Opinion issued June 30, 2022

In The

Court of Appeals

For The

First District of Texas

NO. 01-20-00421-CV

IGNACIO E. FLORES, INDIVIDUALLY AND D/B/A TEXAS FOUNDATION AND REMODELING LLC D/B/A TEXAS FOUNDATION & RENOVATION LLC AND D/B/A NEAT HOME INVESTORS LLC, Appellant

V.

HUN CHANG AND DAVID MOON, Appellees

On Appeal from the County Civil Court at Law No. 4
Harris County, Texas
Trial Court Case No. 1121316

MEMORANDUM OPINION

In this restricted appeal, appellant, Ignacio E. Flores, individually and doing business as Texas Foundation and Remodeling LLC, doing business as Texas

Foundation & Renovation LLC, and doing business as Neat Home Investors LLC,[1] challenges the trial court's no-answer default judgment in favor of appellees, Hun Chang and David Moon (collectively, "appellees"), in appellees' suit against Flores for breach of contract, fraudulent inducement, and unjust enrichment. In five issues, Flores contends that the trial court erred in entering judgment in favor of appellees and in awarding them attorney's fees.

We affirm in part and reverse and remand in part.

Background

In their first amended petition, appellees alleged that Flores and three limited liability companies[2] (collectively, the "LLC defendants") entered into a contract "with [appellees] to provide construction and renovation services for [appellees'] two homes located" in Houston, Texas. Pursuant to the contract, appellees paid Flores and the LLC defendants "at least $88,016.76" in deposits for the "labor and materials for the renovation and remodeling work" that Flores and the LLC defendants agreed to perform. According to appellees, Flores and the LLC

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[1] In his notice of appeal, Flores stated that his appeal was "being brought by [him] in his individual capacity and as alleged in the [trial court's] final judgment in his capacity of d/b/a Texas Foundation and Remodeling LLC d/b/a Texas Foundation & Renovation LLC and d/b/a Neat Home Investors LLC, even though such additional capacities do not exist." Our style of the case is in accord with the trial court's final judgment. *Owens v. Handyside*, 478 S.W.3d 172, 175 n.1 (Tex. App.—Houston [1st Dist.] 2015, pet. denied).

[2] The three companies are Texas Foundation and Remodeling LLC, Texas Foundation & Renovation, LLC, and Neat Home Investors LLC.

defendants "did not complete the [required] work in a good and workmanlike manner, abandoned the projects and left the work defective, deficient, and otherwise incomplete." After Flores and the LLC defendants "refused to respond to multiple communication attempts," appellees terminated the contract for cause. Appellees incurred "additional damages in securing another contractor to complete the work at the[ir] homes."

Appellees brought claims against Flores and the LLC defendants for breach of contract, fraudulent inducement, and unjust enrichment.[3] As to their breach-of-contract claim, appellees alleged that they gave Flores and the LLC defendants $88,016.76 "in deposits for labor and materials for remodeling and renovation work," as required by the contract, but Flores and the LLC defendants breached the contract by "not complet[ing] the [required] work in a good and workmanlike manner, abandon[ing] the projects and l[eaving] the work defective, deficient, and otherwise incomplete." Because of Flores and the LLC defendants' material breach of the contract, appellees were "damaged in the sum of at least $88,016.76." They requested that amount in damages and "all other relief allowed by law." As to their fraudulent-inducement claim, appellees alleged that Flores and the LLC defendants "fraudulently induced [appellees] into the transaction"

[3] Appellees brought claims against other defendants who are not parties to this appeal. Appellees' claims against those defendants were later dismissed.

described above. And they requested that Flores and the LLC defendants "be ordered to pay" actual damages and "exemplary damages as a result of the[] fraudulent conduct." Alternatively, as to their unjust-enrichment claim, appellees sought to recover $88,016.67 because Flores and the LLC defendants had been "unjust[ly] enrich[ed] at [appellees'] expense." Appellees sought attorney's fees pursuant to Texas Civil Practice and Remedies Code chapter 38.[4]

Appellees also alleged that Flores was individually liable as an "alter ego of the [LLC] defendants" because the LLC defendants forfeited their charters and their rights to do business as limited liability companies by failing "to file the [required] reports or pay a tax or penalty" with the Texas Comptroller of Public Accounts.[5] And appellees asserted that "as a manager, member or officer of the LLC defendants," Flores became individually liable for the LLC defendants' actions and "bound to pay [appellees] on demand the reasonable value of the goods, wares, and merchandise provided by [appellees]" pursuant to Texas Tax Code section 171.255.[6]

Appellees attached to their petition, as Exhibit A, a document entitled "Hun Chang/David Moon Payment Ledger," in which they itemized the date, payment

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4 *See* TEX. CIV. PRAC. & REM. CODE ANN. § 38.001(8).

5 *See* TEX. TAX CODE ANN. § 171.309.

6 *See id.* § 171.255.

type, and amount of each payment they made to Flores under the contract. The payment ledger fully documented the $88,016.67 appellees sought as damages.

Appellees attempted to personally serve Flores with process on six occasions between November 2018 and March 2019. All of those attempts were unsuccessful. Appellees then filed a motion for substitute service as to Flores, requesting that the trial court permit substituted service. Appellees attached to their motion a detailed recitation of their unsuccessful attempts to serve Flores. The trial court granted the motion.

An affidavit of service executed by Joel L. Hershey was then filed in the trial court. In the affidavit, Hershey testified that he successfully served Flores on June 13, 2019 by "affixing a true copy of [certain] documents[7] to the main entry of the premises, the usual place of abode with the date of service endorsed thereon by [Hershey]" and "by mailing a true copy of [the] documents by Regular First Class Mail and by Certified Mail, Return Receipt Requested, to [Flores] at the [his] usual place of abode."

After Flores did not answer or otherwise appear, appellees moved for an interlocutory default judgment against Flores, which, after an evidentiary hearing, the trial court granted. There is no reporter's record from this hearing, but the clerk's

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7 The affidavit lists the documents as: "Citation, Plaintiff's . . . Petition and Requests for Disclosure with Attached Exhibit and Order Granting Substituted Service." (Emphasis omitted.)

record contains an exhibit list, executed by the court reporter, in which she states that certain exhibits "were admitted into evidence," including a "Proposal," a "Payment Ledger," an "Account Statement," a "Handwritten Accounting," and "Attorney's Fees." In its interlocutory default judgment, the trial court recited that Flores, "d/b/a [the LLC defendants], although duly and legally cited to appear and answer, failed to appear and answer, and wholly made default." And by default, Flores and the LLC defendants "admitted the allegations [in appellees'] petition and that the cause [was] unliquidated and proven by an instrument in writing, and, on good and sufficient evidence presented to the [trial] [c]ourt, [the court] f[ound] that [Flores d/b/a the LLC defendants was] indebted to [appellees] in the sum of $88,016.76." The trial court also awarded appellees $4,425.00 in attorney's fees.

After a bench trial,[8] the trial court signed a final judgment. In its final judgment, the trial court recited that the case "proceeded to trial" before it and that,

> The [LLC defendants], although legally cited to appear and answer, failed to appear and answer, and wholly made default. . . . Flores, d/b/a [the LLC defendants], although legally cited to appear and answer, failed to appear and answer . . .
>
> No jury have been demanded, all matters of fact and things in controversy were submitted to the [trial] [c]ourt and the case proceeded to trial. . . . The [trial] [c]ourt ha[d] read the pleadings and the papers on file, and [was] of the opinion that . . . the cause of action [was] . . . proven by an instrument in writing, and, on good and

[8] There is no reporter's record from the bench trial. The clerk's record indicates that the trial court admitted into evidence certain exhibits from appellees during trial.

> sufficient evidence presented to the [trial] [c]ourt, . . . [Flores] individually and [d/b/a the LLC defendants], [were] in default.

The trial court ordered that appellees "have and recover" from Flores, "individually and d/b/a [the LLC defendants], jointly and severally, the principal sum of $88,016.76, punitive damages of $25,000[.00]," together with reasonable attorney's fees "in the amount of 5,826.25.00" and conditional appellate attorney's fees in the amount of $15,000.00 in the intermediate court of appeals and $15,000.00 in the Texas Supreme Court. A notice of final judgment in favor of appellees was sent the day the trial court's final judgment was signed.

Standard of Review

A restricted appeal is a direct attack on a judgment. *Roventini v. Ocular Scis., Inc.*, 111 S.W.3d 719, 721 (Tex. App.—Houston [1st Dist.] 2003, pet. denied). To prevail on a restricted appeal, an appellant must show that: (1) he filed notice of the restricted appeal within six months after the judgment was signed; (2) he was a party to the underlying lawsuit; (3) he did not participate in the hearing that resulted in the complained-of judgment and did not timely file any post-judgment motion or request for findings of fact and conclusions of law; and (4) error is apparent on the face of the record. *Alexander v. Lynda's Boutique*, 134 S.W.3d 845, 848 (Tex. 2004); *see* TEX. R. APP. P. 30.

Only the fourth requirement—whether error is apparent on the face of the record—is disputed here. Although review by restricted appeal affords review of

the entire case and thus permits the same scope of review as an ordinary appeal, the face of the record must reveal the claimed error. *See Norman Commc'ns, Inc. v. Tex. Eastman Co.*, 955 S.W.2d 269, 270 (Tex. 1997). The face of the record consists of all the papers on file in the appeal, including the reporter's record, if one was made, as they existed in the trial court when the trial court entered its judgment. *In re E.K.N.*, 24 S.W.3d 586, 590 (Tex. App.—Fort Worth 2000, no pet.). "[E]rror that is merely inferred [from the record] will not suffice." *Ginn v. Forrester*, 282 S.W.3d 430, 431 (Tex. 2009).

Texas Property Code Chapter 27

In his first issue, Flores argues that the trial court erred in entering judgment in favor of appellees because appellees' pleadings were insufficient to show that appellees complied with the notice requirements of the Residential Construction Liability Act ("RCLA"). *See* TEX. PROP. CODE ANN. §§ 27.001–.007.

The RCLA modifies causes of action for damages resulting from construction defects in residences by limiting and controlling causes of action that otherwise exist. *Timmerman v. Dale*, 397 S.W.3d 327, 330 (Tex. App.—Dallas 2013, pet. denied); *see also Mitchell v. D. R. Horton-Emerald, Ltd.*, 579 S.W.3d 135, 137 (Tex. App.—Houston [1st Dist.] 2019, pet. denied). It provides defenses, limitations on damages, and determines the standard of causation. *See* TEX. PROP. CODE ANN. §§ 27.003, 27.004, 27.006; *Timmerman*, 397 S.W.3d at 330. It also sets out notice

provisions. *See* TEX. PROP. CODE ANN. § 27.004; *Timmerman*, 397 S.W.3d at 330; *see also Martin v. Cottonwood Creek Constr., LLC*, 560 S.W.3d 759, 764 (Tex. App.—Waco 2018, no pet.) ("Generally, the RCLA requires a claimant to provide written notice to a contractor specifying in reasonable detail the construction defects that are the subject of the complaint at least 60 days before the claimant initiates an action against the contractor." (internal quotations omitted)); *Perry Homes v. Alwattari*, 33 S.W.3d 376, 382 (Tex. App.—Fort Worth 2000, pet. denied) ("Under the RCLA, a homeowner who complains of a construction defect must give the contractor written notice of the claim."). The RCLA applies to: "(1) any action to recover damages or other relief arising from a construction defect, except a claim for personal injury, survival, or wrongful death or for damage to goods; and (2) any subsequent purchaser of a residence who files a claim against a contractor." TEX. PROP. CODE ANN. § 27.002(a); *see also Timmerman*, 397 S.W.3d at 330. But it does not apply to "an action to recover damages that arise from . . . a contractor's wrongful abandonment of an improvement project before completion." TEX. PROP. CODE ANN. § 27.002(d).

In their petition, appellees alleged that they paid Flores and the LLC defendants $88,016.76 in deposits for the "labor and materials for the renovation and remodeling work" that Flores and the LLC defendants agreed to perform under the contract. But Flores and the LLC defendants "did not complete the [required] work

in a good and workmanlike manner, abandoned the projects and left the work defective, deficient, and otherwise incomplete." Appellees, in their petition, did not seek damages arising from any construction defect;[9] rather, they sought a refund of their deposit and exemplary damages for Flores's and the LLC defendants' fraud in inducing them to enter the transaction. Appellees' allegations fall squarely within the exception to the RCLA's coverage for "a contractor's wrongful abandonment of an improvement project before completion." *Id.*; *see also Karbach v. Markham*, No. 03-06-00636-CV, 2009 WL 3682604, at *4 (Tex. App.—Austin Nov. 6, 2009, no pet.) (mem. op.) (where evidence supported appellant's assertions that project was left unfinished, work was not performed in good and workmanlike manner, project had been abandoned, RCLA did not apply). Because appellees were not required to comply with the RCLA's notice requirements, we hold that their failure to do so is not a basis for reversing the trial court's judgment.

We overrule Flores's first issue.

Support for the Judgment

In his second issue, Flores argues that the trial court erred in entering judgment in favor of appellees because appellees' pleadings and evidence do not support appellees' claims against him for breach of contract, fraudulent inducement, unjust

[9] *See* TEX. PROP. CODE ANN. § 27.001(4) (defining "[c]onstruction defect" (internal quotations omitted)).

enrichment, and unliquidated damages. In his third issue, Flores argues that the trial court erred in entering judgment in favor of appellees because appellees' pleadings and evidence do not support the imposition of liability on him for the LLC defendants' conduct. And in his fifth issue, Flores argues that the trial court erred in awarding appellees attorney's fees because there was no oral or written agreement established or a showing of compliance with a statute that permits the award of attorney's fees. Because these issues all challenge the sufficiency of the pleadings or the evidence in support of the trial court's judgment, we consider them together.

A. Sufficiency of the Pleadings

In portions of his second and third issues and in his fifth issue, Flores argues that the trial court erred in entering judgment in favor of appellees because appellees' pleadings do not support appellees' claims against him for breach of contract, fraudulent inducement, unjust enrichment, unliquidated damages, and attorney's fees. Flores also asserts that appellees' pleadings do not support the imposition of liability on Flores for the LLC defendants' conduct.

A default judgment must be supported by the pleadings. *Stoner v. Thompson*, 578 S.W.2d 679, 682 (Tex. 1979); *Binder v. Joe*, 193 S.W.3d 29, 32 (Tex. App.—Houston [1st Dist.] 2006, no pet.); *McKnight v. Trogdon-McKnight*, 132 S.W.3d 126, 131 (Tex. App.—Houston [14th Dist.] 2004, no pet.). The pleadings must give the defendant fair notice of the plaintiffs' cause of action and the relief sought.

Stoner, 578 S.W.3d at 683; *Binder*, 193 S.W.3d at 32. To determine whether the defendant received fair notice, we "look[] to whether the opposing party can ascertain from the pleading the nature and basic issues of the controversy and what testimony will be relevant." *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 896 (Tex. 2000). Although pleadings are not evidence, no evidence is necessary to support a default judgment because the defendant's failure to answer is taken as admitting the allegations of the petition. *Huynh v. Vo*, No. 01-02-00295-CV, 2003 WL 1848607, at *1 (Tex. App.—Houston [1st Dist.] Apr. 10, 2003, no pet.) (mem. op.).

In their petition, appellees alleged that they entered into a contract with Flores and the LLC defendants for them to provide "construction and renovation services" for appellees' two homes. Appellees paid $88,016.76 in deposits for the "labor and materials for the renovation and remodeling work" that Flores and the LLC defendants agreed to perform under the contract. Appellees attached to the petition an itemized payment ledger showing the payment of that amount to Flores and the LLC defendants.

According to appellees, Flores and the LLC defendants "did not complete the [required] work in a good and workmanlike manner," "abandoned the projects," "left the work defective, deficient, and otherwise incomplete," refused to respond to multiple communication attempts by appellees, and despite appellee's written

demand, refused to return the deposits paid by appellees. And, based on these allegations, appellees asserted that Flores and the LLC defendants "fraudulently induced [appellees] into the transaction" described above. As to Flores's individual liability for the conduct of the LLC defendants, appellees alleged that Flores was "the alter ego of the [LLC] defendants" and they asserted that, because the LLC defendants had forfeited their charters and rights to do business as limited liability companies by failing "to file the [required] reports or pay a tax or penalty" with the Texas Comptroller of Public Accounts, Flores, "as a manager, member or officer of the LLC [d]efendants," became individually liable for the LLC defendants' actions and "bound to pay" appellees "[p]ursuant to [Texas Tax Code section 171.255]."[10]

Based on appellees' petition and Flores's failure to answer, Flores admitted to: (1) the existence of the contract with appellees and his failure to comply with that contract; (2) his receipt of deposits from appellees in the sum of at least $88,016.76; (3) his refusal to return those deposits to appellees; (4) his intent to defraud appellees by inducing them to enter the contract; (5) his status as an officer or director of the LLC defendants; (6) the LLC defendants' forfeiture of their charters and rights to do

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[10] *See* TEX. TAX CODE ANN. § 171.255(a), (b) (declaring "each director or officer of the corporation is liable for each debt of the corporation that is created or incurred in this state after the date on which the report, tax, or penalty is due and before the corporate privileges are revived," and such liability "is in the same manner and to the same extent as if the director or officer were a partner and the corporation were a partnership").

business; and (7) his individual liability for the LLC defendants' conduct with respect to appellees. These admissions support the trial court's conclusion that Flores was liable to appellees on their claims for breach of contract and fraudulent inducement and was derivatively liable for the LLC defendants' actions.

As to appellees' attorney's-fee claim, appellees, in their petition, alleged that they were entitled to attorney's fees under Texas Civil Practice and Remedies Code chapter 38, which permits the recovery of attorney's fees from an individual or corporation for a claim on "an oral or written contract." *See* TEX. CIV. PRAC. & REM. CODE ANN. § 38.001(8). In a suit for breach of contract, the plaintiffs may recover the amount of reasonable and necessary attorney's fees incurred in the prosecution of their breach-of-contract claim. *See id.*; *Stevens v. Avent*, No. 07-20-00265-CV, 2022 WL 878922, at *1 (Tex. App.—Amarillo Mar. 15, 2022, no pet.) (mem. op.); *Hood v. CIT Bank, NA*, No. 07-20-00265-CV, 2021 WL 629751, at *6 (Tex. App.—Houston [14th Dist.] Feb. 18, 2021, no pet.) (mem. op.). To recover attorney's fees, (1) the claimants must be represented by an attorney, (2) must have presented their claim to the opposing party or to a duly authorized agent of the opposing party, and (3) payment for the just amount owed must not have been tendered before the expiration of the thirtieth day after the claim was presented. TEX. CIV. PRAC. & REM. CODE ANN. § 38.002; *see also Gibson v. Cuellar*, 440 S.W.3d 150, 157 (Tex. App.—Houston [1st Dist.] 2013, no pet.) ("To recover attorney's fees, the claimant must

present the claim to the opposing party, and payment must not . . . be[] tendered before thirty days have elapsed after the claim [was] presented"). As such, presentment[11] is a condition precedent to the recovery of attorney's fees under Texas Civil Practice and Remedies Code section 38.001, and the claimant bears the burden to plead and prove presentment of the claim to the opposing party more than thirty days before filing suit. *Stevens*, 2022 WL 878922, at *1; *KC Pharm., LLC v. JPMorgan Chase Bank, N.A.*, No. 01-20-00409-CV, 2021 WL 1095905, at *8 (Tex. App.—Houston [1st Dist.] Mar. 23, 2021, no pet.) (mem. op.) ("Section 38.002 requires that the party seeking attorney's fees plead and prove that it presented its claim for damages to the opposing party and that the opposing party refused to pay."); *Gibson*, 440 S.W.3d at 157.

Flores argues that appellees' pleadings are insufficient to support the trial court's award of attorney's fees because appellees pleaded only that they "made written demand" on Flores and the LLC defendants for return of the deposits they had made and did not plead the number of days before filing the lawsuit that they made their demand. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 38.002. Presentment must be pleaded. *See Hood*, 2021 WL 629751, at *7; *Whitmore v. Nat'l Cutting*

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[11] *See Genender v. USA Store Fixtures, LLC*, 451 S.W.3d 916, 924 (Tex. App.—Houston [14th Dist.] 2014, no pet.) ("Presentment is a demand or request for payment or performance, whether written or oral. No particular form of presentment is required. However, merely filing suit for breach of contract, by itself, does not constitute presentment." (internal quotations and citations omitted)).

Horse Ass'n, No. 02-11-00170-CV, 2012 WL 4815413, at *15 (Tex. App.—Fort Worth Oct. 11, 2012, no pet.) (mem. op.) (plaintiff "had the burden to plead and prove that she made presentment of her claim of an oral agreement to [defendant] and that [defendant] did not comply with the claim within thirty days").

Appellees, in their petition, alleged that they were entitled to attorney's fees under Texas Civil Practice and Remedies Code chapter 38, they "made [a] written demand upon [Flores and the LLC defendants] for [the] return of [their] deposits," and Flores and the LLC defendants "refused to return [the] deposits." Appellees also alleged that they had "fully or substantially performed all acts necessary to perfect and establish all claims and causes of action asserted" and "[a]ll conditions precedent to [their] right to recover on any of the claims and causes of action asserted in [their] lawsuit ha[d] been discharged, satisfied or fully performed."

The Texas pleading rules only require a pleader to provide fair notice of the claim and the relief sought such that the opposing party can prepare a defense. *In re Lipsky*, 460 S.W.3d 579, 590 (Tex. 2015) (orig. proceeding); *see also Khan v. GBAK Props., Inc.*, 371 S.W.3d 347, 357–58 (Tex. App.—Houston [1st Dist.] 2012, no pet.) (plaintiff's failure to supply specific dates in petition for wrongful actions allegedly performed by defendant was not fatal to plaintiff's claims). Pleadings give fair notice when "an opposing attorney of reasonable competence, with the pleadings before him, can ascertain the nature and the basic issues of the controversy and the

testimony probably relevant." TEX. R. CIV. P. 45(b), 47(a); *Myan Mgmt. Grp., L.L.C. v. Adam Sparks Family Revocable Tr.*, 292 S.W.3d 750, 754 (Tex. App.—Dallas 2009, no pet.). Absent a special exception pointing out the lack of the specific pleading of the number of days before filing the lawsuit that the plaintiff made his demand, a petition that gives "fair notice" that the plaintiff seeks to recover attorney's fees under Texas Civil Practice and Remedies Code chapter 38 is sufficient. *See Hood*, 2021 WL 629751, at *7; *see also Paramount Pipe & Supply Co. v. Muhr*, 749 S.W.2d 491, 496 (Tex. 1988); *Gibson v. Cuellar*, 440 S.W.3d 150, 156–57 (Tex. App.—Houston [14th Dist.] 2013, no pet.) (holding pleading that did not specifically mention chapter 38 was sufficient to support award of attorney's fees in absence of special exception).

Based on the foregoing, we cannot agree with Flores that the trial court erred in entering judgment in favor of appellees because appellees' pleadings do not support appellees' claims for breach of contract, fraudulent inducement, unjust enrichment, unliquidated damages, and attorney's fees. We also cannot conclude that appellees' pleadings do not support the imposition of liability on Flores for the LLC defendants' conduct. We hold that appellees' pleadings are sufficient to support the trial court's judgment.

B. Sufficiency of the Evidence

In portions of his second and third issues, Flores argues that the trial court erred in entering judgment in favor of appellees because the evidence does not support appellees' claims against him for breach of contract, fraudulent inducement, unjust enrichment, and unliquidated damages. And Flores asserts that the evidence does not support the imposition of liability on Flores for the LLC defendants' conduct.

Because a restricted appeal affords the same scope of review as an ordinary appeal, we may review the sufficiency of the evidence to support the trial court's judgment. *See Miles v. Peacock*, 229 S.W.3d 384, 387 (Tex. App.—Houston [1st Dist.] 2007, no pet.). But we are not allowed to review the legal and factual sufficiency of the evidence to support Flores's liability. *See Roberts v. Jay Fuller Enters., LLC*, No. 12-20-00134-CV, 2021 WL 1047052, at *2 (Tex. App.—Tyler Mar. 18, 2021, no pet.) (mem. op.); *Texaco, Inc. v. Phan*, 137 S.W.3d 763, 770 (Tex. App.—Houston [1st Dist.] 2004, no pet.) "Once a default judgment is taken against a non[-]answering defendant on an unliquidated claim, all allegations of fact set forth in the petition are deemed admitted, except the amount of damages." *Dawson v. Briggs*, 107 S.W.3d 739, 748 (Tex. App.—Fort Worth 2003, no pet.).

A defendant may challenge the sufficiency of evidence supporting the amount of unliquidated damages on appeal from a no-answer default judgment. *Said v.*

Allstate Ins. Co., No. 01-12-00435-CV, 2013 WL 4676254, at *2 (Tex. App.—Houston [1st Dist.] Aug. 27, 2013, no pet.) (mem. op.); *Whitaker v. Rose*, 218 S.W.3d 216, 220 (Tex. App.—Houston [14th Dist.] 2007); *Dawson*, 107 S.W.3d at 748.

Here, the face of the record shows that a bench trial took place, but the record on appeal does not include a reporter's record of the trial. Generally, a reporter's record is not required for a no-answer default judgment. *Whitaker*, 218 S.W.3d at 220. This is different from a post-answer default judgment. *Id.* In a post-answer default judgment, where "the defendant has filed an answer with the trial court," "the defendant does not abandon that answer or confess any issues because the defendant fails to pursue the remainder of the trial." Where the defendant has not filed an answer, though, a judgment on the defendant's liability can be entered based solely on the pleadings. *Id.* The plaintiff moving for a no-answer default judgment need only present competent evidence of any unliquidated damages. *Dolgencorp. of Tex., Inc. v. Lerma*, 288 S.W.3d 922, 930 (Tex. 2009); *see* TEX. R. CIV. P. 243 ("If the cause of action is unliquidated or be not proved by an instrument in writing, the court shall hear evidence as to damages and shall render judgment therefor . . . ."). Either testimony or affidavits will satisfy the evidence requirement of Texas Rule of Civil Procedure 243. *Whitaker*, 218 S.W.3d at 220; *see* TEX. R. CIV. P. 243.

Evaluation of the sufficiency of the evidence supporting the trial court's award of unliquidated damages requires that we review the evidence submitted during trial. *See, e.g.*, *City of Keller v. Wilson*, 168 S.W.3d 802, 810–11, 822, 824 (Tex. 2005) (setting out legal- and factual-sufficiency standards of review). "[A]s a practical matter, in an uncontested hearing, evidence of unliquidated damages is often not fully developed," so if "an appellate court sustains a no evidence point after an uncontested hearing on unliquidated damages following a no-answer default judgment, the appropriate disposition is a remand for a new trial on the issue of unliquidated damages." *Holt Atherton Indus., Inc. v. Heine*, 835 S.W.2d 80, 86 (Tex. 1992); *see Dolgencorp*, 288 S.W.3d at 930 (reaffirming rule announced in *Holt Atherton*).

Here, there is no reporter's record, but the clerk's record includes an exhibit list, prepared by the court reporter, identifying the documents that were admitted into evidence during the bench trial, including a "Payment Ledger." The payment ledger is attached as Exhibit A to appellees' petition. It itemizes the payments made by appellees to Flores and the LLC companies, and it is consistent with the trial court's award of $88,016.76 in damages. But standing alone, the payment ledger does not explain how those payments relate to Flores's failure to comply with the parties' contract. Without testimony or affidavits providing an explanation as to how the documented payments constitute actual damages caused by the breach of

contract, it cannot satisfy Texas Rule of Civil Procedure 243 and thus no evidence supports the trial court's award of unliquidated damages to appellees. Accordingly, we hold that the trial court erred in entering the damages award.[12]

To the extent that Flores, in his second issue, asserts that there was no evidence to support the trial court's unliquidated damages award in favor of appelles, we sustain that portion of his second issue. We overrule the remaining portion of Flores's second issue and his third and fifth issues.

Notice of Judgment

In his fourth issue, Flores argues that the trial court erred in entering judgment in favor of appellees because he did not "receive[] proper notice" of the trial court's interlocutory default judgment or final judgment.

"An appellate brief is meant to acquaint the court with the issues in a case and to present argument that will enable the court to decide the case." *Schied v. Merritt*,

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[12] Because we are reversing the trial court's unliquidated damages award, we must also reverse the trial court's award of punitive damages and attorney's fees to appellees. *See TexPro v. Constr. Grp., LLC v. Davis*, No. 05-14-00050-CV, 2015 WL 4984856, at *5 (Tex. App.—Dallas Aug. 19, 2015, no pet.) (mem. op.) (in restricted appeal, after trial court entered no-answer default judgment, reversing unliquidated damages award and concluding appellate court must also reverse punitive damages award and attorney's fees award, and remand for new trial on unliquidated damages and reconsideration of attorney's fees); *Paradigm Oil, Inc. v. Retamco Operating, Inc.*, 242 S.W.3d 67, 75–76 (Tex. App.—San Antonio 2007, pet. denied) ("Because we hold there is insufficient evidence to support an award of actual damages, we must also reverse the awards of exemplary damages and attorney's fees."); *see also Mustang Pipeline Co. v. Driver Pipeline Co.*, 134 S.W.3d 195, 201 (Tex. 2004); *Twin City Fire Ins. Co. v. Davis*, 904 S.W.2d 663, 665–66 (Tex. 1995).

No. 01-15-00466-CV, 2016 WL 3751619, at *2 (Tex. App.—Houston [1st Dist.] July 12, 2016, no pet.) (mem. op.) (internal quotations omitted). The Texas Rules of Appellate Procedure control the required contents and organization of an appellant's brief. *Id.*; *see* TEX. R. APP. P. 38.1. The appellate briefing requirements are mandatory. *M&E Endeavors LLC v. Air Voice Wireless LLC*, Nos. 01-18-00852-CV, 01-19-00180-CV, 2020 WL 5047902, at *7 (Tex. App.—Houston [1st Dist.] Aug. 17, 2020, no pet.) (mem. op.).

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). "This is not done by merely uttering brief conclusory statements, unsupported by legal citations." *Tesoro Petroleum Corp. v. Nabors Drilling USA, Inc.*, 106 S.W.3d 118, 128 (Tex. App.—Houston [1st Dist.] 2002, pet. denied); *see also Barham v. Turner Constr. Co. of Tex.*, 803 S.W.2d 731, 740 (Tex. App.—Dallas 1990, writ denied) (appellant bears burden of discussing his assertions of error). The failure to provide substantive analysis of an issue or cite appropriate authority waives a complaint on appeal. *Marin Real Estate Partners, L.P. v. Vogt*, 373 S.W.3d 57, 75 (Tex. App.—San Antonio 2011, no pet.); *Huey v. Huey*, 200 S.W.3d 851, 854 (Tex. App.—Dallas 2006, no pet.); *Cervantes-Peterson v. Tex. Dep't of Family & Protective Servs.*, 221 S.W.3d 244, 255 (Tex. App.—Houston [1st Dist.] 2006, no pet.).

Flores devotes just three sentences in his appellant's brief to his discussion of his fourth issue. Significantly, he does not provide the Court with any appropriate argument, analysis, discussion, or authority to support his complaint, and he does not explain how the purported error related to a lack of "proper notice" provides a basis for reversal of the trial court's judgment.[13] *See* TEX. R. APP. P. 38.1(i); *Richardson v. Marsack*, No. 05-18-00087-CV, 2018 WL 4474762, at *1 (Tex. App.—Dallas Sept. 19, 2018, no pet.) (mem. op.) ("Our appellate rules have specific requirements for briefing," including requiring "appellants to state concisely their complaints, to provide succinct, clear, and accurate arguments for why their complaints have merit in law and fact, to cite legal authority that is applicable to their complaints, and to cite appropriate references in the record."); *Huey*, 200 S.W.3d at 854 ("We have no duty to brief appellant's issue for [him]. Failure to cite to applicable authority or provide substantive analysis waives an issue on appeal."). We hold that Flores has waived his fourth issue due to inadequate briefing.

[13] Flores appears to assert that notice of the trial court's interlocutory default judgment and notice of the trial court's final judgment were sent to him using an LLC defendant's address instead of the residential address where he "was served with citation."

Conclusion

We reverse the portion of the trial court's judgment awarding appellees unliquidated damages, punitive damages, and attorney's fees. We affirm the remaining portion of the trial court's judgment. We remand the case for further proceedings consistent with this opinion.

Julie Countiss
Justice

Panel consists of Justices Goodman, Landau, and Countiss.