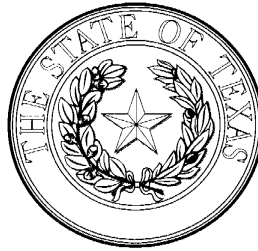


Opinion issued October 13, 2022.



In The
Court of Appeals
For The
First District of Texas

NO. 01-21-00110-CV

MARCUS EUGENE ANDERSON, Appellant
V.
AMERICAN CREDIT ACCEPTANCE, Appellee

On Appeal from the 281st District Court
Harris County, Texas
Trial Court Case No. 2019-56022

MEMORANDUM OPINION

Appellant Marcus Eugene Anderson appeals from the trial court's order granting summary judgment in favor of Appellee American Credit Acceptance. We affirm the trial court's judgment.

Background

On November 8, 2016, Appellant Marcus Eugene Anderson (“Appellant”) executed a Retail Installment Contract (“Contract”) for the purchase of a 2014 Dodge Ram 3500 (“truck”) from CarMax Auto Superstores, Inc. (“CarMax”). To secure his obligations under the Contract, Appellant gave CarMax a security interest in the truck. CarMax subsequently assigned the Contract to Appellee American Credit Acceptance (“Appellee”). On June 6, 2017, Appellant defaulted on the Contract by failing to make the required monthly payments due under the Contract. On August 14, 2019, Appellee sued Appellant for possession of the truck.

Appellee filed a traditional motion for summary judgment on its claims. It argued it was entitled to take possession of the truck pursuant to the Texas Uniform Commercial Code (“UCC”) because it had a valid and enforceable security interest in the truck superior to any interest held by Appellant. It further asserted its security interest entitled it to take possession of the truck and resell it to satisfy Appellant’s obligations under the Contract. According to Appellee, Appellant owed \$61,619.04 on the Contract as of August 1, 2019.

Appellee submitted a copy of the Contract and an affidavit from Loss Mitigation Specialist Patricia Lawler (“Lawler”) in support of its motion for summary judgment.¹ In her affidavit, Lawler stated that in her role as a Loss

¹ Appellant did not object to Appellee’s summary judgment evidence.

Mitigation Specialist for Appellee, she monitored and was familiar with Appellant's account, which reflected he defaulted on the Contract on June 6, 2017. Lawler, as Appellee's records custodian, authenticated the Contract attached to Appellee's motion for summary judgment.

In his response to Appellee's motion for summary judgment, Appellant argued he was "entitled to be discharged from personal liability due to the recognized 'standard suretyship defenses' afforded him." Appellant also argued that Appellee was not entitled to take possession of the truck because Appellee "has no possession of the original note/draft made by [Appellant], thus not entitled to any security Interest as a holder in due course absent evidence to validate [Appellee's] creditor claims." Appellant further contended that "Plaintiff may be an Assignee, but is not entitled to any right superior to any entitlements of the original Guarantor." Appellant attached to his response a "Letter of Rogatory," a UCC financing statement Appellant filed on March 20, 2018, an unsigned affidavit he prepared for Appellee to execute, a "Revocation of Consumer's Guarantee of Payment, nunc pro tunc, in Favor of Guarantee of Collection," and a November 5, 2020 "Notice of Adequate Assurance of Performance."

The trial court granted Appellee’s motion for summary judgment and awarded Appellee possession of the truck. This appeal followed.²

Briefing Waiver

Appellant filed his notice of appeal and appellate brief pro se. Although we liberally construe pro se briefs, we still require pro se litigants to comply with applicable laws and rules of procedure. *See Wheeler v. Green*, 157 S.W.3d 439, 444 (Tex. 2005) (stating pro se litigants are not exempt from rules of procedure and that “[h]aving two sets of rules—a strict set for attorneys and a lenient set for pro se parties—might encourage litigants to discard their valuable right to the advice and assistance of counsel”); *Sterner v. Marathon Oil Co.*, 767 S.W.2d 686, 690 (Tex. 1989) (stating appellate courts should construe pro se briefs liberally). The Texas Rules of Appellate Procedure require an appellant’s brief to contain, among other things, a clear and concise argument for the contentions made with appropriate citations to authorities and the record. *See* TEX. R. APP. P. 38.1(i). When an appellate issue is unsupported by argument or lacks citation to the record or legal

² Appellant’s brief is styled as “Appellant’s Bill for Final Judgment, Order, or Decree on Petition for Appellate Brief Supported by Writ of Mandamus.” To the extent Appellant is seeking mandamus relief, we deny the request. Appellant is not entitled to such relief because he has an adequate remedy on appeal. *See In re Orsak*, ___ S.W.3d. ___, No. 01-21-00481-CV, 2022 WL 3649365, at *3 (Tex. App.—Houston [1st Dist.] Aug. 25, 2022, no pet. h.) (stating relator is only entitled to mandamus relief if he establishes trial court abused its discretion and relator has no adequate remedy on appeal).

authority, nothing is presented for review. *See Fredonia State Bank v. Gen. Am. Life Ins. Co.*, 881 S.W.2d 279, 285 (Tex. 1994) (discussing “long-standing rule” that inadequate briefing waives issue on appeal); *Abdelnour v. Mid Nat’l Holdings, Inc.*, 190 S.W.3d 237, 241 (Tex. App.—Houston [1st Dist.] 2006, no pet.) (holding appellant waived issue because appellant’s brief did not contain any citations to relevant authorities or to appellate record for that issue).

We are not responsible for identifying possible trial court error, searching the record for facts favorable to a party’s position, or conducting legal research to support a party’s contentions. *Walker v. Eubanks*, ___ S.W.3d. ____, No. 01-21-00643-CV, 2022 WL 3722404, at *4 (Tex. App.—Houston [1st Dist.] Aug. 30, 2022, no pet. h.) (citing *Fredonia State Bank*, 881 S.W.2d at 283–84; *Canton-Carter v. Baylor Coll. of Medicine*, 271 S.W.3d 928, 931 (Tex. App.—Houston [14th Dist.] 2008, no pet.; *Bolling v. Farmers Branch Indep. Sch. Dist.*, 315 S.W.3d 893, 895 (Tex. App.—Dallas 2010, no pet.)). Were we to do so, we would be abandoning our role as judges and undertaking the role of advocate for that party. *Walker*, ___ S.W.3d. ____, 2022 WL 3722404, at *4 (citing *Valadez v. Avitia*, 238 S.W.3d 843, 845 (Tex. App.—El Paso 2007, no pet.)).

The final judgment from which Appellant appeals is an order granting Appellee’s motion for summary judgment. The order awards Appellee possession of the truck and grants Appellee all writs of process and orders necessary to execute

the judgment. In his brief, Appellant does not expressly argue that the trial court erred by granting summary judgment in favor of Appellee on its claim for possession of the truck nor does he provide a clear and concise argument as to why the trial court's judgment should be reversed.³ See *Walker*, 2022 WL 3722404, at *4 (holding appellant waived appellate issues relating to trial court's granting of summary judgment where his brief did not include any substantive argument, record references, relevant citations to legal authority, "identify any issue of material fact he contends the evidence raised or otherwise point out any error allegedly committed by the trial court in granting summary judgment to Appellees on his breach of contract claim"). Appellant also does not set forth the summary judgment standard, apply the standard to this case, or cite to any other relevant legal authority. See *Abdelnour*, 190 S.W.3d at 241 (holding appellant waived issue because appellant's brief did not contain any citations to relevant authorities or to appellate record for that issue); see also *Canton-Carter*, 271 S.W.3d at 931 ("Failure to cite legal authority or to provide substantive analysis of the legal issues presented results in waiver of the complaint."). Among other briefing deficiencies, Appellant does not identify which elements of its cause of action Appellee failed to prove conclusively or otherwise allege that he raised any genuine issues of material fact in response to

³ The only reference to a summary judgment proceeding in Appellant's brief is a statement included in the "Statements Regarding Oral Argument."

Appellee's motion precluding summary judgment. *See Walker*, 2022 WL 3722404, at *4.

Having failed to comply with Texas Rule of Appellate Procedure 38.1, we hold Appellant waived his issues on appeal and has presented nothing for our review. *See Walker*, 2022 WL 3722404, at *4; *Abdelnour*, 190 S.W.3d at 241; *see also See* TEX. R. APP. P. 38.1(i) (requiring appellant's brief to contain clear and concise argument for contentions made, with appropriate citations to authorities and record).

Motion for Summary Judgment

Even if Appellant had not waived his issues on appeal, he would still not prevail.

A. Standard of Review

We review a trial court's ruling on a motion for summary judgment de novo. *Travelers Ins. Co. v. Joachim*, 315 S.W.3d 860, 862 (Tex. 2010). When reviewing a ruling on a motion for summary judgment, we take as true all evidence favorable to the nonmovant and indulge every reasonable inference and resolve any doubts in favor of the nonmovant. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005) (citing *Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 215 (Tex. 2003)). When a plaintiff moves for summary judgment on its cause of action, it must conclusively prove all essential elements of its claim as a matter of law. *Leonard v. Knight*, 551 S.W.3d 905, 909 (Tex. App.—Houston [14th Dist.]

2018, no pet.). If the movant establishes its entitlement to judgment, the burden then shifts to the nonmovant to come forward with competent controverting evidence sufficient to raise a genuine issue of material fact. *Id.*

Article 9 of the Uniform Commercial Code provides that when a debtor defaults on an obligation, a secured party may take possession of the collateral, dispose of it, and apply the proceeds to help satisfy the obligation. TEX. BUS. & COM. CODE §§ 9.609(a)(1), 9.610(a), 9.615; *see also Foley v. Capital One Bank, N.A.*, 383 S.W.3d 644, 647 (Tex. App.—Houston [14th Dist.] 2012, no pet.). The secured party may do so “pursuant to judicial process.” *Id.* § 9.609(b)(1).

B. Analysis

While Appellant’s arguments on appeal are not clear, the gist of his arguments appears to be that Appellee breached its “fiduciary duties” to Appellant in several ways stemming from CarMax’s assignment of the Contract to Appellee and the alleged concealment of material facts when Appellant initially executed the Contract. But those claims, which can best be described as a counterclaim against Appellee, and possibly a third-party claim against CarMax—were never pleaded by Appellant.⁴ Appellant also appears to argue that he is entitled to an offset.

⁴ CarMax was not a party to the underlying suit. And the record reflects Appellant never filed an answer or other pleading in the trial court.

In support of its motion for summary judgment, Appellee provided an uncontested affidavit establishing conclusively that it had a security interest in the Contract and that Appellant defaulted on the Contract. Appellant did not dispute that CarMax assigned its rights in the Contract to Appellee, that Appellee was “in possession” of the Contract, or that Appellant defaulted on the Contract. *See Foley*, 383 S.W.3d at 647 (stating when debtor defaults, secured party may take possession of the collateral, dispose of it, and apply proceeds to help satisfy debtor’s obligation) (citing TEX. BUS. & COM. CODE §§ 9.609, 9.610, 9.615). Appellant also does not argue that he raised an issue of material fact or otherwise direct this Court to any evidence he brought forth raising an issue of material fact precluding summary judgment. *See Leonard*, 551 S.W.3d at 909 (requiring nonmovant to bring forth competent controverting evidence sufficient to raise a genuine issue of material fact).

Because Appellee conclusively proved all essential elements of its claim as a matter of law and Appellant failed to bring forth competent summary judgment evidence raising a question of material fact, we conclude the trial court did not err by granting Appellee’s motion for summary judgment. *See id.*

We overrule all of Appellant’s issues.

Conclusion

We affirm the trial court’s judgment.

Veronica Rivas-Molloy
Justice

Panel consists of Justices Kelly, Rivas-Molloy, and Guerra.