Opinion issued August 13, 2020

In The

Court of Appeals

For The

First District of Texas

NO. 01-19-00182-CV

JOHN E. DELOACH, INDIVIDUALLY, JOHN E. DELOACH AS GENERAL PARTNER OF JOHN E. DELOACH FAMILY LIMITED PARTNERSHIP, AND JOHN E. DELOACH FAMILY LIMITED PARTNERSHIP, Appellants

V.

STEPHEN STELLY, Appellee

On Appeal from the 253rd District Court
Chambers County, Texas
Trial Court Case No. CV29534

MEMORANDUM OPINION

Stephen Stelly sued John E. DeLoach, individually and as general partner of the John E. DeLoach Family Limited Partnership ("the FLP"), and the FLP for

breach of contract. A jury found in favor of Stelly, and the trial court entered judgment on the verdict. The FLP filed a post-judgment motion for judgment n.o.v., judgment non obstante veredicto or judgment notwithstanding the verdict,arguing, among other things, that the claim was barred by the four-year statute of limitations for contract claims. We agree.

We reverse the judgment of the trial court and render a take-nothing judgment in favor of the FLP.

Background

Stelly is a lifelong farmer with business interests in Louisiana and southeast Texas. Those interests included farming a lease in Chambers County, an alligator farm in Louisiana, and a trucking company that specializes in hauling agricultural commodities. He also has occasionally worked in the oil fields.

DeLoach was a long-time acquaintance of Stelly's parents. He owned land, on which he sometimes grew crops, but his primary line of business was wastewater disposal, mainly from oil and gas operations. Among other related operations, DeLoach owned and operated a wastewater injection well in a salt dome in Daisetta, Texas.

In 1998, Stelly entered into a contract with a sugar producer to grow sugar cane in Texas to be supplied to a sugar mill in Louisiana. The sugar producer was building or expanding a sugar mill and wanted to ensure profitability by contracting

for a steady supply of raw material. At the time, Stelly was leasing from Delta Rice Producers ("DRP") farmland in Texas that was part of the 600 acres that are the subject of this lawsuit. In September 1999, Stelly held a field day to show off his crop and enlist other local farmers to join a sugar cane co-op that would supply the Louisiana sugar mill. DeLoach attended the field day, and thereafter he began pursuing a business relationship relating to sugar cane production with Stelly.

By late December 1999, however, Stelly owed DRP nearly $50,000. DRP offered to forgive the indebtedness in exchange for Stelly planting sugar cane in other fields owned by DRP. Less than six months later, DeLoach, on behalf of the FLP entered into an earnest money contract with DRP to buy the 600 acres that included Stelly's leased fields and DRP's fields and that are the subject of this suit. According to Stelly, he and DeLoach had agreed to purchase the property as partners, but DeLoach insisted on crossing through Stelly's name on the earnest money contract. Stelly testified that in an attempt to protect what he thought would be his interest in the land, he drafted a handwritten contract, which both he and DeLoach signed and which provided:

> Mutual Agreement of Partnership Between Stephen B Stelly and John E DeLoach and John E DeLoach FLP
>
> Terms of agreement to Partners
>
> Stephen agrees to manage, support, find help for the land operations of the FLP's Property. Farm the land for the FLP to the best of his ability with no charge for the equipment owned by Stephen.

> John agrees 1st to finance FM 1663 600 acres for Stephen. 2nd all harvesting equipment needed by Stephen. 3rd agrees to pay Stephen $3500 monthly for his managing of the FLP's property and any additional labor and supplies needed.
>
> Stephen agrees to pay John the total notes, taxes any [sic] fees for the 600 acres on FM1663, along with all notes on equipment financed by John. Upon final payment of property, John will deed property over to Stephen. Same with all equipment purchased.

The FLP purchased the property for $330,000, with a mortgage from Capital Farm Credit. Around the same time, the FLP also purchased a trailer to haul sugar cane to the mill in Louisiana for $15,350. Stelly conceded at trial that the 600 acres were owned wholly in FLP's name. Stelly, however, also maintained that he had paid DeLoach more than the money due under the agreement, but DeLoach never deeded the property to him as required by the agreement.

Stelly testified that he paid by check and by directing the Louisiana sugar mill to send money owed him directly to the FLP. Stelly testified that he paid DeLoach and FLP in full "before the notes were due" over approximately three-and-a-half years, but DeLoach did not use that money to pay off the mortgage or pay for equipment that was purchased on credit. At trial, Stelly said that he was aware that there was still a balance of about $130,000 on the mortgage despite his having paid DeLoach and the FLP in full. Stelly testified: "Mr. DeLoach didn't pay the note. He'd take the money. I don't know what he did with the money. I gave it to him." Stelly said that by 2005, he had already paid about $550,000 for the property.

From 2000 until 2008, DeLoach paid Stelly $3,500 a month to manage his properties. DeLoach's waste disposal business was unexpectedly closed in May 2008. Thereafter, to help DeLoach, Stelly chose to work without payment. According to Stelly, DeLoach continued to be "broke," and in 2015, DeLoach asserted that he was the sole owner of the 600 acres and that he intended to sell the property. Soon thereafter, Stelly filed this lawsuit.[1]

Stelly's live pleading at trial alleged one cause of action: breach of contract. Stelly alleged the existence of an agreement and that he had satisfied his obligations because "funds, revenues, and profits generate[d]" by his farming activities "far exceed the value of the original contract purchase price for the real estate." He also alleged that the FLP failed and refused to provide him a warranty deed in compliance with the partnership agreement.

The case was submitted to the jury on a contract theory. The jury found that the FLP agreed to deed the 600 acres to Stelly and convey ownership in the equipment at issue in the case to Stelly upon his complying with the terms of the agreement. It also found that Stelly did not "fail to comply with the agreement" and that DeLoach as general partner of the FLP failed to comply with the agreement "by refusing to deed the property to Stephen Stelly" and "by refusing to convey the equipment to Stephen Stelly."

---

[1] John E. DeLoach died while this case was pending in the trial court.

The trial court entered judgment on the verdict on January 4, 2019. On February 1, 2019, the FLP moved for judgment n.o.v., raising fourteen arguments for modification of the final judgment. In particular, the FLP asserted that Stelly's claim was barred by the four-year statute of limitations. The trial court denied the motion on March 8, 2019, and six days later the defendants filed a notice of appeal.

Appellate Jurisdiction

On appeal, Stelly argues that the motion for judgment n.o.v. did not extend the deadline for filing the notice of appeal, thus the notice of appeal was untimely, and this court lacks jurisdiction over this appeal. Ordinarily, a notice of appeal must be filed within 30 days after the judgment is signed. TEX. R. APP. P. 26.1. When a party timely files a motion for new trial or a motion to modify the judgment, the deadline for filing a notice of appeal is extended to 90 days after the judgment. TEX. R. APP. P. 26.1(a)(1), (2). The nature of a motion is determined by its substance, not its caption. *In re Brookshire Grocery Co.*, 250 S.W.3d 66, 72 (Tex. 2008) (orig. proceeding); *Surgitek v. Abel*, 997 S.W.2d 598, 601 (Tex. 1999) ("[W]e look to the substance of a motion to determine the relief sought, not merely to its title."). A motion for judgment n.o.v. can constitute a motion to modify the judgment under Rule 26.1(a)(2) when it assails the judgment. *See Ryland Enter., Inc. v. Weatherspoon*, 355 S.W.3d 664, 666 (Tex. 2011).

The appellants filed a motion for judgment n.o.v. 28 days after the trial court's final judgment, when the trial court still had plenary power. *See* TEX. R. CIV. P. 329b(d) ("The trial court, regardless of whether an appeal has been perfected, has plenary power to grant a new trial or to vacate, modify, correct, or reform the judgment within thirty days after the judgment is signed."). The motion for judgment n.o.v. asked the court to modify or reform its judgment to eliminate Stelly's recovery and render a take-nothing judgment in favor of the appellants. We conclude that the motion for judgment n.o.v. assailed the judgment and therefore was a motion to modify the judgment under Texas Rule of Appellate Procedure 26.1(a)(2). Therefore, the filing of the motion extended the date for filing a notice of appeal to 90 days after the entry of judgment on January 4, 2019, which was April 4, 2019. The appellants filed their notice of appeal on March 14, 2019, and the filing was timely. We conclude that we have jurisdiction over this appeal.

Limitations

The appellants argue that the trial court erred by failing to grant the motion for judgment n.o.v. based on the affirmative defense of limitations. A judgment n.o.v. "is proper when a legal principle precludes recovery." *JSC Neftegas-Impex v. Citibank, N.A.*, 365 S.W.3d 387, 396 (Tex. App.—Houston [1st Dist.] 2011, pet. denied); *see* TEX. R. CIV. P. 301 ("[U]pon motion and reasonable notice the court may render judgment non obstante veredicto if a directed verdict would have been

proper . . . ."). We review de novo a trial court's ruling on a motion for judgment n.o.v. that is based on the assertion that a legal principle precludes recovery. *JSC Neftegas-Impex*, 365 S.W.3d at 396; *see In re Humphreys*, 880 S.W.2d 402, 404 (Tex. 1994) ("[Q]uestions of law are always subject to de novo review.").

A trial court's judgment must "conform to the pleadings, the nature of the case proved and the verdict, if any . . . ." TEX. R. CIV. P. 301. Stelly's live pleading at trial asserted only one cause of action: breach of contract. No other claims were tried by consent and submitted to the jury.

Breach of contract claims are subject to a four-year statute of limitations. *See* TEX. CIV. PRAC. & REM. CODE § 16.051 (four-year residual statute of limitations); *id.* § 16.004(a)(1) (four-year statute of limitations for suit for "specific performance of a contract for the conveyance of real property"); *Exxon Corp. v. Emerald Oil & Gas Co.*, 348 S.W.3d 194, 203 (Tex. 2011); *Ammerman v. Ranches of Clear Creek Cmty. Ass'n, Inc.*, 562 S.W.3d 622, 636 (Tex. App.—Houston [1st Dist.] 2018, no pet.); A claim for breach of contract accrues when the contract is breached. *Cosgrove v. Cade*, 468 S.W.3d 32, 39 (Tex. 2015) (citing *Stine v. Stewart*, 80 S.W.3d 586, 592 (Tex. 2002)).

The contract required the FLP to deed "FM 1663 600 acres" and convey the equipment purchased for the sugar cane farming enterprise to Stelly "upon final payment of property." The contract did not include a legal description of the land or

a description of the equipment. It is undisputed that these conveyances did not occur. At trial Stelly testified that he finished paying for the property after about three-and-a-half years or at the very latest by 2005. Therefore, the breach of contract claim accrued no later than May 2005. Stelly first filed suit in August 2015, approximately ten years after the claim accrued and beyond the period of limitations. *See* TEX. CIV. PRAC. & REM. CODE §§ 16.004, 16.051; *Exxon Corp.*, 348 S.W.3d at 203; *Ammerman*, 562 S.W.3d at 636..

Stelly argues on appeal that he acquired equitable title by paying the FLP in accordance with the agreement, and that the four-year limitations period does not apply. He relies on *Carl v. Settegast*, 237 S.W. 238, 242 (Tex. Comm'n App. 1922), for the proposition that the four-year limitations period does not apply when a plaintiff's action rests upon an equitable title. In *Carl*, the Commission of Appeals held:

> It is now well settled upon authority in this state that the test whether an action be one to recover real estate, within the express exception to this article, is whether the title asserted by plaintiff, whether legal or equitable, will support an action in trespass to try title. In determining this question the mere form in which the action is brought is not material. . . . It is there pointed out that, if, to show title in the land sued for, the plaintiff must first invoke the equitable powers of the court to set aside or reform some deed or other written instrument or judgment, not absolutely void as to the plaintiff, the action is not one to recover real estate within the terms of the exception to the four-year statute. On the other hand, it has been repeatedly held that where plaintiff's action rests upon an equitable title, to assert which does not require the aid of a court of equity to remove the impediment to such title caused by some

> written instrument or judgment, the action is one for the recovery of real estate, and the four-year statute of limitations does not apply.

Id. at 241–42.

Stelly also relies on a string of cases to demonstrate that the exception to the statute of limitations in an action for the recovery of real property is well established. *See Jackson v. Hernandez*, 285 S.W.2d 184, 191 (1955) (suit for partition of real estate); *Johnson v. Wood*, 157 S.W.2d 146, 148 (Tex. 1941) (trespass to try title); *Gilmore v. O'Neil*, 173 S.W. 203, 207 (Tex. 1915) (trespass to try title); *Rutherford v. Carr*, 87 S.W. 815, 817 (Tex. 1905) (suit regarding real property originating from common source of title); *Stafford v. Stafford*, 70 S.W. 75, 76 (Tex. 1902) ("It is as much an action for the recovery of real estate as if it had been in the form of trespass to try title."); *Tijerina v. Tijerina*, 290 S.W.2d 277, 278 (Tex. Civ. App.—San Antonio 1956, no writ) (trespass to try title).

The exception to the four-year statute of limitations for *an action for the recovery of real property*, only applies when "the cause of action asserted is one which will support a trespass to try title suit, without first requiring the aid of the court to establish equitable rights." *Landram v. Robertson*, 195 S.W.2d 170, 175 (Tex. Civ. App.—San Antonio 1946, writ ref'd n.r.e.) (construing predecessor statute to section 16.051); *see Miles v. Martin*, 321 S.W.2d 62, 69 (1959) ("Whether a suit is one for the recovery of real estate within the exception to that article does

not depend upon the form of the pleadings but upon the nature of the title asserted by the plaintiff.").

"A trespass to try title action is the method of determining title to lands, tenements, or other real property." TEX. PROP. CODE § 22.001(a); *see Lance v. Robinson*, 543 S.W.3d 723, 736 (Tex. 2018). "The trespass-to-try-title statute 'is typically used to clear problems in chains of title or to recover possession of land unlawfully withheld from a rightful owner,' and the plaintiff in such an action must 'establish superior title' to the property." *Lance*, 543 S.W.3d at 735–36 (quoting *Martin v. Amerman*, 133 S.W.3d 262, 265 (Tex. 2004)). "To prevail in a trespass-to-try-title action, a plaintiff must usually (1) prove a regular chain of conveyances from the sovereign, (2) establish superior title out of a common source, (3) prove title by limitations, or (4) prove title by prior possession coupled with proof that possession was not abandoned." *Lance*, 543 S.W.3d at 735–36 (quoting *Martin*, 133 S.W.3d at 265). None of these claims of title are present in this case.

Stelly pleaded a breach of contract claim based on a handwritten agreement regarding real property and a business relationship that is not clearly delineated in the agreement. The majority of the testimony at trial centered on Stelly's and DeLoach's business dealings, sugar cane farming, and Stelly's purported attempts to help DeLoach out of financial difficulty. Unlike the cases Stelly relies on, this was not a case for trespass to try title. Stelly's pleadings and proof did not comply with

the heightened standards for trespass to try title claims. *E.g.*, TEX. R. CIV. P. 783. Stelly's pleadings and proof also did not substantively prove a claim of title that could support a trespass to try title claim. His first amended petition, which was the live pleading at trial, alleged that DeLoach, on behalf of the FLP, promised to convey land and property after he paid a sum of money that was not specified in the agreement itself. Other proof at trial showed that the FLP purchased the land at issue from DRP in a transaction that excluded Stelly.

A trial court's judgment must "conform to the pleadings, the nature of the case proved and the verdict, if any . . . ." TEX. R. CIV. P. 301. Considering the pleading and the record on appeal, we conclude that Stelly pleaded and proved only a breach-of-contract claim, which was barred by limitations. Accordingly, we hold that the trial court erred by denying the motion for judgment n.o.v.

Conclusion

We reverse the judgment of the trial court, and we render a take-nothing judgment in favor of the appellants.

Peter Kelly
Justice

Panel consists of Justices Keyes, Kelly, and Landau.