Affirmed and Memorandum Opinion filed February 2, 2016.

In The

Fourteenth Court of Appeals

NO. 14-14-00785-CV

RICHARD ALAN HAASE, Appellant

V.

HYCHEM, INC., Appellee

On Appeal from the 240th District Court
Fort Bend County, Texas
Trial Court Cause No. 09-DCV-175011

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

Ten years ago, Richard Alan Haase filed a federal patent-infringement lawsuit. In that suit, Haase was sanctioned for a discovery violation he admittedly committed, his patent was held to be invalid, and the costs of two trials and multiple appeals were taxed against him. Even before that litigation concluded, Haase began casting increasingly large nets in an effort to hold others liable for the amounts that the federal courts have required him to pay, as well as for the loss of

the patent, the damages he failed to recover, and the harm he claims to have sustained from the federal trial court's allegedly defamatory sanctions opinion.

The appeal now before us is all that remains of a case in which Haase sued the law firm that represented him in federal court, the defendants from the federal suit, the law firms that represented those defendants, and a company that did not participate in the federal suit, but which distributes the federal-court defendants' products. In this appeal, Haase challenges the summary judgment in favor of the distributor on Haase's claims of fraud, civil conspiracy, defamation, and "extortion and exploitation of the judicial process." We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

During the course of the patent litigation, the federal district and appellate courts issued four sets of rulings that are relevant to this case.[1] As we did in the first appeal from this state-court lawsuit, we will refer to those federal decisions as the Sanctions Ruling, the Sanctions Appeal, the Patent-Infringement Ruling, and the Patent-Infringement Appeal. *See Haase v. Pearl River Polymers, Inc.*, No. 14-11-00024-CV, 2012 WL 4166826, *1 (Tex. App.—Houston [14th Dist.] Aug. 9, 2012, pet. denied) (mem. op.) ("*Haase I*"), *cert. denied*, 134 S. Ct. 240 (2013).

Haase patented a formula for purifying water (the '690 patent).[2] He licensed its use exclusively to ClearValue, Inc., of which he was a major shareholder, and ClearValue contracted its water-purification services to municipalities. In 2002, the company from which Haase or ClearValue purchased the chemicals used in the formula sued for non-payment. Haase and ClearValue then filed a federal suit

[1] We refer to each court's judgment, order, and opinion on the same issue as a single ruling.

[2] As discussed *infra*, the patent, U.S. Patent No. 6,120,690, has since been declared invalid.

against the supplier and its related companies, which we refer to collectively as "Pearl River,"[3] for patent-infringement and misappropriation of trade secrets. *See ClearValue, Inc. v. Pearl River Polymers, Inc.*, 242 F.R.D. 362, 366 (E.D. Tex. 2007) ("*ClearValue I*"), *aff'd in part, rev'd in part and remanded*, 560 F.3d 1291 (Fed. Cir. 2009) ("*ClearValue II*"). Because Pearl River would no longer do business with Haase or ClearValue, ClearValue contracted with Moon Chemical Company ("Moon") for Moon to manufacture the '690 formula.[4] Moon purchased the chemicals from Hychem, Inc., a distributor of Pearl River's products, and the appellee in this case.

A. The Sanctions Ruling

In the federal patent-infringement case, Pearl River sent Haase or ClearValue discovery requests seeking the results of any testing performed on Pearl River's products. Haase asked his testifying patent-infringement expert to arrange for testing of a sample that was said to contain a Pearl River product that Moon had purchased from Hychem. The test revealed that the sample had a viscosity far below that of Haase's '690 formula. Although Haase, his attorney, and the expert witness communicated about the test and its results, they did not reveal the information to Pearl River—even though Haase was bound by the federal district court's discovery order to do so.

The existence of the test report was revealed at trial. Haase initially stated that he had seen some test results, but was not involved in the testing, and did not know when the tests were conducted. He also expressed his belief that the test results were privileged. On the second day of trial, Haase's expert revealed that he

[3] The defendant companies were Pearl River Polymers, Inc., Polychemie, Inc., SNF, Inc., Polydyne, Inc., and SNF Holding Company.

[4] Moon also is identified in the record as Moon Chemical Products, Inc.

had seen the test results. This eliminated the claim of privilege, but Haase testified that he had not shared the test results with his attorneys. The trial court ordered Haase to produce the test report to opposing counsel immediately, adding that the court would consider any motion for sanctions the next day.

Pearl River moved for sanctions against Haase, Haase's attorney, and ClearValue. During the day-long sanctions hearing, the trial court considered evidence contradicting Haase's representations to the court—evidence that included email exchanges between Haase, his attorney, and the expert concerning the test results. The trial court informed the parties that it was striking Haase's pleadings and entering judgment for Pearl River, and instructed Pearl River to produce evidence of its attorneys' fees. Ultimately, the trial court issued the Sanctions Ruling against Haase, ClearValue, and their patent attorney for $2,717,098.34. *See ClearValue I*.

B. The Sanctions Appeal

Haase, ClearValue and their attorney appealed the Sanctions Ruling to the U.S. Court of Appeals for the Federal Circuit. In the Sanctions Appeal, the appellate court affirmed the ruling in part and reversed in part. *See ClearValue II*. The reviewing court agreed that the record supported the conclusion that Haase's unjustified failure to disclose the results of the test was performed willfully and in bad faith; however, that court also held that under governing precedent, Haase's conduct did not warrant death-penalty sanctions. The appellate court therefore reversed the order striking Haase's pleadings, reduced the monetary sanctions to $121,107.38, and remanded the case.

C. The Patent-Infringement Ruling

On remand, Haase moved to sanction Pearl River for alleged misrepresentations made during the sanctions hearing, but the federal district court denied the motion. Haase also continued to challenge the remaining sanctions against him, but without success. *See ClearValue, Inc. v. Pearl River Polymers, Inc.*, 735 F. Supp. 2d 560, 585 (E.D. Tex. 2010) ("*ClearValue III*") ("On remand, rather than put its sanctionable conduct behind it, ClearValue has persisted in re-raising the issue.").[5]

The case again proceeded to trial, and a jury found in Haase's favor on his claims against Pearl River for trade-secret misappropriation and indirect patent infringement. The trial court granted Pearl River's judgment as a matter of law on the claim of trade-secret misappropriation, and entered judgment only on the indirect patent-infringement claim, awarding damages collectively to Haase and ClearValue in the amount of $2,172,617.00, together with prejudgment and postjudgment interest. *See id.* at 571. The trial court then reduced the damages by $121,107.38, representing the previously affirmed sanctions against Haase. *Id*. at 585.

D. The Patent-Infringement Appeal

Both sides appealed the judgment, and the federal appellate court ruled in Pearl River's favor. *See generally ClearValue, Inc. v. Pearl River Polymers, Inc.*, 668 F.3d 1340 (Fed. Cir. 2012) ("*ClearValue IV*"), *cert. denied*, 133 S. Ct. 615 (2012). Specifically, the reviewing court concluded that Pearl River had not misappropriated a trade secret and that Haase's patent was invalid. *Id.* at 1342.

[5] The court defined "ClearValue" to include Haase.

As a result of this decision, Pearl River was the prevailing party, and the federal district court accordingly assessed costs against Haase and ClearValue. In his appeal from that ruling, Haase again challenged the monetary sanctions against him for withholding evidence, and his arguments again were rejected. *See ClearValue, Inc. v. Pearl River Polymers, Inc.*, 546 F. App'x 963 (Fed. Cir. 2013) (per curiam) ("*ClearValue V*"), *cert. denied*, 135 S. Ct. 708 (2014).

E. This Litigation

Six months after the federal appellate court partially affirmed the sanctions imposed against Haase and ClearValue, Haase filed suit in state court against the same Pearl River companies, the two law firms that represented Pearl River in the patent-infringement suit, and Hychem.[6] Haase asserted causes of action for, among other things, fraud, conspiracy, slander, and "extortion and exploitation of the judicial process." Nearly all of the facts that he alleged in support of these claims had been asserted in the federal district court in connection with various sanctions motions. The defendants asserted diversity and federal-question jurisdiction and removed the case to federal court, where it was transferred to the same court in which the patent-infringement suit was then pending. The federal court remanded the case back to the state district court.

After Pearl River and its counsel moved successfully for summary judgment, Haase's claims against them were severed from his claims against Hychem. We affirmed that summary judgment. *See Haase I.*

We have now reached Haase's claims against Hychem for fraud, conspiracy, slander, and "extortion and exploitation of the judicial process." Hychem filed

[6] Haase also sued the law firm that represented him in the patent-infringement suit, but later nonsuited those claims and refiled them in a different county. *See Haase v. Abraham, Watkins, Nichols, Sorrels, Agosto & Friend, LLP*, 404 S.W.3d 75 (Tex. App.—Houston [14th Dist.] 2013, no pet.).

original and supplemental motions for no-evidence and traditional summary judgment on all of Haase's claims, and in a single order, the trial court granted all of the motions without stating the grounds.

In three issues, Haase contends that we must reverse the summary judgment because (1) there are genuine issues of material fact, (2) the Supremacy Clause and the law of the case require reversal, and (3) summary judgment violates his federal and state rights to a jury trial.

II. STANDARD OF REVIEW

When a party moves for no-evidence summary judgment on a cause of action, the trial court must grant the motion unless the non-movant responds with evidence sufficient to raise a genuine issue of material fact as to each element of the claim that is challenged in the motion. *See* TEX. R. CIV. P. 166a(i). To prevail in a traditional motion for summary judgment, the movant must establish that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c). The burden then shifts to the non-movant to respond with evidence raising a genuine issue of material fact.

If the trial court does not specify the grounds on which it granted summary judgment, the non-movant must successfully challenge on appeal every ground on which summary judgment may have been granted. *See Malooly Bros. v. Napier*, 461 S.W.2d 119, 121 (Tex. 1970) ("The judgment must stand, since it may have been based on a ground not specifically challenged by the plaintiff . . . ."); *Navarro v. Grant Thornton*, *LLP*, 316 S.W.3d 715, 719–20 (Tex. App.—Houston [14th Dist.] 2010, no pet.) (same). Appellate courts review the grant of summary judgment de novo. *Sw. Bell Tel., L.P. v. Emmett*, 459 S.W.3d 578, 583 (Tex. 2015). We apply the legal-sufficiency standard, that is, we review the evidence presented by the motion and response in the light most favorable to the non-

movant, crediting evidence favorable to the non-movant if reasonable jurors could, and disregarding contrary evidence unless reasonable jurors could not. *See Gonzalez v. Ramirez*, 463 S.W.3d 499, 504 (Tex. 2015) (per curiam); *Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 582 (Tex. 2006).

III. NO GENUINE ISSUES OF MATERIAL FACT

Because Haase's various claims against Hychem require proof of different elements, we address each cause of action separately.

A. Fraud

To prevail on a fraud claim, a plaintiff must establish that (1) a material representation was made; (2) the representation was false; (3) when the representation was made, the speaker knew it was false or made it recklessly without any knowledge of the truth and as a positive assertion; (4) the speaker made the representation with the intent that the plaintiff should act upon it; (5) the plaintiff acted in reliance on the representation; and (6) the plaintiff thereby suffered injury. *See Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am.*, 341 S.W.3d 323, 337 (Tex. 2011).

Haase contends that Hychem committed fraud by shipping a falsely labeled product. It is undisputed that on three occasions in the summer and fall of 2005, Moon purchased a chemical labeled as "Hyperfloc CP 627" from Hychem. Two of the purchases were shipped to Moon with a certificate of analysis stating the chemical's percentage of solids and its viscosity, pH, color, and appearance.[7] Of these two purchases, the certificate of analysis that accompanied Moon's first purchase represented that the product had been tested, and at a concentration of 20.9%, it had a viscosity of 1980 cP. Haase obtained material from Moon which

[7] The summary-judgment record does not include a certificate of analysis for one of Moon's three purchases.

was said to contain some of the Hyperfloc CP 627 that Moon purchased from Hychem, and testing showed that even at a higher concentration of 22.5%, the material's viscosity was only 585.1 cP. According to Haase, he was damaged by the allegedly fraudulent certificate of analysis misstating the chemical's viscosity.[8]

Hychem moved for summary judgment on Haase's fraud claim on the ground, among others, that there is no evidence that Hychem intended Haase to rely on the certificate of analysis. The record instead shows that Moon ordered the Hyperfloc CP 627, and that the products and accompanying certificates of analysis were shipped to Moon. There is no evidence that Moon forwarded the certificates of analysis to Haase before any use was made of the chemical. Even if Moon did so, there is no evidence that Hychem knew of the practice when it sold the product to Moon. There is no evidence that at the time of the sales, Hychem knew that Moon was purchasing chemicals for Haase, or that Haase personally used the product. To the contrary, Haase responded to the summary-judgment motion with an affidavit in which he attested that Moon produced the '690 formula pursuant to a contract with ClearValue.

Because Haase failed to respond to the motion with evidence that Hychem intended him to rely on the certificate of analysis, we sustain the summary judgment as to Haase's fraud claim.

[8] Haase consistently maintains that all three of the Moon's purchases of Hyperfloc CP 627 were out of specification, but there is no evidence that all three were tested. His complaints against Hychem are based on a certificate of analysis sent to Moon representing that the accompanying product's viscosity was 1980 cP, but there is only one such certificate in the record. Assuming for the sake of argument that the product accompanying this certificate is the same as the material tested at a higher concentration but found to have much lower viscosity, the most that this evidence would show is that a certificate of analysis for a single order of Hyperfloc CP 627 incorrectly stated the accompanying product's viscosity.

B. Civil Conspiracy

"An actionable civil conspiracy is a combination by two or more persons to accomplish an unlawful purpose or to accomplish a lawful purpose by unlawful means." *Massey v. Armco Steel Co.*, 652 S.W.2d 932, 934 (Tex. 1983). The tort's "essential elements are: (1) two or more persons; (2) an object to be accomplished; (3) a meeting of minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as the proximate result." *Id.*

Haase alleges that Hychem conspired with Pearl River and Pearl River's counsel to violate Federal Rule of Civil Procedure 11 in the federal patent-infringement suit by making false representations and omissions in the motion for sanctions and in argument in support of the motion. He further alleges that "the object to be accomplished was accomplished in the Federal Action and in Plaintiff[']s] use of the out-of-specification product." We can find no clearer statement of the object of the alleged conspiracy.[9]

Hychem moved for summary judgment on the ground, among others, that there was no evidence of a meeting of the minds between Hychem and the alleged co-conspirators on an object or course of action. In his response to the motion, Haase failed to identify any such evidence. He contends that the probability is vanishingly remote that Hychem's shipment to Moon of three out-of-specification was unintentional; however, there is evidence of only one out-of-specification shipment. Moreover, conspiracy is not proved by evidence that shows only that the tortfeasors engaged in the injury-causing conduct; there also must be evidence

[9] Given Haase's references to the motion for sanctions in the federal patent-infringement suit, he appears to contend that Hychem, Pearl River, and Pearl River's counsel conspired to cause Haase to be sanctioned. Haase nevertheless admits in his brief that he did in fact commit the discovery violation, and that, as discussed in the Sanctions Appeal, the violation was sanctionable under Federal Rule of Civil Procedure 37. He does not contend that the alleged co-conspirators caused him to commit the discovery violation or that they agreed to do so.

of specific intent. *See Juhl v. Airington*, 936 S.W.2d 640, 644 (Tex. 1996) ("'[C]ivil conspiracy requires specific intent' to agree 'to accomplish an unlawful purpose or to accomplish a lawful purpose by unlawful means.'" (quoting *Triplex Commc'ns, Inc. v. Riley*, 900 S.W.2d 716, 719 (Tex. 1995))). Haase cited no evidence that Hychem communicated about Haase with the alleged co-conspirators; that Hychem intended Haase to rely on the certificate; or that Hychem knew that the certificate of analysis was incorrect. *See Triplex*, 900 S.W.2d at 719 ("For a civil conspiracy to arise, the parties must be aware of the harm or wrongful conduct at the inception of the combination or agreement.").

We sustain the summary judgment as to Haase's civil-conspiracy claim.

C. Slander

For a plaintiff who is non-public figure to prevail in a defamation claim, the plaintiff must establish that (1) the defendant published a false statement of fact to a third party, (2) the statement was defamatory concerning the plaintiff, (3) the statement was published negligently, and (4) the plaintiff was damaged by the defamatory publication. *In re Lipsky*, 460 S.W.3d 579, 593 (Tex. 2015) (orig. proceeding). If the false statement of fact was defamatory per se, however, the plaintiff need not prove damages unless he seeks more than a nominal amount. *Id.*

Hychem sought summary judgment regarding this claim on the ground, among others, that there is no evidence that it published a false, defamatory statement of fact concerning Haase. Haase failed to produce any evidence that Hychem did so; his complaints instead are about statements of others. Haase alleged that he was defamed by the Sanctions Ruling in the federal patent-infringement suit, but that "statement" was not made by Hychem. The Sanctions Ruling instead was authored by Judge Davis, United States District Court, Eastern District of Texas, Tyler Division. Haase also alleges that Pearl River and its

counsel defamed him in the federal patent-infringement case through false statements in Pearl River's motion for sanctions and in arguments to the court in support of the motion. Again, these are not false, defamatory statements of fact about Haase by Hychem.

We sustain the summary judgment as to Haase's defamation claims.

D. "Extortion and Exploitation of the Judicial Process"

Hychem sought traditional summary-judgment on any extortion-and-exploitation claim on the ground, among others, that any such claim was barred by the four-year residual statute of limitations. *See* TEX. CIV. PRAC. & REM. CODE ANN. §16.051 (West 2015) ("Every action for which there is no express limitations period, except an action for the recovery of real property, must be brought not later than four years after the day the cause of action accrues."). Because Haase has not addressed that ground in the trial court or on appeal, we affirm summary judgment on this ground as to any cause of action that falls within Haase's extortion-and-exploitation allegation.

Having found that there is no genuine issue of material fact precluding summary judgment on any of Haase's claims against Hychem, we overrule Haase's first issue.

IV. EFFECT OF THE DECISIONS OF THE FEDERAL COURTS

Haase phrases his second issue as "Rulings of the Federal Circuit are Supreme and Law of the Case." He then presents two arguments "that by the US Constitution Supremacy Clause and Law of the Case that [sic] the summary judgment award is improper and could be viewed as Fraud-Upon-the-Court."

Citing the Supremacy Clause of the U.S. Constitution, Haase first writes, "State courts cannot issue rulings that contradict the decisions of federal courts."

He then refers to the opinion issued in the Sanctions Appeal, in which the U.S. Court of Appeals for the Federal Circuit partially affirmed and partially reversed the sanctions against him in the patent-infringement case. He does not state how the decision supports his request for reversal of the summary judgment before us. Although we are unable to follow his argument, we know that it begins with the mistaken premise that the decisions of the Court of Appeals for the Federal Circuit are binding on Texas state courts. It is well-established that Texas courts are bound to follow the judicial decisions only of higher Texas courts and the United States Supreme Court. *See Penrod Drilling Corp. v. Williams*, 868 S.W.2d 294, 296 (Tex. 1993).

Haase next contends that "federal circuit and district court rulings define in a state court [the] 'Law of the Case.'" After noting that the defendants removed this case to federal court in 2009, Haase quotes extensively from the federal district court's ruling remanding the case back to state court. In each of Haase's seven block quotations from the remand order, the federal court analyzes a different allegation made in Haase's original petition in this case and explains why the allegation does not present an issue of federal patent law. In most of the excerpts, the court discusses a claim against Hychem's co-defendants rather than against Hychem. In three of the excerpts the federal court discusses allegations raised against Hychem in Haase's original petition, but Haase has amended his petition three times since then, so that the factual allegations discussed in the remand order are not the same on which summary judgment was granted.

It nevertheless appears to be Haase's position that the remand order constitutes "the law of the case." This is incorrect. "The 'law of the case' doctrine is defined as that principle under which questions of law decided on appeal to a court of last resort will govern the case throughout its subsequent stages." *Loram*

Maintenance of Way, Inc. v. Ianni, 210 S.W.3d 593, 596 (Tex. 2006) (quoting *Hudson v. Wakefield*, 711 S.W.2d 628, 630 (Tex. 1986)); *see also Briscoe v. Goodmark Corp.*, 102 S.W.3d 714, 716 (Tex. 2003) ("Under the law of the case doctrine, a court of appeals is ordinarily bound by its initial decision if there is a subsequent appeal in the same case."). The removal of a case is not an appeal, and the federal district court is not a court of last resort.

We overrule this issue.

V. FEDERAL AND STATE CONSTITUTIONAL RIGHT TO A JURY TRIAL

Lastly, Haase contends in his third issue that the summary judgment against him deprived him of the right to a jury trial conferred by the Seventh Amendment of the U.S. Constitution and by Article 1, Section 15 of the Texas Constitution. Haase presented the same argument about his federal right to a jury trial in *Haase v. GIM Res., Inc.*, No. 01-11-00343-CV, 2012 WL 5311332, at *4 (Tex. App.—Houston [1st Dist.] Oct. 25, 2012, no pet.) (mem. op.). As our sister court stated in that case, "It is well-settled that summary judgment does not deny the losing party its constitutional right to a jury trial, because the ruling means that no issues of fact exist for a jury to consider and decide." *Id.* (citing *In re Peterson,* 253 U.S. 300, 310 (1920)); *see also Macklin v. City of New Orleans*, 293 F.3d 237, 241 (5th Cir. 2002) (characterizing the contrary contention as "patently frivolous"). The same is true of the right to a jury trial conferred by the state constitution. *See Lattrell v. Chrysler Corp.*, 79 S.W.3d 141, 150 (Tex. App.—Texarkana 2002, pet. denied).

Because there are no genuine issues of material fact to submit to a jury, the trial court's grant of summary judgment did not deprive Haase of his federal or state constitutional right to a jury trial. We overrule this issue.

VI. CONCLUSION

Having overruled each of the issues presented, we affirm the trial court's judgment.

/s/ Tracy Christopher
Justice

Panel consists of Justices Boyce, Christopher, and Donovan.