Opinion issued October 22, 2020

In The

Court of Appeals

For The

First District of Texas

NO. 01-19-00558-CV

HTS SERVICES, INC., Appellant

V.

US-UK INTERNATIONAL SUPPLY GROUP, LLC, JEAN VALLET MOBIOH, AND DAVID J. MARLBOROUGH, Appellees

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On Appeal from the County Civil Court at Law No. 3
Harris County, Texas
Trial Court Case No. 1113219

MEMORANDUM OPINION

Appellant, HTS Services, Inc. ("HTS Services"), challenges the trial court's judgment, entered after a bench trial, in favor of appellees, US-UK International Supply Group, LLC ("US-UK International"), Jean Vallet Mobioh, and David J. Marlborough (collectively, "appellees"), in HTS Services's suit against appellees to

collect on a promissory note. In its sole issue, HTS Services contends that the trial court erred in entering a take-nothing judgment on its claim against appellees.

We affirm.

Background

In its petition, HTS Services alleged that on February 27, 2018, US-UK International signed a promissory note to repay HTS Services $69,581 by May 29, 2018. Mobioh, the president of US-UK International, and Marlborough, the chief financial officer of US-UK International, guaranteed US-UK International's obligations under the promissory note. US-UK International did not make any payments to HTS Services as required by the promissory note. HTS Services sued appellees to collect on the promissory note and sought monetary damages in the amount of $69.581, pre- and post-judgment interest, attorney's fees, and costs.

Appellees answered, generally denying the allegations in HTS Services's petition and asserting certain defenses, including a verified denial alleging failure of consideration and the affirmative defense of duress.

At trial, the trial court admitted into evidence the promissory note signed by HTS Services and US-UK International as well as by Mobioh and Marlborough as guarantors. The note states:

> As of the 27th day of February, 2018, hereinafter known as the "Start Date", U[S]-U[K] International Supply Group, LLC, hereinafter known as the "Borrower", has received and promises to pay back HTS Services, Inc., hereinafter known as the "Lender," the principal sum of

Sixty-Nine Thousand Five Hundred Eighty-One and 00/100 US Dollars ($69,581.00) with interest accruing on the unpaid balance at a rate of five percent (5%) per annum, pursuant to the terms of this Promissory Note, hereinafter known as the "Note[.]"

1. **PAYMENTS**: The full balance of this Note, including all accrued interest and late fees, is due and payable on the 29th day of May, 2018, hereinafter known as the "Due Date."

2. **SECURITY**:

UNSECURE – There shall be NO SECURITY provided in this Note.

. . . .

14. **COSIGNERS**:

CONSIGNERS – This Note shall have two Cosigners known as Jean Vallet Mobioh (President of Borrower) and David J. Marlborough (CFO of Borrower), hereinafter known as the "Cosigners," and agree to the liabilities and obligations on behalf of the Borrower under the terms of this Note. If the Borrower does not make payment, the Cosigners shall be personally responsible and, jointly and severally, are guaranteeing the payment of the principal, late fees, and all accrued interest under the terms of this Note.

Tarek Morsi, the president of HTS Services, testified that the amount of the promissory note was "$69,081 [sic]" and it was signed by US-UK International and by Mobioh and Marlborough as guarantors.

According to Morsi, HTS Services had previously sold certain items to US-UK International. That transaction pre-dated the February 27, 2018 promissory note. Because HTS Services did not receive payment for the items it had sold, it held the items locked in its containers. US-UK International owed HTS Services

more than $69,000 for the items US-UK International had purchased. Morsi stated that HTS Services refused to release the purchased items to US-UK International unless US-UK International signed the promissory note. The parties then signed the promissory note.

Morsi further testified that HTS Services never loaned US-UK International $69,581 as described in the terms of the promissory note. Instead, Morsi claimed that the $69,581 referenced in the note was supposed to reflect the value of the items that HTS Services had previously sold to US-UK International. But the promissory note did not state that it was for "past services rendered," and the promissory note was never amended to reflect that it would cover "past services rendered" or that it was not a loan of money.

Standard of Review

In an appeal of a judgment rendered after a bench trial, when the trial court does not file findings of fact or conclusions of law, we imply that the trial court made all necessary findings to support its judgment.[1] *BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789, 795 (Tex. 2002); *see also Rahman v. Parvin*, No.

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[1] Although HTS Services filed a request for findings of fact and conclusions of law and a notice of past due findings of fact and conclusions of law, the trial court never filed any findings of fact or conclusions of law. *See* TEX. R. CIV. P. 296, 297; *see also Rahman v. Parvin*, No. 01-19-00502-CV, 2020 WL 4210492, at *3 (Tex. App.—Houston [1st Dist.] July 23, 2020, no pet.) (mem. op.). HTS Services does not assert on appeal that the trial court erred in failing to file findings of fact and conclusions of law.

01-19-00502-CV, 2020 WL 4210492, at *3 (Tex. App.—Houston [1st Dist.] July 23, 2020, no pet.) (mem. op.). When a clerk's record and reporter's record are filed, the implied findings are not conclusive, and a party may challenge both the legal and factual sufficiency of the evidence supporting those findings. *BMC Software Belg.*, 83 S.W.3d at 795; *see also Rahman*, 2020 WL 4210492, at *3. The applicable standards of review are the same as those applied to review jury findings. *Briggs Equip. Tr. v. Harris Cty. Appraisal Dist.*, 294 S.W.3d 667, 670 (Tex. App.—Houston [1st Dist.] 2009, pet. denied). The trial court's judgment must be affirmed if it can be upheld on any legal theory finding support in the evidence. *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990); *Gainous v. Gainous*, 219 S.W.3d 97, 103 (Tex. App.—Houston [1st Dist.] 2006, pet. denied).

When a party attacks the legal sufficiency of the evidence supporting an adverse finding on an issue on which it did not have the burden of proof, it must demonstrate on appeal that no evidence supports the adverse finding. *Exxon Corp. v. Emerald Oil & Gas, Co.*, 348 S.W.3d 194, 215 (Tex. 2011). We will sustain a no-evidence challenge if the record shows: (1) a complete absence of evidence of a vital fact, (2) the court is barred by the rules of law or evidence from giving weight to the only evidence offered to prove a vital fact, (3) the evidence offered to prove a vital fact is no more than a mere scintilla, or (4) the evidence conclusively establishes the opposite of a vital fact. *See City of Keller v. Wilson*, 168 S.W.3d 802, 810 (Tex.

2005). In contrast, when a party attacks the legal sufficiency of the evidence supporting an adverse finding on an issue on which it did have the burden of proof, it must show not only that no evidence supports the finding, but also that the evidence conclusively proves the contrary. *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 241 (Tex. 2001). Under this standard, we reject the legal-sufficiency challenge unless the evidence proves all vital facts in support of the party's position as a matter of law. *Id.*

When reviewing the evidence for legal sufficiency, we consider the evidence in the light most favorable to the challenged finding, crediting favorable evidence if a reasonable fact finder could and disregarding contrary evidence unless a reasonable fact finder could not. *City of Keller*, 168 S.W.3d at 807. We are mindful that the trial court, as the fact finder, was the sole judge of the credibility of the witnesses and weight to be given their testimony. *See id.* at 819.

Promissory Note

In its sole issue, HTS Services argues that the trial court erred in entering a take-nothing judgment on its claim against appellees to collect on a promissory note because it established its prima facie case and appellees did not establish any defenses.[2]

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[2] Based on HTS Services's briefing, we presume that HTS Services's sole issue challenges the legal sufficiency of the evidence to support the trial court's judgment. *See McKeehan v. Wilmington Sav. Fund Soc'y, FSB*, 554 S.W.3d 692, 697–98 (Tex.

To prevail on its claim to collect on a promissory note, HTS Services was required to prove: (1) the existence of the promissory note in question, (2) that appellees signed the note, (3) that HTS Services is the owner or holder of the note, and (4) that a certain balance is due and owing on the note. *Manley v. Wachovia Small Bus. Capital*, 349 S.W.3d 233, 237 (Tex. App.—Dallas 2011, pet. denied); *Wells Fargo Bank, N.A. v. Ballestas*, 355 S.W.3d 187, 191 (Tex. App.—Houston [1st Dist.] 2011, no pet.). Once HTS Services established these facts, it was entitled to recover only if appellees, who signed the note, failed to establish a defense. *UMLIC VP LLC v. T & M Sales & Envtl. Sys., Inc.*, 176 S.W.3d 595, 611 (Tex. App.—Corpus Christi–Edinburg 2005, pet. denied); *Groschke v. Gabriel*, 824 S.W.2d 607, 610 (Tex. App.—Houston [1st Dist.] 1991, writ denied).

The parties do not appear to dispute the existence of the promissory note, that appellees signed the note, or that HTS Services owns the note. Thus, our focus is on the fourth element of HTS Services's claim—whether there is a certain balance due and owing on the note. Because the trial court did not file any findings of fact or conclusions of law, we imply that the trial court made all necessary findings to support its judgment—including that the trial court found that HTS Services did not

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App.—Houston [1st Dist.] 2018, no pet.) (concluding appellant challenged legal sufficiency of evidence based on review of brief and prayer for rendition of judgment); *see also Campbell v. DLJ Mortg. Capital, Inc.*, No. 01-18-01047-CV, 2020 WL 5048136, at *6 & n.6 (Tex. App.—Houston [1st Dist.] Aug. 27, 2020, no pet.) (mem. op.).

establish that a certain balance was due and owing on the promissory note. *See BMC Software Belg.*, 83 S.W.3d at 795; *see also Rahman*, 2020 WL 4210492, at *3. When a party attacks the legal sufficiency of the evidence supporting an adverse finding on an issue on which it had the burden of proof, it must show not only that no evidence supports the finding, but also that the evidence conclusively proves the contrary. *Dow Chem. Co.*, 46 S.W.3d at 241. Under this standard, we reject HTS Services's legal-sufficiency challenge unless the evidence proves all vital facts in support of HTS Services's position as a matter of law. *Id.*

The trial court admitted into evidence the promissory note signed by HTS Services and US-UK International as well as by Mobioh and Marlborough as guarantors. The note states:

> As of the 27th day of February, 2018, hereinafter known as the "Start Date", U[S]-U[K] International Supply Group, LLC, hereinafter known as the "Borrower", *has received and promises to pay back* HTS Services, Inc., hereinafter known as the "Lender," *the principal sum of Sixty-Nine Thousand Five Hundred Eighty-One and 00/100 US Dollars ($69,581.00)* with interest accruing on the unpaid balance at a rate of five percent (5%) per annum, pursuant to the terms of this Promissory Note, hereinafter known as the "Note[.]"
>
> **1. PAYMENTS**: The full balance of this Note, including all accrued interest and late fees, is due and payable on the 29th day of May, 2018, hereinafter known as the "Due Date."

(First emphasis added.) Under the unambiguous terms of the promissory note, HTS Services was to loan US-UK International $69,581, which US-UK International

would then be responsible for paying back, along with accrued interest and late fees.[3] Morsi, the president of HTS Services, testified, however, that HTS Services never loaned US-UK International $69,581 as described in the terms of the promissory note. Under such circumstances, there would be no money for US-UK International to pay back under the promissory note and nothing would be due and owing on the note.

To collect on a promissory note, the owner or holder of the note must establish that a certain balance is due and owing on the note. *See Cadle Co. v. Regency Homes, Inc.*, 21 S.W.3d 670, 678 (Tex. App.—Austin 2000, pet. denied); *Commercial Servs. of Perry, Inc. v. Wooldridge*, 968 S.W.2d 560, 564 (Tex. App.—Fort Worth 1998, no pet.); *cf. Blankenship II v. Robins*, 899 S.W.2d 236, 238 (Tex. App.—Houston [14th Dist.] 1994, no writ). Here, we conclude that HTS Services has failed to establish as a matter of law that a certain balance was due and owing on the promissory note, and thus, that it was not entitled to recover on its claim to collect on a promissory note.[4] *See Dow Chem. Co.*, 46 S.W.3d at 241. We hold that the trial court did not err in entering a take-nothing judgment in favor of appellees.

We overrule HTS Services's sole issue.

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[3] HTS Services does not assert in its briefing that the promissory note is ambiguous.

[4] We need not address HTS Services's argument that the trial court erred in entering a take-nothing judgment on its claim against appellees to collect on a promissory note because appellees did not establish any defenses. *See* TEX. R. APP. P. 47.1.

Conclusion

We affirm the judgment of the trial court.

Julie Countiss
Justice

Panel consists of Justices Kelly, Goodman, and Countiss.