

Affirmed and Memorandum Opinion filed August 16, 2011.



In The

Fourteenth Court of Appeals

NO. 14-10-00611-CV

LARRY BRUCE, Appellant

V.

FREEMAN DECORATING SERVICES, INC. DBA FREEMAN, Appellee

**On Appeal from the County Civil Court at Law No. 4
Harris County, Texas
Trial Court Cause No. 916,234**

M E M O R A N D U M O P I N I O N

Appellant, Larry Bruce, appeals the portion of a judgment imposing personal liability on him for a debt owed to appellee, Freeman Decorating Services, Inc. DBA Freeman, by a limited liability company of which Bruce was an officer or director. We affirm.

I. BACKGROUND

Freeman is a company that provides various services to participants in trade shows. Freeman filed a suit on a sworn account against Aim Data, LLC and Bruce, seeking to recover the past due amount of \$14,534.66 for services provided to Aim Data,

LLC for a trade show in February 2007. Freeman alleged Bruce was statutorily liable for the debt because he was an officer and/or director of Aim Data, LLC and its charter had been forfeited for failure to pay franchise taxes. The trial court rendered an interlocutory default judgment against Aim Data, LLC. The court then conducted a bench trial on the claim against Bruce. On April 23, 2010, the court rendered judgment awarding Freeman \$14,534.66 in damages, \$4,500 in attorneys' fees, and pre- and post-judgment interest against Aim Data, LLC and Bruce, jointly and severally. Bruce filed a motion for new trial, which the court overruled by written order. Only Bruce appeals the judgment.

II. ANALYSIS

In his first issue, Bruce contends he did not personally incur a debt to Freeman. However, this fact seems undisputed, and Freeman did not allege Bruce was liable because he personally incurred the debt. Accordingly, resolution of Bruce's first issue is not dispositive of the appeal.

Rather, Freeman sought to impose liability on Bruce for the debt of Aim Data, LLC pursuant to Texas Tax Code section 171.255. Chapter 171 of the Texas Tax Code governs franchise taxes for business organizations. More specifically, Subchapter F pertains to forfeiture of corporate and business privileges. Subchapter F includes section 171.255, entitled "Liability of Director and Officers," which provides in pertinent part,

(a) If the corporate privileges of a corporation are forfeited for the failure to file a report or pay a tax or penalty, 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. . . .

Tex. Tax Code Ann. § 171.255(a) (West 2008). Freeman presented evidence that Aim Data, LLC's privileges had been forfeited and not revived as of February 10, 2006 and Freeman provided the services at issue to Aim Data, LLC in February 2007.

In his second stated issue, Freeman contends that section 171.255 does not apply to a limited liability company. However, in the body of his argument, Bruce also briefly suggests he is not liable under section 171.255 because there is no evidence he was an

officer or director of Aim Data, LLC, a statutory exception to liability applied even if he was an officer or director, and there is no evidence that Aim Data, LLC incurred a debt to Freeman.

A. Applicability of Section 171.255

Bruce argues that section 171.255 imposes liability on directors and officers of corporations only—not limited liability companies. *See id.* As Bruce suggests, limited liability companies are not expressly mentioned in section 171.255. However, a former version of section 171.001, in effect when Aim Data, LLC forfeited its charter and incurred the debt at issue, provided that a franchise tax is imposed on each “corporation” and “limited liability company” doing business in Texas and defined “corporation” for purposes of Chapter 171 to include “a limited liability company, as defined under the Texas Limited Liability Company Act.” Act of May 25, 1991, 72nd Leg., R.S., ch. 901, § 53, 1991 Tex. Gen. Laws 3161, 3218 (amended 2006) (current version at Tex. Tax. Code Ann. § 171.001 (West 2008)). Accordingly, under the former version of Chapter 171, section 171.255 applied to a limited liability company.

In 2006, the Legislature revised some provisions of Chapter 171, including section 171.001, which now provides that a tax is imposed on a “taxable entity.” Tex. Tax Code Ann. § 171.001(a). The Legislature also codified various definitions into sections 171.0001 and 171.0002. *See id.* §§ 171.0001, .0002. Notably, the Legislature deleted a definition for “corporation,” *see id.* § 171.0001, but added a definition for “taxable entity,” which includes “a limited liability company.” *See id.* § 171.0002. Additionally, the Legislature enacted section 171.2515, expressly rendering the provisions of Subchapter F, including section 171.255, applicable to forfeiture of the right of a “taxable entity” to transact business in the state:

- (a) The comptroller may, for the same reasons and using the same procedures the comptroller uses in relation to the forfeiture of the corporate privileges of a corporation, forfeit the right of a taxable entity to transact business in this state.

(b) The provisions of this subchapter, including Section 171.255, that apply to the forfeiture of corporate privileges apply to the forfeiture of a taxable entity's right to transact business in this state.

Id. § 171.2515. Therefore, under the current version of Chapter 171, section 171.255 remains applicable to a limited liability company, albeit via different provisions than the former version of Chapter 171.

The current version became effective January 1, 2008—after Aim Data, LLC's privileges were forfeited and the debt to Freeman incurred but before Freeman filed suit. Except for a few exceptions, the Legislature provided that the revisions to Chapter 171 “take[] effect January 1, 2008, and appl[y] to reports originally due on or after that date.” Act of May 2, 2006, 79th Leg., 3d C.S., ch. 1, § 26, 2006 Tex. Gen. Laws 1, 40. The applicability of this effective date to imposition of liability on an officer or director when a taxable entity's privileges have been forfeited is not exactly clear because failure to file a report required under Chapter 171 is only one reason privileges may be forfeited; failure to pay taxes is another reason. *See* Tex. Tax. Code Ann. §§ 171.251, .255. Nevertheless, we need not decide any issues relative to the effective date of the current Chapter 171 because the result is the same even if it applies in this case. As explained above, under both the former and current versions of Chapter 171, Bruce is personally liable pursuant to section 171.255 for Aim Data, LLC's debt to Freeman if he was an officer or director at the time the debt was incurred. *See PACCAR Fin. Corp. v. Potter*, 239 S.W.3d 879, 883 (Tex. App.—Dallas 2007, no pet.) (recognizing that liability under section 171.255 attaches only to those persons who were directors or officers of corporation or limited liability company when debt was created or incurred).

B. Officer or Director Status

In his stated issue, Bruce asserts only that section 171.255 is inapplicable to a limited liability company. However, in the body of his argument, Bruce includes a suggestion, limited to one sentence, that there is no evidence he was an officer or director of Aim Data, LLC: “Even so, Bruce denied he was a director of Aim Data, LLC in 2006 . . . and there was no evidence as to whether he was an officer.”

Bruce apparently challenges legal sufficiency of the evidence to support a finding that he was an officer or director. When, as here, findings of fact or conclusions of law are not filed or properly requested after a bench trial, it is implied that the trial court made all necessary findings to support its judgment. *Mays v. Pierce*, 203 S.W.3d 564, 571 (Tex. App.—Houston [14th Dist.] 2006, pet. denied) (citing *Roberson v. Robinson*, 768 S.W.2d 280, 281 (Tex. 1989)). However, when a reporter’s record is filed, these implied findings are not conclusive and may be challenged for legal and factual sufficiency. *Reservoir Systems, Inc. v. TGS-NOPEC Geophysical Co., L.P.*, 335 S.W.3d 297, 303 (Tex. App.—Houston [14th Dist.] 2010, pet. denied) (citing *Roberson*, 768 S.W.2d at 281).

We review a trial court’s findings for sufficiency of the evidence under the same standards applicable to reviewing evidence supporting a jury finding. *Id.* at 302 (citing *Catalina v. Blasdel*, 881 S.W.2d 295, 297 (Tex. 1994); *CA Partners v. Spears*, 274 S.W.3d 51, 69 (Tex. App.—Houston [14th Dist.] 2008, pet. denied)). When examining a legal-sufficiency challenge, we review the evidence in the light most favorable to the challenged finding and indulge every reasonable inference that would support it. *City of Keller v. Wilson*, 168 S.W.3d 802, 822 (Tex. 2005). We credit favorable evidence if a reasonable fact finder could and disregard contrary evidence unless a reasonable fact finder could not. *Id.* at 827. The fact finder is sole judge of the credibility of witnesses and the weight to be given their testimony. *Id.* The evidence is legally sufficient if it would enable reasonable and fair-minded people to reach the verdict under review. *Id.*

To prove Bruce’s status as a director or officer of Aim Data, LLC at the time it incurred the debt, Freeman presented, without objection, “Texas Franchise Tax Public Information Report[s]” prepared for Aim Data, LLC for 2003, 2004, and 2006. On the 2003 and 2004 reports, Bruce is listed as an officer and director. On the 2006 report, Bruce is listed as the only director. Moreover, Bruce is shown as the person signing the 2006 report and certifying the information was true and correct to the best of his knowledge.

In the above-referenced portion of his trial testimony, Bruce denied he was a director in 2006 and claimed he did not sign the 2006 report. However, as sole judge of witness credibility and the weight to assign evidence, the trial court was free to disbelieve Bruce's testimony, consider that the signature on the report matched his signature on other documents which he admittedly signed, and conclude the report accurately reflected his status as a director.

The form for the 2006 report provided no deadline for filing but merely stated that the information "is updated annually." This particular report was dated June 8, 2006. Bruce presented no controverting evidence showing the report was amended within the year after June 8, 2006 to remove his name as a director. Notably, a company is required to include the expiration date of the term for each officer or director listed on the form, but there is no expiration date shown for Bruce's term as director. Accordingly, the trial court could have reasonably inferred that Bruce remained a director in February 2007—only eight months after the report was filed. Accordingly, the evidence was legally sufficient to support the court's implied finding that Bruce was a director of Aim Data, LLC when it incurred the debt to Freeman.

C. Exception to Section 171.255

Bruce's suggestion that an exception to section 171.255 applied in this case is also limited to one sentence in his brief: "Regardless of whether someone could possibly construe Section 171.255 of the Tax Code to be applicable to a limited liability company, the exception of Section 171.255(c) applies to Bruce."

There are two exceptions to personal liability under section 171.255:

(c) A director or officer is not liable for a debt of the corporation if the director or officer shows that the debt was created or incurred:

- (1) over the director's objection; or
- (2) without the director's knowledge and that the exercise of reasonable diligence to become acquainted with the affairs of the corporation would not have revealed the intention to create the debt.

Tex. Tax Code Ann. § 171.255(c). The officer or director bears the burden to show the debt was incurred over his objection or without his knowledge. *In re Trammell*, 246 S.W.3d 815, 822 (Tex. App.—Dallas 2008, no pet.); *Priddy v. Rawson*, 282 S.W.3d 588, 595 n.11 (Tex. App.—Houston [14th Dist.] 2009, pet. denied).

Despite bearing this burden of proof, Bruce did not plead that an exception applied. Assuming without deciding the issue was tried by consent, we construe Bruce's assertion as an argument that the trial court erroneously made an implied finding rejecting application of an exception because he conclusively established an exception. *See Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 241 (Tex. 2001) (stating that party attacking legal sufficiency relative to adverse finding on which he had burden of proof must demonstrate evidence conclusively established all vital facts in support of the issue).

However, Bruce does not advance any argument or cite any portion of the record supporting his general assertion that an exception applied, much less indicate which exception was purportedly applicable. Although we have liberally construed his brief to address arguments presented in the body but not in a stated issue, he nonetheless is required to present substantive analysis with appropriate citations to authorities and the record. *See Tex. R. App. P. 38.1(h)* (providing appellant's brief must contain clear and concise argument for contentions made, with appropriate citations to authorities and record); *Sunnyside Feedyard, L.C. v. Metropolitan Life Ins. Co.*, 106 S.W.3d 169, 173 (Tex. App.—Amarillo 2003, no pet.) (recognizing that failure to cite authority or advance substantive analysis waives issue on appeal). Accordingly, Bruce has waived any appellate contention that he met his burden to prove an exception applied to imposition of liability under section 171.255.

D. Debt of Aim Data, LLC

Finally, Bruce also briefly asserts that Aim Data, LLC owed no debt to Freeman. Because Aim Data, LLC does not challenge the judgment, Bruce apparently posits that Freeman failed to prove Aim Data, LLC incurred a debt in order to argue that he therefore is not liable to Freeman pursuant to section 171.255. His sole supporting

argument is that Mary Oswald, Freeman's representative at trial, "had no knowledge of the debt or its creation," was not present at the trade show for which the services were provided, and became involved only when the matter was "a collection issue."

Freeman's 2007 invoice to Aim Data, LLC was admitted at trial without objection. The invoice reflects that \$15,534.66 in services were provided to Aim Data, LLC for the February 2007 trade show and itemizes these services in detail. The invoice also reflects that Mastercard payments provided in advance and at the show were declined, but \$1,000 was paid in April 2007, resulting in a balance of \$14,534.66. At trial, Oswald confirmed that this invoice represented services provided for the 2007 trade show and two payments of \$500 each were made in April 2007. Oswald did testify she was not personally involved in the delivery of services to Aim Data, LLC or present at the trade show. Nonetheless, we disagree with Bruce's proposition, unsupported by any authority, that Oswald must have been present at the trade show in order to prove as Freeman's representative that its records showed an outstanding balance for services provided relative to the show.

In sum, having rejected all Bruce's reasons for contending the trial court erred by imposing personal liability on him for the debt of Aim Data, LLC, we overrule his second issue.

We affirm the trial court's judgment.

/s/ Charles W. Seymore
Justice

Panel consists of Justices Anderson, Seymore, and McCally.