Opinion issued August 25, 2020

In The

Court of Appeals

For The

First District of Texas

NO. 01-19-00647-CV

GRAUSTARK MEMBERS II, LLC Appellant

V.

MARK MINOR, Appellee

On Appeal from the County Court at Law No. 2
Harris County, Texas
Trial Court Case No. 1132739

MEMORANDUM OPINION

Appellant, Graustark Members II, LLC ("Graustark"), challenges the trial court's rendition of summary judgment in favor of appellee, Mark Minor, in Minor's suit against Graustark for breach of contract. In its sole issue, Graustark contends that the trial court erred in granting Minor summary judgment.

We affirm.

Background

In his petition filed in justice court, Minor alleged that from November 1, 2010 to May 31, 2016 he leased an apartment in Houston, Texas (the "apartment"). Before Minor moved into the apartment, he paid the landlord at the time a $600 security deposit as required by the lease agreement for the apartment (the "lease agreement").

On May 1, 2016, Minor received a notice to vacate the apartment no later than May 31, 2016. On May 31, 2016, Minor vacated the apartment, gave his keys to the apartment to Graustark's agent, and provided his written forwarding address to Graustark's agent. Thereafter, the apartment was renovated by Graustark.

Later, Minor sent to Graustark a copy of the lease agreement, his forwarding address, and a request that his $600 security deposit be returned. On September 8, 2016, Minor's attorney sent a letter requesting the return of Minor's security deposit and again providing Minor's forwarding address in writing.

According to Minor, Graustark never gave him "an accounting for deductions from the security deposit and . . . refused to return the security deposit rightfully owed to" Minor. And Minor alleged that it should be "presumed that [Graustark] . . . acted in bad faith by not mailing an itemized list of deductions and by retaining [Minor's] security deposit."

Minor brought a claim against Graustark under Texas Property Code Chapter 92 for failure to refund the security deposit. Minor sought the $100 statutory penalty, plus three times the amount of the security deposit withheld and attorney's fees.[1]

Graustark answered, generally denying the allegations in Minor's petition.

Minor then moved for summary judgment on his purported breach-of-contract claim, arguing that he was entitled to judgment as a matter of law because there was a valid, enforceable contract—the lease agreement, Minor was a party to the lease agreement, Minor did not breach the lease agreement, Graustark breached the lease agreement by not returning Minor's security deposit or providing a written description of the damages and charges deducted from the security deposit, and Graustark's breach caused Minor's injuries. Minor further stated in his motion that he "waive[d] all causes of action and relief not requested" in his summary-judgment motion.

Minor attached to his summary-judgment motion a copy of the lease agreement for the apartment. Paragraph 4 of the lease agreement states: "Your total security deposit for all purposes and for all residents is $600, due on or before the date this Lease Contract is signed." Paragraph 42, titled "DEPOSIT RETURN; SURRENDER; ABANDONMENT," provides, in pertinent part:

> We'll mail you your security deposit refund (less lawful deductions) and an itemized accounting of any deductions no later than 30 days after

[1] *See* TEX. PROP. CODE ANN. §§ 92.103, 92.109 ("Liability of Landlord")

> surrender or abandonment unless statutes provide otherwise. You *surrender* the apartment on the date of the earlier of the following: (1) all keys have been turned in where rent is paid; or (2) the move-out date has passed and no resident or occupant is living in the apartment in our reasonable judgment.

Minor also attached his affidavit to his summary-judgment motion. In his affidavit, Minor testified that he leased the apartment from November 1, 2010 to May 31, 2016. Before moving into the apartment, Minor paid the landlord a $600 security deposit. During Minor's tenancy, the owner of the apartment changed. On May 1, 2016, Minor received a notice to vacate the apartment no later than May 31, 2016 because he "did not send an application to maintain the residency at the [apartment]." Minor vacated the apartment on May 31, 2016 and gave "an agent for the new owner" his keys to the apartment and his forwarding address in writing. Later, on September 8, 2016, Minor's attorney, in a letter, requested the return of Minor's $600 security deposit and provided Minor's forwarding address. On February 13, 2017, Minor's attorney sent another letter requesting the return of Minor's security deposit and again providing Minor's forwarding address. According to Minor, he never received "an accounting for deductions from [his] security deposit" and Graustark "refused to return the security deposit" to Minor.

Graustark did not respond to Minor's summary-judgment motion. The justice court granted Minor summary judgment on his breach-of-contract claim, awarding

him $1,900 in damages and attorney's fees. Graustark appealed that judgment to county court.[2]

In county court, Minor again moved for summary judgment on his purported breach-of-contract claim, arguing that he was entitled to judgment as a matter of law because there was a valid, enforceable contract—the lease agreement, Minor was a party to the lease agreement, Minor did not breach the lease agreement, Graustark did not claim that Minor had breached the lease agreement, Graustark breached the lease agreement by not returning Minor's security deposit or providing Minor with a written description of the damages and charges deducted from the security deposit, and Graustark's breach caused Minor's injuries. Minor also stated in his motion that he "waive[d] all causes of action and relief not requested" in his summary-judgment motion. Minor attached his affidavit to his summary-judgment motion.

In response to Minor's summary-judgment motion, Graustark asserted that on November 1, 2010, Minor entered into the lease agreement. In September 2015, Graustark purchased the apartment from the previous owner, Level Headed Chow LLC ("Level Headed Chow"). When Graustark purchased the apartment, Level Headed Chow "did not have any records of any rent or security deposits owed" and Graustark did not receive "credits for any rent or security deposits during [its]

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[2] *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.001 ("Appeal from Justice Court to County or District Court"); TEX. R. CIV. P. 506.1.

purchase" of the apartment. Graustark did not send Minor a notice that it would be responsible for any security deposit. On May 1, 2016, Graustark sent Minor a notice to vacate, and on May 31, 2016, Minor left the apartment. On September 8, 2016 and February 13, 2017, Minor's attorney sent Graustark letters requesting the return of Minor's security deposit.

Graustark argued that Minor was not entitled to summary judgment on his breach-of-contract claim because under the Texas Property Code "a previous owner is liable for any security deposit[] paid to him unless a new owner sends [a] tenant a signed statement that specifies the security deposit and acknowledges [that] the new owner has received the security deposit and is responsible for it." And, here, Graustark never provided Minor "with a signed statement acknowledging responsibility [for Minor's] alleged $600 security deposit." The previous owner of the apartment had "no record of [Minor's] $600 security deposit."

Graustark attached to its summary-judgment response the affidavit of Chris Bran, the president of Graustark. In his affidavit, Bran testified that in September 2015, Graustark purchased the apartment from Level Headed Chow. When Graustark took possession of the apartment, Graustark did not send Minor a written notice showing an accounting of rent or security deposits or state that Graustark was responsible for any rent or security deposits. Graustark has no records of any rent or security deposits that Minor paid before Graustark became the owner of the

apartment, and it did not receive any credits or prorations from Level Headed Chow for any rent or security deposits. Graustark also attached to its response a copy of the "Commercial Contract" and a "Combined Statement" related to the sale of the apartment from Level Headed Chow to Graustark.

After Minor filed a reply to Graustark's response, the trial court granted Minor summary judgment on his breach-of-contract claim and ordered Graustark to pay Minor $1,900, plus attorney's fees.

Jurisdiction

We must first consider whether the trial court's judgment granting Minor summary judgment constitutes a final judgment that we have jurisdiction to review.

"[C]ourts always have jurisdiction to determine their own jurisdiction." *Heckman v. Williamson Cty.*, 369 S.W.3d 137, 146 n.14 (Tex. 2012) (internal quotations omitted); *see also Royal Indep. Sch. Dist. v. Ragsdale*, 273 S.W.3d 759, 763 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (jurisdiction fundamental in nature and cannot be ignored). An appellate court must determine, even sua sponte, the question of its jurisdiction; the lack of jurisdiction cannot be ignored simply because the parties do not raise the issue. *Walker Sand, Inc. v. Baytown Asphalt Materials, Ltd.*, 95 S.W.3d 511, 514 (Tex. App.—Houston [1st Dist.] 2002, no pet.). Whether we have jurisdiction is a question of law, which we review de novo. *See Tex. A & M Univ. Sys. v. Koseoglu*, 233 S.W.3d 835, 840 (Tex. 2007). If this is an

appeal over which we have no jurisdiction, it must be dismissed. *Ragsdale*, 273 S.W.3d at 763.

Generally, appeals may be taken only from final judgments. *Lehmann v. Har–Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). Interlocutory orders may be appealed only if permitted by statute. *See Koseoglu*, 233 S.W.3d at 840; *Bally Total Fitness Corp. v. Jackson*, 53 S.W.3d 352, 352 (Tex. 2001). A judgment issued without a conventional trial is final for purposes of appeal if it either (1) actually disposes of all claims and parties then before the court, regardless of its language, or (2) states with "unmistakable clarity" that it is a final judgment as to all claims and all parties. *Lehmann*, 39 S.W.3d at 192–93, 200, 204. Because the law does not require a final judgment to be in a particular form, whether a judicial decree is a final judgment is determined by looking at the language of the decree and the record in the case. *Id.* at 195; *Tex-Fin, Inc. v. Ducharne*, 492 S.W.3d 430, 436 (Tex. App.— Houston [14th Dist.] 2016, no pet.).

In his petition, Minor brought a claim against Graustark under Chapter 92 of the Texas Property Code for failure to refund the security deposit.[3] *See* TEX. PROP.

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[3] As we have previously explained:

> Chapter 92, subchapter C of the Texas Property Code establishes two causes of action that permit a tenant to seek recovery of [his] security deposit from [his] landlord. *See* [TEX. PROP. CODE ANN.] § 92.109 (liability of landlord). Each of these causes of action provides the tenant with a different remedy. . . . [T]he first cause of action involves a landlord's bad faith retention of the security deposit. *See id.*

CODE ANN. § 92.109(a) ("Liability of Landlord"); *Nowlin v. Keaton*, No. 01-17-00523-CV, 2019 WL 1996483, at *17–18 (Tex. App.—Houston [1st Dist.] May 7, 2019, no pet.) (mem. op.) ("Chapter 92, subchapter C of the Texas Property Code establishes two causes of action that permit a tenant to seek recovery of [his] security deposit from [his] landlord."); *Frazin v. Sauty*, No. 05-15-00879-CV, 2016 WL 7163858, at *4–5 (Tex. App.—Dallas November 7, 2016, pet. denied) (mem. op.); *see also* TEX. PROP. CODE ANN. §§ 92.103 ("Obligation to Refund"), 92.104 ("Retention of Security Deposit; Accounting"), 92.107 ("Tenant's Forwarding Address"). Minor sought damages provided for by Texas Property Code section 92.109. *See* TEX. PROP. CODE ANN. § 92.109(a).

> § 92.109(a). To prevail under that cause of action, the tenant must prove that the landlord: (1) acted in bad faith and (2) retained the security deposit in violation of [C]hapter 92, subchapter C of the Texas Property Code. *Id.* When a landlord is found liable under section 92.109(a), the tenant may recover from the landlord: (1) an amount equal to the sum of $ 100; (2) three times the portion of the security deposit wrongfully withheld; and (3) the tenant's reasonable attorney's fees in a suit to recover the security deposit.

Nowlin v. Keaton, No. 01-17-00523-CV, 2019 WL 1996483, at *17–18 (Tex. App.—Houston [1st Dist.] May 7, 2019, no pet.) (mem. op.); *see also Frazin v. Sauty*, No. 05-15-00879-CV, 2016 WL 7163858, at *4–5 (Tex. App.—Dallas November 7, 2016, pet. denied) (mem. op.) ("The premise of the second cause of action is the landlord's bad faith failure to account for the security deposit. . . . To prevail under th[at] cause of action, the tenant must prove [that] the landlord: (1) acted in bad faith; and (2) failed to provide the tenant with: (a) a written description of the damages in violation of [C]hapter 92, subchapter C of the [P]roperty [C]ode; and (b) an itemized list of the deductions in violation of [C]hapter 92, subchapter C of the [P]roperty [C]ode." (internal quotations omitted)).

Minor then moved for summary judgment on his purported breach-of-contract claim, arguing that he was entitled to judgment as a matter of law because there was a valid, enforceable contract—the lease agreement, Minor was a party to the lease agreement, Minor did not breach the lease agreement, Graustark did not claim that Minor had breached the lease agreement, Graustark breached the lease agreement by not returning Minor's security deposit or providing Minor with a written description of the damages and charges deducted from the security deposit, and Graustark's breach caused Minor's injuries. Although Minor did not allege a breach-of-contract claim in his petition, when a movant, in a summary-judgment motion, requests relief on an unpled claim, that "claim is deemed to have been tried by consent in the absence of an objection by [the nonmovant] to the lack of a supporting pleading." *DTND Sierra Inv., LLC v. HSBC Bank USA, Nat'l Ass'n*, No. 04-15-00657-CV, 2016 WL 3342327, at *3 (Tex. App.—San Antonio June 15, 2016, pet. denied) (mem. op.) (alteration in original) (internal quotations omitted); *Banner Sign & Barricade, Inc. v. Price Constr., Inc.*, 94 S.W.3d 692, 695 (Tex. App.—San Antonio 2002, pet. denied) (although plaintiff did not plead breach-of-contract claim, plaintiff moved for summary judgment on claim and defendant did not object); *see also Roark v. Stallworth Oil & Gas, Inc.*, 813 S.W.2d 492, 494–95 (Tex. 1991); *SVT, L.L.C. v. Seaside Village Townhome Ass'n, Inc.*, No. 14-17-00012-CV, 2018 WL 3151396, at *5 (Tex. App.—Houston [14th Dist.] June 28, 2018, no pet.) (mem. op.)

("Unpled claims . . . that are tried by express or implied consent of the parties are treated as if they had been raised by the pleadings.").

In response to Minor's summary-judgment motion, Graustark did not object to Minor's failure to plead a breach-of-contract claim or assert in any way that Minor was not entitled to summary judgment on his breach-of-contract claim because he did not plead it. Thus, we conclude that Minor's breach-of-contract claim was tried by consent, and we will treat the claim as if it had been raised in Minor's petition. *See DTND Sierra Inv.*, 2016 WL 3342327, at *3; *Miller v. Lucas*, No. 02-13-00298-CV, 2015 WL 2437887, at *3 (Tex. App.—Fort Worth May 21, 2015, pet. denied) (mem. op.) (unpled claims may be tried by consent in summary-judgment context); *In re Educap, Inc.*, No. 01-12-00546-CV, 2012 WL 3224110, at *2 n.2 (Tex. App.—Houston [1st Dist.] Aug. 7, 2012, no pet.) (mem. op.).

The trial court granted Minor summary judgment on his breach-of-contract claim, which the parties do not appear to dispute. But Minor did not move for summary judgment on his Texas Property Code Chapter 92 claim for failure to refund the security deposit, and the trial court did not grant Minor summary judgment on that claim. This is significant because an order that does not dispose of all claims still pending in a case is not a final judgment. *See Lehmann,* 39 S.W.3d

at 206; *Am. Homes 4 Rent v. Kirk*, No. 01-15-01000-CV, 2016 WL 4055586, at *2 (Tex. App.—Houston [1st Dist.] Jul 28, 2016, no pet.) (mem. op.).

A claim for failure to refund the security deposit under Texas Property Code Chapter 92 is separate and distinct from a claim for breach of contract. *See Nowlin*, 2019 WL 1996483, at *17–18 (recognizing Chapter 92, subchapter C of Texas Property Code establishes two independent causes of action that permit tenant to seek recovery of security deposit from landlord); *Brand v. Degrate-Greer*, No. 02-15-00397-CV, 2017 WL 1756542, at *1 (Tex. App.—Fort Worth May 4, 2017, no pet.) (mem. op.) (tenant asserted separate causes of action against landlord for violations of Texas Property Code and for breach of contract); *Frazin*, 2016 WL 7163858, at *7 & n.9 (explaining tenants did not bring breach-of-contract claim; they brought claim for failure to return security deposit under Chapter 92 of Texas Property Code); *Shamoun v. Shough*, 377 S.W.3d 63, 67–77 (Tex. App.—Dallas 2012, pet. denied) (addressing tenant's breach-of-contract claim separate from tenant's statutory claims under Chapter 92 of Texas Property Code).

Even though Minor did not move for summary judgment on his Texas Property Code Chapter 92 claim for failure to refund the security deposit, he expressly "waive[d] all causes of action and relief not requested" in his summary-judgment motion. *Cf. Giraldo v. Pavia*, No. 14-10-00780-CV, 2011 WL 4840712, at *2 n.1 (Tex. App.—Houston [14th Dist.] Oct. 13, 2011, no pet.) (mem.

op.) (judgment final where plaintiff expressly waived any causes of action or relief not addressed in his summary-judgment motion); *Taylor v. Mele*, No. 09-09-00332-CV, 2010 WL 3042129, at *2 (Tex. App.—Beaumont Aug. 5, 2010, no pet.) (mem. op.) (because plaintiff moved for summary-judgment on breach-of-contract claim and "waive[d] all causes of action and relief not requested in the motion," appellate court could only review trial court's ruling on breach-of-contract claim (internal quotations omitted)). Thus, we hold that Minor waived his claim for failure to refund the security deposit under Texas Property Code Chapter 92 and the trial court's judgment, which granted Minor summary judgment on his breach-of-contract claim, was final because no other causes of action remained. *See Lehmann*, 39 S.W.3d at 200 (judgment that finally disposes of all remaining parties and claims, based on record in case, is final); *Jones v. Ill. Emp't rs Ins. of Wausau*, 136 S.W.3d 728, 743 (Tex. App.—Texarkana 2004, no pet.).

We now address the merits of Graustark's complaint that the trial court erred in granting Minor summary judgment.

Summary Judgment

In its sole issue, Graustark argues that the trial court erred in granting Minor summary judgment on Minor's breach-of-contract claim because Graustark is not

liable under the Texas Property Code for a security deposit that was paid to the apartment's previous owner, not Graustark.[4] *See* TEX. PROP. CODE ANN. § 92.105.

We review a trial court's decision to grant summary judgment de novo. *Tex. Mun. Power Agency v. Pub. Util. Comm'n of Tex.*, 253 S.W.3d 184, 192 (Tex. 2007). To prevail on a summary-judgment motion, a movant has the burden of establishing that he is entitled to judgment as a matter of law and there is no genuine issue of material fact. TEX. R. CIV. P. 166a(c); *Cathey v. Booth*, 900 S.W.2d 339, 341 (Tex. 1995). When a plaintiff moves for summary judgment on its claim, he must establish his right to summary judgment by conclusively proving all the elements of his cause of action as a matter of law. *Rhône-Poulenc, Inc. v. Steel*, 997 S.W.2d 217, 223 (Tex. 1999); *Anglo-Dutch Petroleum Int'l, Inc. v. Haskell*, 193 S.W.3d 87, 95 (Tex. App.—Houston [1st Dist.] 2006, pet. denied). Once the plaintiff meets his burden, the burden shifts to the nonmovant to raise a genuine issue of material fact precluding summary judgment. *See Transcon. Ins. Co. v. Briggs Equip. Tr.*, 321 S.W.3d 685, 691 (Tex. App.—Houston [14th Dist.] 2010, no pet.); *see also Gutierrez v. Draheim*, No. 01-14-00267-CV, 2016 WL 921470, at *1 (Tex. App.—Houston [1st Dist.] Mar. 10, 2016, no pet.) (mem. op.). The evidence raises a

[4] To the extent that Graustark's sole issue relates to Minor's ability to establish, as a matter of law, a claim for failure to refund the security deposit under Texas Property Code Chapter 92, as previously noted, Minor waived that claim and we do not address it on appeal.

genuine issue of fact if reasonable and fair-minded jurors could differ in their conclusions in light of all of the summary-judgment evidence. *Goodyear Tire & Rubber Co. v. Mayes*, 236 S.W.3d 754, 755 (Tex. 2007). When reviewing a summary-judgment ruling, we take as true all evidence favorable to the nonmovant and indulge every reasonable inference and resolve any doubts in the nonmovant's favor. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005).

A breach-of-contract claim requires four elements be proven: (1) the existence of a valid contract, (2) performance or tendered performance by the plaintiff, (3) breach of the contract by the defendant, and (4) damages sustained by the plaintiff as a result of the defendant's breach.[5] *See B & W Supply, Inc. v. Beckman*, 305 S.W.3d 10, 16 (Tex. App.—Houston [1st Dist.] 2009, pet. denied).

In its summary-judgment response and on appeal, Graustark appears only to have argued that Minor did not establish as a matter of law that Graustark breached the lease agreement for the apartment. According to Graustark, it could not have breached the lease agreement by not returning Minor's security deposit or providing Minor with a written description of the damages and charges deducted from the security deposit because Texas Property Code section 92.105 states that the

[5] In his summary-judgment response, Graustark did not dispute that Minor had established the first, second, or fourth elements of his breach-of-contract claim. *See Murray v. Pinnacle Health Facilities XV*, No. 01-13-00527-CV, 2014 WL 3512773, at *2 (Tex. App.—Houston [1st Dist.] July 15, 2014, pet. denied) (mem. op.); *see also* TEX. R. CIV. P. 166a(c); TEX. R. APP. P. 33.1(a).

apartment's previous owner, not Graustark, was liable to Minor for the return of Minor's $600 security deposit. *See* TEX. PROP. CODE ANN. § 92.105 ("Cessation of Owner's Interest").

Paragraph 4 of the lease agreement states: "Your total security deposit for all purposes and for all residents is $600, due on or before the date this Lease Contract is signed." Paragraph 42, titled "DEPOSIT RETURN; SURRENDER; ABANDONMENT," provides, in pertinent part:

> We'll mail you your security deposit refund (less lawful deductions) and an itemized accounting of any deductions no later than 30 days after surrender or abandonment unless *statutes provide otherwise*. You *surrender* the apartment on the date of the earlier of the following: (1) all keys have been turned in where rent is paid; or (2) the move-out date has passed and no resident or occupant is living in the apartment in our reasonable judgment.

(First emphasis added.) In his affidavit, Minor testified that he leased the apartment from November 1, 2010 to May 31, 2016, he paid a $600 security deposit before moving into the apartment, he vacated the apartment on May 31, 2016, and he provided his forwarding address in writing to the apartment's new owner, Graustark.

Although not framed in such a way in its summary-judgment response or in its briefing in this Court, it appears that Graustark argued that it did not breach the lease agreement for the apartment by not refunding Minor's security deposit or by not providing Minor with a written description of the damages and charges deducted from the security deposit because, under Texas Property Code section 92.105,

Graustark is not liable to Minor for the return of the security deposit. In other words, Graustark did not breach Paragraph 42 of the lease agreement because Texas Property Code section 92.105 is a statute that exempts it from the obligation to refund Minor's security deposit and provide an itemized accounting of any deductions from the security deposit.

Texas Property Code section 92.105 states, in pertinent part:

> (a) If the owner's interest in the [property] is terminated by sale, assignment, death, appointment of a receiver, bankruptcy, or otherwise, *the new owner is liable for the return of security deposits according to this subchapter from the date title to the [property] is acquired*.
>
> (b) The new owner shall deliver to the tenant a signed statement acknowledging that the new owner has acquired the property and is responsible for the tenant's security deposit and specifying the exact dollar amount of the deposit.
>
> (b-1) The person who no longer owns an interest in the rental [property] is liable for a security deposit received while the person was the owner until the new owner has received the deposit or has assumed the liability for the deposit, unless otherwise specified by the parties in a written contract.

TEX. PROP. CODE ANN. § 92.105(a)–(b), (b-1) (emphasis added).

Graustark asserted in its summary-judgment response that section 92.105 states that the previous owner of a property is liable for any security deposits paid to it unless a new owner sends a tenant a signed statement that specifies the security deposit and acknowledges that the new owner has received the security deposit and is responsible for it. Thus, Graustark argues that Minor paid his security deposit to

the apartment's previous owner or its agent, Graustark did not receive Minor's security deposit when it purchased the apartment, and Graustark never gave Minor a signed statement acknowledging responsibility for Minor's $600 security deposit, so Graustark is not responsible for returning Minor's $600 security deposit. We disagree with Graustark's reading of Texas Property Code section 92.105.

Texas Property Code section 92.105 "provides that if [an] owner sells its interest in [a property], the new owner is liable for the return of security deposits from the date it acquires title to the [property]." *Hardy v. 11702 Mem'l, Ltd.*, 176 S.W.3d 266, 276 (Tex. App.—Houston [1st Dist.] 2004, no pet.); *see* TEX. PROP. CODE ANN. § 92.105(a). Additionally, the previous owner "remains liable for a security deposit it received while it was the owner up to the time [that] the new owner delivers to the tenant a signed statement specifying the dollar amount of the deposit and acknowledging that it has received the deposit and is responsible for it." *Hardy*, 176 S.W.3d at 276; *see* TEX. PROP. CODE ANN. § 92.105(b), (b-1). Thus, under Texas Property Code section 92.105, it is possible for both the new owner and the previous owner of the property to be liable to the tenant for the return of his security deposit. *See Hardy*, 176 S.W.3d, at 276.

Here, there is no dispute that Graustark purchased the apartment in September 2015 while Minor was a tenant. Minor testified that he paid a $600 security deposit when he moved into the apartment in 2010, and Minor moved out of the apartment

on May 31, 2016. Texas Property Code section 92.105 does not exempt Graustark from its obligation under the lease agreement to provide Minor his "security deposit refund (less lawful deductions) and an itemized accounting of any deductions no later than 30 days after surrender or abandonment."

Based on the foregoing, we conclude that Graustark did not raise a genuine issue of material fact about whether it breached the lease agreement. Accordingly, we hold that the trial court did not err in granting Minor summary judgment on his breach-of-contract claim.[6]

We overruled Graustark's sole issue.

Conclusion

We affirm the judgment of the trial court.

Julie Countiss
Justice

Panel consists of Chief Justice Radack and Justices Lloyd and Countiss.

[6] We note that Graustark does not challenge on appeal the amount the trial court awarded Minor for damages or the trial court's attorney's fees award.