they became due. As a result of the breach caused by CHASE, P[O]URMEMAR was sued and had to pay attorney's fees. In addition, his credit rating was severely impacted by the judgment from the delinquent taxes.

(Record citations omitted).

Concerning the first type of damages argued by Pourmemar, his attorney's fees in the suit for delinquent taxes, the only evidence Pourmemar provided in

---

[3] Because we overrule Pourmemar's issue concerning the no-evidence motion for summary judgment, we do not address his argument concerning the traditional motion. *See Ford Motor Co.*, 135 S.W.3d at 600; *see also* TEX. R. APP. P. 47.1.

response to Chase's no-evidence motion for summary judgment was a single statement in his affidavit. "When [Chase] finally sent the payments to the correct property tax account, I had been sued by the tax authority." Pourmemar offered no evidence—in his affidavit or otherwise—of the existence or amount of attorney's fees.

The second type of damages Pourmemar mentions is a loss of credit reputation. To recover damages for a loss of credit reputation, a plaintiff must show "that a loan was actually denied or a higher interest rate was charged." *Tex. Mut. Ins. Co. v. Ruttiger*, 265 S.W.3d 651, 672 (Tex. App.—Houston [1st Dist.] 2008) (quoting *EMC Mortg. Corp. v. Jones*, 252 S.W.3d 857, 872 (Tex. App.—Dallas 2008, no pet.) *rev'd on other grounds*, 53 Tex. Sup. Ct. J. 1642, 2011 WL 3796353 (Aug. 26. 2011); *see also St. Paul Surplus Lines Ins. Co. v. Dal-Worth Tank Co.*, 974 S.W.2d 51, 53 (Tex. 1998) (no evidence of damages due to loss of credit reputation "until a loan is actually denied or a higher interest rate charged"). Here, Pourmemar's only evidence is a statement in his affidavit that "my credit score went down." This is no evidence of actual damages due to loss of credit reputation. *See Tex. Mut. Ins. Co.*, 265 S.W.3d at 672 (no evidence of loss of credit reputation where plaintiff introduced copy of his negative credit rating and financial records showing decline in earnings after injury).

Pourmemar did not plead for or identify any other types of damages in his petition or response to Chase's motion for summary judgment. Although Pourmemar may have suffered nominal damages, he did not raise such damages in his response to Chase's motion for summary judgment and does not argue nominal damages on appeal. *See Taub v. Houston Pipeline Co.*, 75 S.W.3d 606, 618 (Tex. App.—Texarkana 2002, pet. denied) (although trespass plaintiff may claim nominal damages, failure to raise nominal damages in response to summary judgment not basis for reversal of summary judgment); *see also* TEX. R. CIV. P. 166a(c), (i) (stating that issues not presented to trial court in writing cannot be considered as grounds for reversal on appeal and that nonmovant in no evidence motion for summary judgment must produce summary judgment evidence raising a fact issue); *cf. Hill v. Crowson*, No. 10-09-00006-CV, 2009 WL 3858065, at *3 (Tex. App.—Waco Nov. 18, 2009, no pet.) (reversing no-evidence summary judgment on damages element of trespass claim because nominal damages raised in both summary judgment response and appellate briefs). Accordingly, we conclude that the trial court did not err by granting Chase's no-evidence motion for summary judgment on Pourmemar's breach of contract claim. *See Montoya v. Bluebonnet Fin. Assets*, No. 02-09-00301-CV, 2010 WL 4261481, at *6 (Tex. App.—Fort Worth Oct. 28, 2010) (holding that affidavit stating, "I have been injured in having to defend this suit, in damage to my credit . . . ." was insufficient

to defeat no-evidence summary judgment), *judgment vacated on rehearing*, 2010 WL 5186787 (Dec. 23, 2010).

We overrule Pourmemar's second issue.

Continuance of Summary Judgment Hearing

In his third issue, Pourmemar contends that the trial court erred by denying his motion for continuance of the summary judgment hearing.

Texas Rule of Appellate Procedure 38.1(i) requires that an appellant's brief "contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record." TEX. R. APP. P. 38.1(i). "Rule 38 requires [a party] to provide us with such discussion of the facts and the authorities relied upon as may be requisite to maintain the point at issue." *Tesoro Petroleum Corp. v. Nabors Drilling USA, Inc.*, 106 S.W.3d 118, 128 (Tex. App.—Houston [1st Dist.] 2002, pet. denied). "This is not done by merely uttering brief conclusory statements, unsupported by legal citations." *Id.* "Issues on appeal are waived if an appellant fails to support his contention by citations to appropriate authority . . . ." *Abdelnour v. Mid Nat'l Holdings, Inc.*, 190 S.W.3d 237, 241 (Tex. App.—Houston [1st Dist.] 2006, no pet.). Similarly, appellate issues are waived when the brief fails to contain a clear argument for the contentions made. *Izen v. Comm'n for Lawyer Discipline*, 322 S.W.3d 308, 322 (Tex. App.—Houston [1st Dist.] 2010, pet. denied).

Pourmemar's argument on this issue, in its entirety, is:

> Pourmemar filed a timely motion to continue the hearing on the Motions for Summary Judgment. The trial court denied the motion but continued the trial of the case. Under the Texas Rules of Civil Procedure the discovery cut-off would have extended until thirty days prior to trial. There was additional discovery which needed to be completed in this case. The denial of the motion was prejudicial to Pourmemar. Additionally, the trial court failed to state whether the granting of the summary judgment motion was on the no-evidence standard or the traditional summary judgment standard.

This argument does not contain any citation to the law concerning motions for continuance or identify the applicable standard of review. Nor does it provide any record citations or any analysis to support the conclusory assertions that more discovery was needed, the evidence to be discovered was material, or that Pourmemar had used due diligence in pursuing discovery during the year in which the case had been pending. *See Joe v. Two Thirty Nine Joint Venture*, 145 S.W.3d 150, 161 (Tex. 2004) (listing nonexclusive factors for court to consider in determining whether to continue summary judgment hearing such as the length of time the case has been on file, the materiality and purpose of the discovery sought, and whether the party seeking the continuance has exercised due diligence to obtain the discovery sought). Accordingly, we conclude this issue is waived. *See Tesoro Petroleum Corp.*, 106 S.W.3d at 128; *Izen*, 322 S.W.3d at 322.

We overrule Pourmemar's third issue.

Conclusion

We affirm the judgment of the trial court. All pending motions are denied as moot.

Rebeca Huddle
Justice

Panel consists of Chief Justice Radack and Justices Bland and Huddle.