Affirmed and Memorandum Opinion filed October 21, 2010.

In The

Fourteenth Court of Appeals

NO. 14-09-00600-CV

MELVIN HOUSTON AND HOUSTON SYNTHESIZED INVESTMENTS, LLC, Appellants

V.

CHRISTINE BADEAUX LUDWICK, Appellee

On Appeal from the 334th District Court
Harris County, Texas
Trial Court Cause No. 2006-67308

MEMORANDUM OPINION

Melvin Houston ("Houston") and Houston Synthesized Investments, LLC ("HSI") appeal from the trial court's judgment in favor of Christine Ludwick on her claims for (1) breach of fiduciary duty against Houston; and (2) unjust enrichment against Houston and HSI. We affirm.

BACKGROUND

I. Overview

This appeal arises from a jury trial on claims in connection with Madyline Badeaux's March 30, 2001 conveyance of four condominium units to HSI, an entity owned by attorney Houston.

The parties do not dispute the contention that Houston represented Badeaux from early 2001 until April 2002, and that the conveyance occurred during this representation. However, the parties dispute whether the conveyance was made as payment for Houston's representation of Badeaux and whether it should be evaluated in light of an attorney's far-reaching fiduciary obligations to a client. The parties also dispute whether the difference between the purchase price and the fair market value of the condominiums rendered the transaction unfair and warranted money damages.

Houston challenges Ludwick's standing to bring this suit to recover property on behalf of Badeaux's estate, and he argues that the four-year statute of limitations bars her breach of fiduciary duty claim. Houston also challenges the admissibility of certain evidence offered by Ludwick and admitted by the trial court. Finally, Houston seeks remittitur.[1]

II. Factual and Procedural Background

Houston represented Badeaux in a probate matter from early 2001 until April 2002. On March 30, 2001, Badeaux conveyed Sussex Condominium Units 202, 802, 1105, and 1202 to HSI. Houston is HSI's sole owner. The deeds were not recorded until 2007.

[1] This appeal was brought on behalf of both Houston and HSI. The arguments asserted in the appellants' brief are made on behalf of both Houston and HSI. HSI does not make any arguments that differ from those made by Houston. Unless otherwise noted, our resolution of arguments made by Houston is equally applicable to HSI.

Badeaux died on September 12, 2004; she was survived by her son, Jerry Peacock, and her granddaughter, Ludwick. Badeaux adopted Ludwick as her daughter when Ludwick was a child, but they eventually became estranged. Ludwick did not learn of Badeaux's death until several years after the fact.

In her will, Badeaux listed Peacock and Ludwick as her children and devised her entire estate to Peacock. After Peacock died intestate in 2005, Ludwick was adjudicated to be his sole heir and administratrix of his estate.

Although Badeaux died in 2004, Harris County filed a delinquent property tax suit in 2006 against Badeaux as the record owner of Units 202 and 802. Ludwick, Houston, and HSI were located and added as defendants in the tax suit. Ludwick asserted a cross-claim on behalf of Badeaux's estate on May 9, 2008, alleging that Houston breached a fiduciary duty owed to Badeaux by obtaining the condominiums via HSI in 2001 without paying fair value. Ludwick also sued Houston and HSI for unjust enrichment. Harris County filed a motion to dismiss the tax suit against Houston, HSI, and Ludwick, and the trial court granted the motion.

Houston and HSI filed a motion to dismiss Ludwick's claims, arguing that Ludwick lacked standing to sue to recover for the condominium conveyance on behalf of Badeaux's estate. The trial court denied the motion.

Houston sought summary judgment on Ludwick's breach of fiduciary duty claim based on the four-year statute of limitations. Ludwick invoked the discovery rule in opposing the motion, arguing that (1) Houston concealed the March 2001 conveyance; and (2) the claim was asserted less than four years after Badeaux died, which was the earliest Ludwick should have discovered the breach. The trial court denied the motion, and Ludwick's claims were tried to a jury.

Houston testified at trial that he had no knowledge of the 2001 fair market value of the condominiums, and that the conveyance to HSI was not related to his representation of Badeaux. Houston was impeached at trial with deposition testimony in which he

stated that (1) the fair market value of the four units exceeded $174,000 in 2001; and (2) the conveyance was made as payment for his representation of Badeaux in the probate matter. Houston denied at trial that these statements were accurate. Houston did not ask the trial court to instruct the jury that the evidence was to be considered only for impeachment purposes, and not for the truth of the matter asserted.

Ad valorem tax assessments for 2001 also were admitted into evidence; Ludwick relied on them as evidence of the condominiums' fair market value in 2001. Additionally, the closing statement for the conveyance between Badeaux and HSI was admitted; it listed the sale prices for the condominiums as $35,000 for Unit 1105 and $14,000 for each of the three remaining units. Houston testified that he wrote a $12,467 check to Badeaux in payment for the condominiums, and that he assumed the mortgage payments, the homeowners' association fees, and any property taxes due to creditors on the condominiums when they were conveyed. Copies of several checks remitting payment to the homeowners' association were admitted into evidence.

Houston testified that the tenants in Unit 1105 assumed the mortgage payments for that condominium, and that the tenants' failure to make payments resulted in foreclosure. Houston also testified that Units 802 and 1202 were owned by Badeaux free of mortgages in 2001. The trial court admitted into evidence letters and court documents regarding a dispute between the homeowners' association and Houston about whether the homeowners' association fees had been paid. The trial court also admitted pleadings from the original delinquent property tax litigation pertaining to Units 202 and 802.

After a two-day trial, the jury returned a verdict. The jury responded affirmatively to Question 1, which asked whether "at the time in question . . . Madyline Badeaux was a client of Melvin Houston with respect to the matter in dispute." The jury also answered "yes" to Question 2, which asked whether Houston "fail[ed] to comply with his fiduciary duty to Madyline Badeaux with regard to the transactions involving the Sussex Condos." Relative to the unjust enrichment claim, the jury answered "yes" to Question 3, which

asked whether Houston and HSI "intended to avail themselves of a benefit that [they] knew belonged to Madyline Badeaux." The jury answered Question 4, which was predicated on a "yes" answer to Question 2 or Question 3, and awarded damages totaling $142,300 to "fairly and reasonably compensate Christine Badeaux Ludwick for her damages . . . that were proximately caused" by Houston and HSI. This total was based on individual awards of $28,900 for Unit 202; $33,000 for Unit 802; $33,100 for Unit 1202; and $47,300 for Unit 1105. No question was submitted to the jury on the discovery rule or any aspect of the statute of limitations.

Houston filed a motion for judgment notwithstanding the verdict, asking the trial court to disregard all jury findings because:

(1) Ludwick lacked standing to sue on behalf of the estate;

(2) the statute of limitations barred the breach of fiduciary duty claim;

(3) no evidence supported the jury's answer in Question 1 that Badeaux was a client of Houston with the respect to the conveyance, since the conveyance was separate from the probate matter;

(4) no evidence supported the jury's answer to Question 2 that Houston failed to comply with his fiduciary duty, or its answer to Question 3 that Houston and HSI were unjustly enriched, because no competent evidence of fair market value of the condominiums showed that the transaction was unfair;

(5) no competent evidence of the fair market value of the condominiums supported the jury's award of money damages in Question 4.

Houston filed a motion for new trial asserting factual insufficiency of the evidence; he also requested remittitur of the damage award, and argued that the trial court erred in admitting plaintiff's trial exhibits 2 and 10–21 into evidence at trial.

The trial court denied Houston's motion for judgment notwithstanding the verdict, and Houston's motion for new trial and remittitur was overruled by operation of law.

The trial court entered judgment on the jury's verdict, with the exception that it ordered rescission of the deeds conveying Units 202 and 802 rather than damages for those two units.[2] This appeal ensued.

ANALYSIS

I. Preliminary Issues

Houston complains that Ludwick lacks standing because she has no justiciable interest in property belonging to Badeaux's estate. Additionally, as a prerequisite to a suit by an heir on an estate's behalf, Houston claims that Ludwick failed to establish that the administration of Badeaux's estate was not pending or necessary. Houston also argues that the four-year statute of limitations bars Ludwick's breach of fiduciary duty claim. We overrule these issues.

A. Standing

Standing is a component of subject matter jurisdiction. *Jansen v. Fitzpatrick*, 14 S.W.3d 426, 431 (Tex. App.—Houston [14th Dist.] 2000, no pet.) (citing *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993)). Subject matter jurisdiction is reviewed *de novo*. *Tex. Dept. of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226–27 (Tex. 2004). Determining whether undisputed evidence establishes a trial court's jurisdiction is a question of law. *Id*. If a party challenges the existence of jurisdictional facts, we consider relevant evidence submitted by the parties when necessary to resolve the jurisdictional issues, as the trial court is required to do. *Id*.

[2] The judgment comported with the jury findings that Houston breached a fiduciary duty owed to Badeaux in connection with the conveyance of the four condominium units to HSI, and that Houston and HSI both were unjustly enriched. Houston and HSI are jointly and severally liable for the damage award in the final judgment. HSI does not challenge on appeal the propriety of joint and several liability for damages in connection with Houston's breach of fiduciary duty to his client Badeaux. The portion of the judgment awarding rescission is solely against HSI, the property owner listed in the deeds for Units 202 and 802. Houston and HSI make one statement in their brief regarding the rescission: "The trial court also abused its discretion in the Final Judgment by ordering a rescission of the deeds for Units 202 and 802." This statement, found in a footnote in Houston and HSI's brief, is insufficient to warrant further review of the propriety of rescission as a remedy for the breach of fiduciary duty established in answer to Question 2. *See* Tex. R. App. P. 38.1(i).

Houston argues that Ludwick lacks standing to sue in connection with the condominium conveyance because she is neither Badeaux's personal representative nor a beneficiary entitled to receive estate property under Badeaux's will. Generally, only personal representatives and heirs have standing to sue for recovery of property on behalf of an estate. *See, e.g.*, *Fort Motor Co. v. Cammack*, 999 S.W.2d 1, 4 (Tex. App.—Houston [14th Dist] 1998, pet. denied) (citing *Shepherd v. Ledford*, 962 S.W.2d 28, 31 (Tex. 1998)). Personal representatives and heirs have a justiciable interest in the estate property. *Id*. at 5.

If a beneficiary has an interest in estate property under a probated will, then the beneficiary has standing as an heir to sue for recovery of estate property. *See, e.g.*, *Jansen*, 14 S.W.3d at 431–32 (residuary beneficiaries under will who were presently entitled to take property had standing to sue to set aside deed executed by decedent); *Pike v. Crosby*, 472 S.W.2d 588, 590 (Tex. App.—Eastland 1971, no writ) (requiring plaintiffs to show that they were beneficiaries under a probated will to sue to cancel deeds executed by decedent). Successors in interest to such a beneficiary also have standing. *See Jansen*, 14 S.W.3d at 433.

Houston correctly asserts that Ludwick is not Badeaux's personal representative; additionally, in her will, Badeaux devised her entire estate to Peacock when she died in 2004. However, Ludwick was adjudicated to be Peacock's sole heir after Peacock died in 2005. Any recovery in the suit on behalf of Badeaux's estate would pass to Ludwick as Peacock's sole heir. Therefore, Ludwick has standing and a justiciable interest in a suit seeking recovery for property belonging to Badeaux's estate. *See id.* (residuary beneficiary's sons, who would take under unprobated will or intestate disposition of residuary beneficiary's estate, had sufficient property interest to establish standing to recover property of decedent's estate).[3]

[3] Badeaux's will states that if Peacock does not survive Badeaux, then her estate passes to Ludwick. We need not decide whether this provision alone would confer standing on Ludwick because

Houston also argues that Ludwick was required to show no administration of Badeaux's estate was pending or necessary before she had authority to sue. "It is the general rule that during the period allowed for administration, before heirs . . . may maintain a suit to recover property which they claim has descended to them, they must show that no administration is pending and none is necessary." *White v. White*, 142 Tex. 499, 179 S.W.2d 503, 506 (1994). The administration period in Texas closes four years after the testator's death. *See* Tex. Prob. Code Ann. § 74 (Vernon 2003). Once an administration period closes, this requirement no longer applies and heirs properly may bring suit on behalf of the estate without such a showing. *See County of Dallas v. Sempe*, 151 S.W.3d 291, 296 (Tex. App.—Dallas 2004, pet. dism'd w.o.j.) (requirement inapplicable to heirs bringing survival action after four-year period closed); *cf. Van v. Webb*, 147 Tex. 299, 215 S.W.2d 151, 154 (1948) ("'[I]f, owing to the lapse of time, the statute forbids the grant of administration upon [the] estate . . . [the heirs] are in such sense the representatives of their ancestor, that a pending action may be revived or an original suit brought against them.'") (quoting *McCampbell v. Henderson*, 50 Tex. 601, 611 (1879)).

Badeaux died on May 12, 2004. Ludwick first asserted her claim against Houston on May 9, 2008. By the time Houston filed his motion to dismiss on August 8, 2008, the administration period for Badeaux's estate had closed. Therefore, even if this requirement applies here, the trial court properly rejected Houston's contention because the administration period for Badeaux's estate had closed.

Peacock survived Badeaux at the time of her death in 2004, and Ludwick later was adjudicated to be Peacock's sole heir after his death in 2005.

We overrule Houston's challenge to Ludwick's standing and Houston's contention that Ludwick was required to establish that the administration of Badeaux's estate was not pending or necessary.[4]

B. Statute of Limitations

Houston challenges on appeal the trial court's denial of his motion for summary judgment, in which he argued that the four-year statute of limitations barred Ludwick's breach of fiduciary duty claim. When a trial court's denial of a motion for summary judgment is followed by a trial on the merits, review of the trial court's summary judgment denial is foreclosed. *See, e.g.*, *Ackermann v. Vordenbaum*, 403 S.W.2d 362, 365 (Tex. 1966); *Tricon Tool & Supply, Inc. v. Thumann*, 226 S.W.3d 494, 508–09 (Tex. App.—Houston [1st Dist.] 2006, pet. denied); *United Parcel Serv., Inc. v. Tasdemiroglu*, 25 S.W.3d 914, 916 (Tex. App.—Houston [14th Dist.] 2000, pet. denied). Therefore, we do not address Houston's argument that the trial court erred by denying his motion for summary judgment. We overrule Houston's issue regarding the statute of limitations.

II. Sufficiency of the Evidence

Houston's next issues on appeal relate to the legal and factual sufficiency of the evidence supporting the jury's answers. Houston argues that insufficient evidence supports an affirmative answer to Question 1, in which the jury was asked whether Badeaux "was a client of Melvin Houston with respect to the matter in dispute." Houston contends there is no evidence establishing that his representation of Badeaux was related to the "matter in dispute," *i.e.*, the conveyance. Houston also claims that the jury's answers to Questions 2 and 3 are unsupported because no competent evidence of fair market value was introduced to show that the sale price was unfair, or that Houston and HSI were unjustly enriched. Further, Houston claims that the lack of competent evidence

[4] Houston also argues that his statute of limitations argument may be applied to attack Ludwick's standing to sue. However, a statute of limitations challenge is not properly framed as a challenge to standing.

of fair market value at trial renders the jury's finding of damages in Question 4 insupportable.

When both the legal and factual sufficiency of the evidence are challenged, we first review legal sufficiency to determine whether there is any evidence of probative value to support the fact finders' decision. *Wiese v. Pro Am. Servs., Inc.*, No. 14-08-00989-CV, 2010 WL 2813313, at *2 (Tex. App.—Houston [14th Dist.] July 20, 2010, no pet.). We sustain legal insufficiency challenges when the evidence offered to prove a vital fact is no more than a mere scintilla. *Busch v. Hudson & Keyse, LLC*, 312 S.W.3d 294, 299 (Tex. App.—Houston [14th Dist.] 2010, no pet.) (citing *City of Keller v. Wilson*, 168 S.W.3d 802, 810 (Tex. 2005)). We must consider evidence in the light most favorable to the findings and indulge every reasonable inference that would support them. *Id*. The ultimate test for legal sufficiency focuses on whether the evidence would enable a reasonable and fair-minded fact finder to reach the judgment under review. *Id*. In our factual sufficiency review, we consider all the evidence and will set aside the finding only if the evidence supporting the finding is so weak or so against the overwhelming weight of the evidence that the finding is clearly wrong and unjust. *Manon v. Tejas Toyota, Inc.*, 162 S.W.3d 743, 752–53 (Tex. App.—Houston [14th Dist.] 2005, no pet.) (citing *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986)).

A. Relation Between the Conveyance and Houston's Representation of Badeaux

A fiduciary relationship exists between an attorney and a client as a matter of law. *Goffney v. Rabson*, 56 S.W.3d 186, 193 (Tex. App.—Houston [14th Dist.] 2001, pet. denied). The term fiduciary refers to integrity and fidelity. *Id*. Therefore, the attorney-client relationship is one of most abundant good faith, and it requires absolute candor, openness, honesty, and the absence of any concealment or deception. *Id*. Breach of fiduciary duty by an attorney most often involves an attorney failing to disclose conflicts of interest; failing to deliver funds belonging to the client; placing personal interests over the client's interests; using client confidences improperly; taking advantage of the client's

trust; engaging in self-dealing; or making misrepresentations. *Id*. A breach of fiduciary duty claim against an attorney focuses on whether the lawyer obtained an improper benefit from representing the client. *Murphy v. Gruber*, 241 S.W.3d 689, 693 (Tex. App.—Dallas 2007, pet. denied).

The parties agree that Houston represented Badeaux from early 2001 until April 2002. The parties also agree that Badeaux conveyed the four condominiums to HSI, which was owned solely by Houston, during the representation. Houston contends there is no evidence that the conveyance related to his representation of Badeaux. From this premise, he argues that the conveyance was not encompassed by his fiduciary duties as Badeaux's attorney.

Houston's contention fails even if we assume solely for the sake of argument that a fiduciary duty would not apply to a transaction between Badeaux and Houston occurring during the representation if that transaction were not related to the representation. The jury heard evidence that the conveyance was related to the representation because it was made in exchange for Houston's legal services rendered in the probate matter. Houston denied at trial that such an arrangement existed; however, he was impeached with deposition testimony in which he stated that Badeaux conveyed the condominiums as payment for his legal services. Houston's deposition testimony provided evidence that he considered the closing statement for the conveyance to embody his agreement with Badeaux. Houston did not ask the trial court to instruct the jury that the deposition testimony was to be considered for impeachment purposes only, and not for the truth of the matter asserted. Therefore, the jury was entitled to rely on this testimony in answering Question 1. *See Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 906 (Tex. 2000) (court of appeals properly upheld admissibility of evidence for any purpose where party failed to request limiting instruction at trial); *Gabriel v. Lovewell*, 164 S.W.3d 835, 845 (Tex. App.—Texarkana 2005, no pet.) (in absence of limiting instruction, impeachment testimony admissible for all purposes).

Viewed in the light most favorable to the jury's answer to Question 1, this testimony constitutes more than a scintilla of evidence establishing that the condominiums were conveyed as payment for Houston's legal services in the probate matter, and that Badeaux was Houston's client with respect to the "matter in dispute" involving the condominiums. This evidence is not so weak as to render the jury verdict unfair or unjust.

We overrule Houston's evidentiary sufficiency complaints as to the jury's answer to Question 1.

B. Fairness of the Transaction

Houston next challenges the legal and factual sufficiency of the evidence supporting the jury's finding in answer to Question 2 that he failed to comply with his fiduciary duty to Badeaux. In particular, Houston complains that the ad valorem tax assessment documents were not competent evidence of the condominiums' fair market value, and that these documents could not be used to show that the purchase price was unfair.

When self-dealing by the fiduciary is alleged as part of a breach of fiduciary duty claim, a presumption of unfairness automatically arises and the burden is placed on the fiduciary to prove that the questioned transaction was (1) made in good faith; (2) for a fair consideration; and (3) after full and complete disclosure of all material information to the principal. *Jackson Law Office, P.C. v. Chappell*, 37 S.W.3d 15, 22 (Tex. App.—Tyler 2000, pet. denied) (citing *Stephens County Museum, Inc. v. Swenson*, 517 S.W.2d 257, 261 (Tex. 1974), and *Int'l Bankers Life Ins. Co. v. Holloway*, 368 S.W.2d 567, 576 (Tex. 1963)). The instruction accompanying Question 2 properly placed this burden on Houston:

> Because a relationship of trust and confidence existed between [Houston and Badeaux] with regard to the transaction involving the Sussex Condos, [Houston] owed Madyline Badeaux a fiduciary duty. To prove that he complied with his duty, Melvin Houston must show:

a. The transaction in question was fair and equitable to Madyline Badeaux;

b. Melvin Houston made reasonable use of the confidence that Madyline Badeaux placed in him;

c. Melvin Houston acted in the utmost good faith and exercised the most scrupulous honesty toward Madyline Badeaux;

d. Melvin Houston placed the interest of Madyline Badeaux before his own, did not use the advantage of his position to gain any benefit to himself at the expense of Madyline Badeaux, and did not place himself in any position where his self-interest might conflict with his obligation as a fiduciary, and

e. Melvin Houston fully and fairly disclosed all important information to Madyline Badeaux concerning the transaction.

Because Houston bore the burden of rebutting the presumption that the conveyance was unfair, to succeed on a legal sufficiency challenge he must demonstrate that the evidence conclusively establishes the fairness of the challenged conveyance. *See Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 241 (Tex. 2001). To succeed on a factual sufficiency challenge, he must show that the jury's finding was against the great weight and preponderance of the evidence. *Id.*

Houston testified at trial that Badeaux did not pay Houston's $20,157.33 bill for the probate representation. In his deposition, Houston testified that the condominiums were conveyed in exchange for services he provided as part of the probate representation. Houston testified at trial that the condominium conveyance was fair and undertaken in good faith. Houston also testified that he did not advise Badeaux to list the condominiums for sale; advertise the condominiums for sale within Sussex; or seek a second mortgage on the condominiums if she needed money to pay her legal bill. Houston testified that Badeaux was unrepresented by any other attorney at the closing.

Houston also testified at trial that he had no knowledge of the condominiums' market value. He was impeached with deposition testimony in which he testified that in 2001, Unit 1105 was worth more than $75,000; Unit 202 was worth more than $33,000;

and Units 802 and 1202 have floor plans similar to Unit 202. Houston did not ask the trial court to instruct the jury that the evidence was to be considered for impeachment purposes only, and not for the truth of the matter asserted. Therefore, the jury could consider this evidence in answering Question 2. *See Horizon/CMS Healthcare Corp.*, 34 S.W.3d at 906; *Gabriel*, 164 S.W.3d at 845.

The closing statement indicates a purchase price of $77,000, less credits for payment of $64,532.88 to third parties for outstanding mortgage liens, homeowners' association fees, and taxes, resulting in a net payment of $12,467.12 to Badeaux. The jury heard evidence that the homeowners' association disputed whether the fees had been paid, and that one of the condominiums went into foreclosure following non-payment of the mortgage. Further, the jury heard evidence that the current litigation arose from Harris County's delinquent tax suit for non-payment of taxes for two of the condominiums dating back to 2001.

Based on this evidence, the jury was entitled to conclude that Houston failed to comply with his fiduciary duty because the fair market value of the four condominium units far exceeded the purchase price specified for the March 2001 conveyance. Houston's evidence does not conclusively establish that the conveyance was fair as a matter of law. Additionally, Houston's testimony does not show that the verdict was against the great weight or preponderance of the evidence.

We overrule Houston's sufficiency complaints as to the jury's answer to Question 2.[5]

[5] Question 4 was predicated on a "yes" answer to either Question 2 or Question 3. Because we affirm the jury finding on Question 2, we do not address whether the evidence was sufficient to support the unjust enrichment claim submitted in Question 3. *See Hatfield v. Solomon*, 316 S.W.3d 50, 59–60 (Tex. App.—Houston [14th Dist.] 2010, no pet.) (unnecessary to reach additional issues because judgment was supported by one of multiple causes of action leading to same damage award).

C. Damages

Houston argues that no evidence supports the jury's damage awards in Question 4. He contends that there is no evidence of fair market value to compare to the purchase price for purposes of establishing damages. He claims that tax assessments were the only evidence introduced to show the fair market value of the condominiums.

The tax assessment value placed upon real property is not evidence of its value for purposes other than taxation. *Houston Lighting & Power Co. v. Fisher*, 559 S.W.2d 682, 686–87 (Tex. App.—Houston [14th Dist.] 1977, writ ref'd n.r.e.) (valuation of property in condemnation case). Here, the assessments were not the only evidence of the condominiums' value introduced at trial. As discussed above, Houston testified in his deposition that the four condominiums were worth more than $174,000 in 2001. Viewed in the light most favorable to the jury's damage award, Houston's deposition testimony constitutes more than a scintilla of evidence regarding the fair market value of the condominiums. *See Porras v. Craig*, 675 S.W.2d 503, 504–05 (Tex. 1984) (testimony of an owner as to property's fair market value is competent evidence).[6] Because this evidence showed that the fair market value far exceeded the purchase price for the condominiums reflected in the closing statement, the record supports the jury's conclusion that the conveyance caused damage to Badeaux.

As to the amount of damages, the evidence showed that Badeaux's potential damages ranged from $96,589.52 to $174,000.[7] The jury awarded a total of $142,300 allocated among the four units. Because the jury's finding falls within the range of damage awards supported by the evidence, the award is an appropriate exercise of the

[6] The property deeds and closing statement are in HSI's name. Houston is HSI's sole owner. During trial, Houston repeatedly referred to the condominiums as his own. On this record, we treat Houston's testimony regarding the fair market value of the condominiums as the testimony of the condominiums' owner.

[7] If the jury believed that the full $77,000 was paid for the condominiums, it could have assessed damages of $96,589.52 as the difference between the $77,000 purchase price and the $174,000 fair market value. If the jury believed that no payment was rendered for the condominiums, it could have assessed up to $174,000 in damages.

jury's discretion. *See Waterways on Intercoastal Ltd. v. State*, 283 S.W.3d 36, 46 (Tex. App.—Houston [14th Dist.] 2009, no pet.).

We overrule Houston's issue regarding the sufficiency of the evidence supporting the jury's answers to Question 4.

III. Remittitur

Houston requested remittitur of the damage awards assessed by the jury, based on his assertion that the evidence conclusively demonstrated payment of (1) $12,467.12 by check to Badeaux; (2) $60,381.26 in mortgage debt; (3) $1,410.48 in homeowners' association fees; and (4) $3,151.62 in property taxes on the condominiums. The trial court denied his request and signed a final judgment ordering rescission of the deeds for Units 202 and 802, and payment of damages of $33,100 and $47,300 for Units 1202 and 1105, respectively.

The standard of review for an excessive damages complaint is based on the factual sufficiency of the evidence. *See Rose v. Doctors Hosp.*, 801 S.W.2d 841, 847–48 (Tex. 1990). As stated above, we consider all of the evidence and will set aside the finding only if the evidence supporting the finding is so weak or so against the overwhelming weight of the evidence that the finding is clearly wrong and unjust. *Dow Chem. Co.*, 46 S.W.3d at 242. Because the courts of appeals do not find facts, we must not pass upon the witnesses' credibility or substitute our judgment for that of the jury, even if the evidence would clearly support a different result. *See, e.g.*, *Pool v. Ford Motor Co.*, 715 S.W.2d 629, 634 (Tex. 1986).

The closing statement for the conveyance states that the purchase price was $14,000 for Unit 1202 and $35,000 for Unit 1105, and that HSI assumed the mortgages, taxes, and homeowners' association fees due to creditors on the condominiums.[8] Other than copies of several checks for homeowners' association fees, Houston's trial testimony

[8] Because the trial court disregarded the damages award for Units 202 and 802, and instead ordered rescission as to these units, we address remittitur only as it pertains to Units 1202 and 1105.

was the only evidence at trial that payment was actually made. Additionally, Houston testified that Unit 1202 was not subject to a mortgage when Badeaux conveyed it. He testified that Unit 1105 was foreclosed upon when the tenant, who had assumed the mortgage, failed to stay current with the payments. Several letters were introduced in which Houston corresponded with Sussex Condominiums regarding a dispute about whether the homeowners' association fees were paid after the conveyance. The closing statement does not state that any taxes were owed on Units 1202 or 1105. Considering all this evidence, we cannot say that the damage award was excessive or that a remittitur was warranted.

We overrule Houston's issue regarding the requested remittitur of the jury's damage award.

IV. Evidentiary Challenges

Houston complains that the trial court erred in admitting Ludwick's exhibits 2 and 10–21. He argues the trial court erred in admitting these exhibits because (1) the exhibits were not produced during discovery, (2) the exhibits are irrelevant, and (3) the prejudice from these exhibits outweighed their probative value under Texas Rule of Evidence 403.

A. Preservation

The record reveals that the admissibility of exhibits 2, 10–14, and 16 was argued at a hearing that began before voir dire and resumed after jury selection. Houston generally informed the trial court that he intended to object to exhibits 17 and 19, but he failed to object when those exhibits were introduced at trial. Houston stated that he had no objections to exhibit 15. It does not appear from the record that exhibits 18, 20, or 21 were admitted into evidence at trial.

To preserve error on the admission of evidence, a timely objection must appear on the record stating the specific ground of objection. *See* Tex. R. Evid. 103. Ludwick

argues that because Houston raised some of his objections in connection with his motion in limine, his evidentiary complaints were not preserved for appellate review.

A motion in limine is a pretrial device that permits a party to identify certain evidentiary rulings the trial court may be asked to make. *Greenberg Traurig of N.Y., P.C. v. Moody*, 161 S.W.3d 56, 90 (Tex. App.—Houston [14th Dist.] 2004, no pet.); *Weidner v. Sanchez*, 14 S.W.3d 353, 363 (Tex. App.—Houston [14th Dist.] 2000, no pet.). A motion in limine prevents the opposing party from asking prejudicial questions or introducing prejudicial evidence in front of the jury without first seeking the trial court's permission. *Hartford Acc. & Indem. Co. v. McCardell*, 369 S.W.2d 331, 335 (Tex. 1963), *rev'd on other grounds*, *Bay Area Healthcare Group, Ltd. v. McShane*, 239 S.W.3d 231 (Tex. 2007); *Weidner*, 14 S.W.3d at 363. Because a trial court's ruling on a motion in limine preserves nothing for review, a party still must object when the evidence is offered to preserve error. *Hartford*, 369 S.W.2d at 335.

Not all pretrial motions are motions in limine. *Greenberg Traurig*, 161 S.W.3d at 91. There is a distinction between a motion in limine and a pretrial ruling on admissibility. *Id.* The trial court has the authority to make a pretrial ruling on the admissibility of evidence. *Id.* (citing *Huckaby v. A.G. Perry Son, Inc.*, 20 S.W.3d 194, 203 (Tex. App.—Texarkana 2000, pet. denied)). Even when a motion in limine has been overruled, a judgment will not be reversed based on an evidentiary complaint unless the evidence was in fact offered for admission at trial; if it was in fact offered for admission at trial, then an objection made at that time will preserve the right to complain on appeal. *Hartford*, 369 S.W.3d at 335; Tex. R. Evid. 103 ("When the court hears objections to offered evidence outside the presence of the jury and rules that such evidence be admitted, such objections shall be deemed to apply to such evidence when it is admitted before the jury without the necessity of repeating those objections."); *see also Greenberg Traurig*, 161 S.W.3d at 91–93.

The issues raised in connection with Houston's motion in limine were heard on the record and reargued when Ludwick actually offered exhibits 1–24 for admission into evidence. This occurred after jury selection but before opening statements. Ludwick offered the exhibits, and the trial judge asked for objections. At that point the hearing became a hearing on the admissibility of the exhibits, and Houston's objections to the exhibits were preserved. The trial court made a definitive ruling at that time to admit exhibits 2, 10–14, and 16 into evidence for the jury's consideration. Therefore, we reject the contention that Houston's complaints regarding exhibits 2, 10–14, and 16 are unreviewable because they were raised only in a motion in limine.

Because Houston failed to make specific objections to exhibits 17 and 19, and because he informed the trial court that he had no objections to exhibit 15, the admissibility of those exhibits is not reviewable on appeal. We do not address the admissibility of exhibits 18, 20, and 21, which were not admitted into evidence at trial.

B. Exhibits 2, 10–14, and 16

Houston claims that the trial court erred in admitting the challenged exhibits because (1) Ludwick did not produce the documents during discovery, (2) the documents are irrelevant, and (3) the prejudice from the documents outweighs their probative value. Exhibit 2 shows the 2001 Harris County tax assessments for the condominiums in question. Exhibits 10–14 and 16 are correspondence between Houston and Sussex Condominiums regarding the homeowners' association fee dispute. All of these letters are dated after Badeaux's death; in them, Houston purports to speak on Badeaux's behalf to challenge Sussex's accounting of the fee payments.

The first ground provides no basis for reversal. Discovery sanctions, such as the exclusion of evidence not timely produced during discovery, are reviewed for abuse of discretion. *See* Tex. R. Civ. P. 193.6; *Duerr v. Brown*, 262 S.W.3d 63, 69, 76 (Tex. App.—Houston [14th Dist.] 2008, no pet.). The trial court may prohibit a party who fails to make, amend, or supplement a discovery response in a timely manner from introducing

new evidence if the failure unfairly surprises or prejudices the other party. *See* Tex. R. Civ. P. 193.6(a)(2).

When Houston complained that Ludwick did not produce these exhibits during discovery, Ludwick informed the trial court that the introduction of the documents should not surprise Houston because (1) the tax assessment information was produced during discovery, albeit in different format, and (2) Houston received copies of his own correspondence with Sussex Condominiums months before trial. The trial court acted within its discretion to decide that under these circumstances, the introduction of the evidence did not unfairly surprise Houston.

The second and third grounds also provide no basis for reversal. Houston claims that the exhibits are irrelevant. Evidentiary rulings are committed to the trial court's sound discretion. *Owens-Corning Fiberglas Corp. v. Malone*, 972 S.W.2d 35, 43 (Tex. 1998); *Halim v. Ramchandani*, 203 S.W.3d 482, 488 (Tex. App.—Houston [14th Dist.] 2006, no pet.) ("We must uphold the trial court's evidentiary ruling if there is any legitimate basis for it."). At the pretrial hearing, Houston's only objection to the relevancy of exhibit 2 was based on his initial misunderstanding as to the date on the tax assessments; he thought they related to 2008 instead of 2001. Because no other relevancy argument was raised, we hold that the trial court acted within its discretion to admit exhibit 2. Houston also challenges the relevancy of the correspondence regarding the disputed payment of homeowners' association fees. Because these documents are probative of whether the fees referenced in the closing statement were paid, the trial court acted within its discretion in concluding that exhibits 10–14 and 16 are relevant.

Houston also argues that the trial court abused its discretion in deciding that the documents' prejudicial impact does not outweigh their probative value. *See* Tex. R. Evid. 403. Specific objections to evidence are required to enable the trial court to understand the precise question of law raised by the objecting party and to make an intelligent ruling. *See* Tex. R. Evid. 103(a)(1); *Seymour v. Gillespie*, 608 S.W.2d 897,

898 (Tex. 1980). Houston's challenge to the prejudicial impact of exhibit 2 related only to his complaint that it was not produced during discovery, which we already have addressed. When Houston objected to the admission of exhibits 10–14 and 16, he stated: "I object on the . . . grounds [that the documents are] prejudicial under 4.03 [sic]. . . . [T]hese documents are unfairly prejudicial under 4.03 [sic] . . . ." Houston did not explain on the record why these documents were so prejudicial as to outweigh their probative value on the question of damages. Therefore, Houston's general objection was insufficient, and the trial court acted within its discretion in overruling his objection.

CONCLUSION

Having overruled all of Houston's issues on appeal, we affirm the trial court's judgment of March 30, 2009.

/s/ William J. Boyce
Justice

Panel consists of Justices Seymore, Boyce, and Christopher.