Reversed and Remanded and Opinion and Dissenting Opinion filed September 8, 2016.

In The

Fourteenth Court of Appeals

NO. 14-14-00855-CV

ADEEL ZAIDI, A. K. CHAGLA, PRESTIGE CONSULTING, INC., AND APEX KATY PHYSICIANS – TMG, L.L.C., Appellants

V.

PANKAJ K. SHAH AND APEX KATY PHYSICIANS, LLC, Appellees

On Appeal from the 61st District Court
Harris County, Texas
Trial Court Cause No. 2009-02578

O P I N I O N

This is an appeal from the judgment rendered after a bench trial on the plaintiffs' claims arising from the purchase and lease of real property for the operation of a hospital, and from the financial management of the business entities involved. The trial court rendered judgment holding the defendants and one non-

party jointly and severally liable to two plaintiffs for more than $13.4 million in actual damages, together with pre- and post-judgment interest and $350,000 in attorney's fees. The trial court further ordered two of the defendants to pay more than $33.5 million in punitive damages, bringing the total judgment to more than $50 million.

Although the appellants have presented more than twenty issues and sub-issues for our review, the dispositive arguments are subsumed within a single question: given that they objected in the trial court that the proposed factual findings included invalid theories of liability for which there was no evidence, did the trial court reversibly err in refusing their request for specific findings identifying the damages that the trial court awarded for each cause of action? Because we conclude that at least one theory of liability is insupportable, we answer that question in the affirmative. That answer is sufficient for us to grant all the relief that the appellants have requested, which is that we reverse the trial court's judgment and remand the case for a new trial on all issues of liability and damages.

I. BACKGROUND

This case arises from the dealings among the companies, managers, and investors involved in the purchase of real property and an unsuccessful attempt to operate a hospital.

Medistar Corporation owned real property referred to as Katy Pin Oak Hospital ("Pin Oak"), and Prestige Consulting, Inc. d/b/a Turnaround Management Group[1] ("Prestige") believed it could interest investors in purchasing the property and operating a hospital there. Of Prestige's two co-owners, Adeel Zaidi assumed

[1] This also appears in the record as Turn-Around Management Group.

the more active role, while A.K. Chagla was primarily concerned with reviewing contracts and notarizing documents. Eventually, Prestige formed Apex Katy Physicians, LLC ("the Landlord") to purchase the property; Apex Long Term Acute Care–Katy, L.P. ("the Tenant") to lease the property for use as a hospital; and Apex Katy Physicians–TMG, LLC ("the General Partner") to act as the general partner in the limited partnership that was the Tenant.[2] Prestige was to staff and manage the Tenant pursuant to a written contract.

Zaidi recruited a number of investors, nearly all of whom were physicians. Dr. Pankaj K. Shah ("Shah") was among the investors in the project. Like the other investors, he was a limited partner in the Tenant, and owned a membership interest in the Tenant's General Partner. Shah and his wife Bharati also owned Indus Associates, LLC ("Indus"), and Indus owned the majority of the membership interests in the Landlord. Shah and Zaidi were co-managers of the Landlord. The General Partner was co-managed by Zaidi and one of three other investors—including Shah—who acted as co-managers on a rotating basis.

In January 2007, the Landlord agreed to buy the Pin Oak property from Medistar and lease it to the Tenant. The Landlord borrowed $9 million of the property's $13.5 million purchase price from MetroBank, and Shah personally guaranteed over $6 million of the loan. We therefore refer to the Landlord and Shah collectively as "the Borrowers."

The enterprise was not a success, and the Tenant never paid the full amount of each month's rent. Under the lease agreement, the Tenant's obligation to pay rent was secured by a lien on its accounts receivable, and in August 2009, an

[2] The General Partnership owned a 1% partnership interest in the Tenant; Prestige owned 50% of the membership interests in the General Partnership; and Prestige was owned 71% by Zaidi and 29% by Chagla.

attorney hired by Shah to represent the Landlord attempted to foreclose on the lien. Shah then learned that more than a year earlier the Landlord's co-manager Zaidi had signed a waiver of all of the Landlord's interests in the Tenant's personal property. The month after the failed foreclosure attempt, the Tenant filed for bankruptcy.

In this consolidated civil suit, many claims, counterclaims, and cross-claims were asserted among the companies, managers, investors, and affiliated entities and individuals connected to the purchase and operation of the Pin Oak property. The record before us shows that at the time of trial, the plaintiffs and cross-plaintiffs included the Landlord, Shah, Shah's wife Bharati, and the Shahs' company Indus; of these parties, however, Shah and the Landlord were the only ones to appear at trial and the only ones to prevail on their claims. The defendants were Zaidi, Chagla, Prestige, the General Partner (collectively "the Turnaround Parties") and US TMG, LLC, which is another company affiliated with Prestige. The trial court, however, rendered judgment not only against all of these defendants but also against the Tenant, which was no longer a party to the case by the time of trial.

The trial court held the Turnaround Parties, US TMG, LLC and the Tenant jointly and severally liable to the Landlord for actual damages of $4,071,584, and held them liable to Shah for actual damages of $9,336,920. The trial court also held Zaidi liable for exemplary damages of $18,673,840 to Shah and $8,143,168 to the Landlord, and held Chagla liable for exemplary damages of $4,668,460 to Shah and $2,035,792 to the Landlord.

The trial court issued findings of fact and conclusions of law in which the damages were neither identified nor linked to any cause of action. The Turnaround

Parties timely requested additional findings, but the trial court issued nothing further, and the Turnaround Parties appealed.

II. ISSUE ADDRESSED

Of the many issues presented, we address only a portion of the Turnaround Parties' second issue. The Turnaround Parties contend that the evidence is legally insufficient to support some theories of liability, but the trial court prevented them from properly presenting their case on appeal by awarding the Borrowers cumulative sums without linking the damages to specific causes of action. Because this argument is dispositive, we address only this legal-sufficiency question.

III. STANDARD OF REVIEW

When a complete reporter's record is filed, we review the trial court's factual findings for legal sufficiency under the same standard we apply to jury verdicts. *See Green v. Alford*, 274 S.W.3d 5, 23 (Tex. App.–Houston [14th Dist.] 2008, pet. denied) (op. on reh'g en banc) (citing *Ortiz v. Jones*, 917 S.W.2d 770, 772 (Tex. 1996) (per curiam)). When analyzing the legal sufficiency of the evidence, we review the record in the light most favorable to the challenged finding, crediting favorable evidence if a reasonable factfinder could and disregarding contrary evidence unless a reasonable factfinder could not. *See City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005). Evidence is legally sufficient if it "rises to a level that would enable reasonable and fair-minded people to differ in their conclusions." *Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 601 (Tex. 2004) (quoting *Merrell Dow Pharm., Inc. v. Havner*, 953 S.W.2d 706, 711 (Tex. 1997)). We will conclude that the evidence is legally insufficient to support the finding only if (a) there is a complete absence of evidence of a vital fact, (b) the court is barred by rules of law or evidence from giving weight to the only evidence

offered to prove a vital fact, (c) the evidence offered to prove a vital fact is no more than a mere scintilla, or (d) the evidence conclusively establishes the opposite of the vital fact. *City of Keller*, 168 S.W.3d at 810.

IV. *CASTEEL* ANALYSIS

A judgment is reversible if the trial court made an error of law that probably prevented the appellant from properly presenting the case to the appellate court. TEX. R. APP. P. 44.1(a)(2). One such error occurs when, over a party's objection, the trial court submits to the jury a broad-form liability question incorporating multiple theories of liability, at least one of which is invalid. *See Crown Life Ins. Co. v. Casteel*, 22 S.W.3d 378, 388 (Tex. 2000) (op. on reh'g). The Texas Supreme Court explained why this error can prevent a party from presenting its case on appeal:

> It is fundamental to our system of justice that parties have the right to be judged by a jury properly instructed in the law. Yet, when a jury bases a finding of liability on a single broad-form question that commingles invalid theories of liability with valid theories, the appellate court is often unable to determine the effect of this error. The best the court can do is determine that some evidence *could* have supported the jury's conclusion on a legally valid theory. To hold this error harmless would allow a defendant to be held liable without a judicial determination that a factfinder actually found that the defendant *should* be held liable on proper, legal grounds.

Id. (citations omitted).

The Texas Supreme Court later expanded the doctrine, applying it to a jury's assessment of damages when the jury was asked to consider damage elements for which there was no support. *See Harris County v. Smith*, 96 S.W.3d 230, 233 (Tex. 2002). As the court explained, "A trial court's error in instructing a jury to consider erroneous matters, whether an invalid liability theory or an unsupported

element of damage, prevents the appellant from demonstrating the consequences of the error on appeal." *Id.*

Although the *Casteel* line of cases arose in the context of jury trials, the parties have assumed that the same reasoning applies to nonjury trials. Other courts have relied on *Casteel* when reviewing appeals from judgments rendered after a bench trial, although none have reversed on that basis,[3] and we agree that the *Casteel* principles apply here. *Casteel* and its progeny are intended to remedy the trial court's error in failing to eliminate—or at least to segregate—the factfinder's consideration of invalid claims. The error is harmful when it results in a broad-form finding that prevents the reviewing court from determining whether the finding is based on valid claims. The same error can arise, with the same resulting harm, when the trial court is the factfinder.

The Texas Supreme Court has emphasized that *Casteel*-type errors must be preserved in the trial court by a timely and specific objection, although the parties need not specifically mention *Casteel*. *See Tex. Comm'n on Human Rights v. Morrison*, 381 S.W.3d 533, 536 (Tex. 2012) (per curiam) ("*Casteel* error may be preserved without specifically mentioning *Casteel*."); *Thota v. Young*, 366 S.W.3d 678, 691 (Tex. 2012) ("[W]ithout some objection to the charge, claiming the submitted theory had no evidentiary support, or an objection to the form of the charge, any complaint of charge error was not preserved for review by the court of appeals."). Here, both sides brought the problem of broad-form findings to the

[3] *See, e.g.*, *Town Ctr. Mall, L.P. v. Dyer*, No. 02-14-00268-CV, 2015 WL 5770583, at *7 (Tex. App.—Fort Worth Oct. 1, 2015, pet. denied) (mem. op.) (considering, in an appeal from a non-jury trial, the appellant's *Casteel* arguments and rejecting them on the merits); *Tagle v. Galvan*, 155 S.W.3d 510, 516 (Tex. App.—San Antonio 2004, no pet.) (stating that "properly prepared request for findings or additional findings specifically drawing a trial court's attention to the *Harris County/Casteel* problem will likely be sufficient to preserve error," but holding that the appellants failed to do so).

trial court's attention. The Borrowers stated in one of their proposed findings of fact and conclusions of law that the trial court "is compelled by the rule of . . . *Casteel* . . . to separate the damages caused by each of Plaintiffs' theories to avoid commingling valid and invalid theories." In their own proposed findings and in their objections to the Borrowers' proposed findings of fact and conclusions of law, the Turnaround Parties pointed out that there was no evidence to support various causes of action against some or all of them.

The trial court nevertheless issued findings of fact and conclusions of law that contained no findings linking any amount of damages to any cause of action, but which included the global finding that "the Defendants engaged in this [sic] acts, omissions, representations and non-disclosures individually and collectively in conspiracy . . . and that this proximately caused harm and damages to the Plaintiffs, individually and collectively." The Turnaround Parties requested additional findings of fact, asking the trial court to identify the damages awarded to each of the Borrowers for each cause of action, but the trial court did not do so. This issue therefore has been preserved for our review. *See Miranda v. Byles*, 390 S.W.3d 543, 552 (Tex. App.—Houston [1st Dist.] 2012, pet. denied) (op. on reh'g) ("The corollary to [the *Harris County*/*Casteel* error-preservation] rule in bench trials is a party must ask for additional findings of fact and conclusions of law asking for a detailed apportionment of findings between the permissible and impermissible bases for liability."), *cert. denied*, 135 S. Ct. 373 (2014).

It would be sufficient for us to discuss a single unsupported cause of action, but given the dearth of opinions applying the *Casteel* line of cases to a nonjury trial, we address three examples. These, however, are examples only, and by discussing these particular bases of liability, we do not suggest that any claim we have not discussed is valid.

A. Fraudulent-Inducement Claims Against All of the Turnaround Parties

The Turnaround Parties argue that the trial court erred in including fraudulent inducement as a basis for their liability to the Borrowers, because despite the trial court's conclusion that "several contracts existed between Plaintiffs and Defendants," there is no evidence of a contract between any Borrowers and any of the Turnaround Parties.[4] Because a contract between the parties is an element of a fraudulent-inducement claim, the absence of a contract renders fraudulent inducement an invalid theory of liability.

A claim for fraudulent inducement includes all of the elements of common-law fraud, plus elements that are specific to itself. A plaintiff seeking to recover for fraud must prove that (1) the speaker made a material representation; (2) the representation was false; (3) when the representation was made, the speaker either knew it was false or made it recklessly without any knowledge of its truth and as a positive assertion; (4) the speaker intended the plaintiff to act upon the representation; (5) the plaintiff acted in reliance on the representation; and (6) the plaintiff suffered injury thereby. *See Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am.*, 341 S.W.3d 323, 337 (Tex. 2011). Fraudulent inducement "shares the same elements but involves a promise of future performance made with no intention of performing at the time it was made." *Zorrilla v. Aypco Constr. II, LLC*, 469 S.W.3d 143, 153 (Tex. 2015). To prevail in a fraudulent-inducement claim, the plaintiff not only must establish all of the elements of a fraud claim, but must establish those elements "as they relate to an agreement between the parties." *Haase v. Glazner*, 62 S.W.3d 795, 798–99 (Tex. 2001).

[4] The trial court erroneously identified the Tenant as a defendant, and although there was a lease contract between the Tenant and the Landlord, the Borrowers amended their pleadings before trial to drop the Tenant as a defendant. Because Bharati Shah and Indus did not prevail in their claims, we do not consider whether there was a contract between either of them and any of the Turnaround Parties.

"Fraud" and "fraudulent inducement" are not different names for the same claim; they are different claims, and the trial court held the Turnaround Parties liable to the Borrowers under both theories of liability. Regardless of whether the Borrowers proved the elements of a fraud claim—a question we do not address—the evidence is legally insufficient to hold the Turnaround Parties liable for fraudulent inducement.

Because the trial court awarded cumulative damages based on multiple causes of action, we cannot know the extent to which the judgment rests on this erroneous finding. Thus, as in *Casteel*, the form of the findings and the award of cumulative damages based on claims that included an invalid theory of liability have prevented the Turnaround Parties from properly presenting their case on appeal.

B. Breach-of-Fiduciary-Duty Claims Against the General Partner, Chagla, and Prestige

The trial court found that "Defendants, individually and collectively, owed fiduciary duties to the Plaintiffs, individually and collectively, including the duties of candor, loyalty, and disclosure." The trial court further found that the "Defendants, individually and collectively," committed various acts and omissions that would breach such duties, such as making material misrepresentations and failing to disclose material facts. The Turnaround Parties challenge this theory of liability because fiduciary duties are not imposed "collectively," but instead are created only through certain relationships, and certain of the Turnaround Parties lack such a relationship with one or both Borrowers. The Turnaround Parties are correct.

Fiduciary duties arise in two types of relationships. A confidential relationship—which may arise from a moral, social, domestic, or purely personal

relationship of trust and confidence—may give rise to an informal fiduciary duty. *Associated Indem. Corp. v. CAT Contracting, Inc.*, 964 S.W.2d 276, 287 (Tex. 1998) (citing *Thigpen v. Locke*, 363 S.W.2d 247, 253 (Tex. 1962)). An informal fiduciary duty will not be imposed in a business transaction unless the personal confidential relationship existed prior to, and apart from, "the agreement made the basis of the suit." *See id*. at 288. The Borrowers neither alleged nor offered evidence of such a preexisting confidential relationship with any member of the Turnaround Parties.

More commonly, certain formal relationships—such as those between an attorney and client, between partners, and between a trustee and a trust beneficiary—give rise to fiduciary duties as a matter of law. *See Ins. Co. of N. Am. v. Morris*, 981 S.W.2d 667, 674 (Tex. 1998). The General Partner in the Tenant limited partnership, however, owed no fiduciary duty to the Landlord, and Chagla and Prestige owed no fiduciary duties to either of the Borrowers.

The Borrowers do not dispute this absence of fiduciary duties, but instead argue only that Zaidi "was a fiduciary to many parties" and "all entities and individuals who conspired with, participated with, aided/abetted, or employed Zaidi while he was committing any breaches of fiduciary duty were also responsible for those breaches." But, to hold the General Partner, Chagla, and Prestige liable for conspiring in Zaidi's breach of fiduciary duty is one theory of liability, and to hold them liable for breaching their own fiduciary duties is a distinct theory of liability. Regardless of whether there is legally sufficient evidence that Zaidi's co-defendants conspired in his breach of fiduciary duty—a question we do not address—such evidence would not support a finding that each of the Turnaround Parties owed fiduciary duties to each of the Borrowers. Once again, the trial court has prevented the Turnaround Parties from properly

presenting the case on appeal by issuing findings that include invalid bases of liability.

C. Default Judgment Against the General Partner

Before any evidence was heard at trial, the Borrowers urged the trial court to enter default judgment against the General Partner because it allegedly "forfeited its corporate privileges, including its right to sue and to defend." As support for a default judgment, the Borrowers relied on Texas Tax Code section 171.252(1), under which a corporation that has forfeited its corporate privileges for nonpayment of taxes "shall be denied the right to sue or defend in a court of this state." TEX. TAX CODE ANN. § 171.252(1) (West 2015). The same provisions apply to any taxable entity, such as a limited liability company. *See id.* §§ 171.2515, 171.3015.[5] After taking the matter under advisement, the trial court rendered default judgment against the General Partner.[6] We agree with the Turnaround Parties that in doing so, the trial court erred as a matter of law.

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[5] The record contains neither a motion for default judgment nor any evidence that the General Partner's right to sue and defend was forfeited. The record shows only that the Borrowers' attorney represented that the company's rights were forfeited, and the Turnaround Parties' attorney represented that the company "got [its] charter back" before trial. On appeal, the Turnaround Parties challenge the default judgment only on the ground that the trial court misconstrued the statutes on which the Borrowers relied. We therefore treat as true the Borrowers' representation that the General Partner's "corporate privileges" were forfeited after the company was sued, but before the case was tried.

[6] The General Partner was one of the defendants against whom the trial court rendered judgment. In its findings of fact and conclusions of law, the trial court stated under "Preliminary Matters" that "default judgment shall be entered against [the General Partner] because [the General Partner] forfeited its corporate privileges prior to trial."

The dissent argues that the findings were an untimely attempt to modify the judgment. But, this cannot be so. If the findings are consistent with the judgment, then the findings simply explain the court's reasoning without modifying the judgment. The findings do not conflict with the judgment merely because the latter does not state why judgment was rendered against the General Partner. *See* TEX. R. CIV. P. 299a ("Findings of fact shall not be recited in a judgment."). Nor is there a conflict between the recitals preceding the decretal portion of the judgment and the findings of fact and conclusions of law. *See J.K.A. v. State*, 855 S.W.2d 58, 60

Despite the statute's language, it has long been established that when such a taxable entity has been sued, the plaintiff still must prove its case, and the entity may raise defenses and introduce evidence that "negatives the plaintiff's case." *Bryan v. Cleveland Sand & Gravel Co.*, 139 S.W.2d 612, 613 (Tex. Civ. App.—Beaumont 1940, writ ref'd);[7] *see, e.g.*, *Cognata v. Down Hole Injection, Inc.*, 375 S.W.3d 370, 375 (Tex. App.—Houston [14th Dist.] 2012, pet. denied) ("Despite such clear language, this statute has historically been limited to prohibit delinquent corporations from bringing cross-actions, not from merely defending lawsuits."); *Cruse v. O'Quinn*, 273 S.W.3d 766, 770 (Tex. App.—Houston [14th Dist.] 2008, pet. denied) ("Tax Code section 171.252 does not prevent a corporation that has forfeited its corporate privileges from defending claims against it."); *Hardwick v. Austin Gallery of Oriental Rugs, Inc.*, 779 S.W.2d 438, 441 (Tex. App.—Austin 1989, writ denied) ("[S]uch a corporate defendant may set up purely passive defenses and its answer may not be stricken; that is to say, the plaintiff must still establish his cause of action in order to recover, the statute notwithstanding, and the corporate defendant may offer evidence that negates the plaintiff's claim."), *superseded by statute on other grounds as stated in Bair Chase Prop. Co. v. S & K*

(Tex. App.—Houston [14th Dist.] 1993, writ denied) ("Recitals . . . , except those showing the full name of the parties, etc. and those stating for and against whom judgment is rendered, are not sanctioned by [Rule 306] nor given place or function in a judgment." (quoting *Roberson Farm Equip. Co. v. Hill*, 514 S.W.2d 796, 801 (Tex. Civ. App.—Texarkana 1973, writ ref'd n.r.e.)). But, even if there were a conflict between a "judgment," on one hand, and a "default judgment" as stated in the trial court's findings of fact and conclusions of law, on the other hand, then the latter would control. *See Torres v. Clark*, No. 14-11-00750-CV, 2012 WL 1694607, at *2 (Tex. App.—Houston [14th Dist.] May 15, 2012, no pet.) (mem. op.) ("Although the order does not state that Torres's suit was dismissed because of his failure to appear and prosecute the case, 'findings of fact and conclusions of law filed after a judgment are deemed controlling as to any conflict therewith.'" (quoting *Dickerson v. DeBarbieris*, 964 S.W.2d 680, 684 (Tex. App.—Houston [14th Dist.] 1998, no pet.)).

[7] By refusing the application for writ of error, the Texas Supreme Court adopted the opinion as its own. *See Myers v. Gulf Coast Minerals Mgmt. Corp.*, 361 S.W.2d 193, 196 (Tex. 1962); *see also State ex rel. McWilliams v. Town of Oak Point*, 579 S.W.2d 460, 462–63 (Tex. 1979).

Dev. Co., 260 S.W.3d 133, 140 (Tex. App.—Austin 2008, pet. denied); *see also* TEX. TAX CODE ANN. § 171.253 ("On a suit against a corporation on a cause of action arising *before* the forfeiture of the corporate privileges of the corporation, affirmative relief may not be granted to the corporation unless its corporate privileges are revived under this chapter." (emphasis added)); *Maloney Mercantile Co. v. Johnson Cty. Sav. Bank*, 56 Tex. Civ. App. 397, 399, 121 S.W. 889, 890 (Tex. Civ. App.—Fort Worth 1909, no writ) ("[W]e see no reason for the Legislature to have distinguished between causes of action arising before and after forfeiture unless it was intended that a denial of the right to defend should be limited to causes of action accruing after the forfeiture.").[8]

A default judgment operates as an admission by the defaulting party of all of the petition's factual allegations other than the amount of unliquidated damages. *See Holt Atherton Indus., Inc. v. Heine*, 835 S.W.2d 80, 83 (Tex. 1992). Thus, by erroneously rendering the default judgment, the trial court treated the Borrowers' factual allegations as admissions of liability by the General Partner—even though,

[8] The dissent states that in *Humble Oil & Refining Co. v. Blankenburg*, 149 Tex. 498, 235 S.W.2d 891, 894 (1951), the Texas Supreme Court concluded that the effect of the statute's predecessor was to deny the corporation the right to defend itself in court. *See post* at 11. We disagree with the dissent's characterization of *Blankenburg*'s import. The court did repeat the language of the statute, but it did not purport to change *Bryan*'s holding about the meaning of that language. In *Bryan*, the court unambiguously rejected the argument "that such a corporation [i.e., one that has forfeited its charter] cannot interpose a defense purely negative in character against a suit brought against it, grounded upon matters which arose during the time it was lawfully engaged in business." *Bryan*, 139 S.W.2d at 613. *Blankenburg* can hardly be said to have overruled *Bryan sub silentio* given that the *Blankenburg* court described only the Franklin Development Company as having forfeited its right to do business in the state, and Franklin Development Company was never a defendant in the litigation. *See Blankenburg*, 149 Tex. at 502, 235 S.W.2d at 893. Rather, suit was brought by the beneficial owners of the company's assets to obtain title and possession of those assets. *Id.*, 149 Tex. at 500, 503–04, 235 S.W.2d at 892, 894. The suit was brought "not for the benefit of the corporation, but by the individual stockholders, suing in their own right." *Id.*, 149 Tex. at 507, 235 S.W.2d at 896 (quoting *Pratt-Hewit Oil Corp. v. Hewit*, 122 Tex. 38, 47, 52 S.W.2d 64, 67 (1932)). Thus, *Blankenburg* is not inconsistent with *Bryan*'s holding that after a corporation's charter has been forfeited, it may still "interpose a defense purely negative in character."

as to some causes of action, the General Partner's liability to one or both Borrowers is supported by legally insufficient evidence. Because the trial court held the Turnaround Parties jointly and severally liable for all of the Borrowers' actual damages, this erroneous ruling may have affected the judgment against the other Turnaround Parties as well. Here, too, the trial court prevented the Turnaround Parties from properly presenting their appeal by including an invalid theory of liability as a basis for the judgment against them.

V. HARM

The trial court's global factual findings were burdened with more causes of actions than the evidence would bear, so we must reverse and remand unless we are "reasonably certain that the [factfinder] was not significantly influenced" by the inclusion of invalid theories of liability. *See Romero v. KPH Consol., Inc*., 166 S.W.3d 212, 227–28 (Tex. 2005). Because it is impossible to determine the extent to which the trial court awarded actual and punitive damages on an invalid basis, we have no such reasonable certainty. We instead conclude that the trial court's error in cumulating the damages awarded for valid and invalid theories of liability "precludes [us] from determining whether the [factfinder] found liability on an invalid basis, precludes determination of whether the error probably caused the rendition of an improper judgment, and is harmful because it prevent[ed] proper presentation of the case on appeal." *Columbia Rio Grande Healthcare, L.P. v. Hawley*, 284 S.W.3d 851, 865 (Tex. 2009).

VI. DISPOSITION

Having found harmful error, we must consider the appropriate remedy and the extent to which it applies to the various claims and parties.

A. Type of Remedy Available

As in the *Casteel* line of cases, we must remand the cause for a new trial, but we have considered whether it is appropriate to render judgment in part on the fraudulent-inducement and breach-of-fiduciary-duty claims discussed above. *See* TEX. R. APP. P. 43.3 (requiring an appellate court, when reversing a trial court's judgment, to render the judgment the trial court should have rendered unless remand is required for further proceedings or in the interests of justice); TEX. R. APP. P. 44.1(b) (providing that if reversible error does not affect a part of the controversy that is separable without unfairness to the parties, then the appellate court must order retrial only of the part affected by the error). As a general rule, however, we can grant parties less relief than requested, but we cannot grant more. *See, e.g.*, *Enzo Invs., LP v. White*, 468 S.W.3d 635, 654 (Tex. App.—Houston [14th Dist.] 2015, pet. denied) (sub. op.) (rejecting the argument that an appellant's prayer for rendition forecloses the reviewing court from granting the lesser relief of remand); *Advanced Personal Care, LLC v. Churchill*, 437 S.W.3d 41, 49 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (ordering the lesser relief of remand despite the appellant's request for rendition); *Garza v. Cantu*, 431 S.W.3d 96, 108–10 (Tex. App.–Houston [14th Dist.] 2013, pet. denied) (sub. op.) (granting the appropriate remedy of remand where the appellant asked only for rendition but "did not adopt a 'rendition-or-bust' strategy").

According to the dissent, it has been this court's rule since 1984 to grant the party prevailing on appeal the relief appropriate for a given type of error, without regard for what relief was requested. As support for this proposition, the dissent cites *Olin Corp. v. Dyson*, 678 S.W.2d 650, 657 (Tex. App.—Houston [14th Dist.] 1984), *rev'd*, 692 S.W.2d 456 (Tex. 1985).

Olin does not support the proposition for which it is cited. In *Olin*, the appellant argued that there was no evidence to support the jury's finding of gross negligence, but requested only remand or modification rather than rendition of judgment. *See id.* Contrary to the dissent's characterization, however, the question of whether the appellant nevertheless was entitled to the unrequested relief of rendition of judgment was never before the court because we overruled the no-evidence point of error. *See id.* We discussed the appellant's prayer for relief only because the appellees argued "that appellant failed to preserve a no evidence point because it does not include in its prayer for relief a request for reversal and rendition." *Id.* We rejected that argument, explaining,

> If the language of a point of error leaves a Court of Civil Appeals in doubt as to whether it is a no evidence point, an insufficient evidence point, . . . the court should resolve the doubt by looking to the procedural predicate for the point, the argument under the point, and the prayer for relief.

Id. (quoting Robert W. Calvert, *No Evidence and Insufficient Evidence Points of Error*, 38 TEX. L. REV. 361, 372 (1960)). We concluded, "This court has no need to look to the prayer for relief in appellant's brief to determine whether appellant raises a no evidence point because appellant's final point of error specifically alleges legal insufficiency of the evidence." *Id.*

Although the dissent would hold that we can render judgment even if only remand was requested, that result cannot be reconciled with the Texas Supreme Court's recent statements to the contrary. *See e.g.*, *Tex. Parks & Wildlife Dep't v. Sawyer Trust*, 354 S.W.3d 384, 392 (Tex. 2011) ("[The Sawyer Trust] makes no similar request to replead to assert a claim for compensation. . . . Generally, a party is not entitled to relief it does not request."); *State v. Brown*, 262 S.W.3d 365, 370 (Tex. 2008) ("Brown does not seek a remand for the trial court to consider sanctions. A party generally is not entitled to relief it does not seek."); *Stevens v.*

Nat'l Educ. Ctrs., Inc., 11 S.W.3d 185, 186 (Tex. 2000) (per curiam) ("But NEC specifically requested that this Court not remand for a new trial and prayed only for rendition. Because NEC did not request appropriate relief for granting its petition for review, we deny both petitions for review.").

In stating that "a party generally is not entitled to relief it does not seek," the Texas Supreme Court was not speaking solely to situations in which the relief at issue was not requested in the trial court. In *Sawyer Trust*, for example, the court refused to remand for repleading, but that generally is not a request that the plaintiff is required to make in the trial court. *See Sawyer Trust*, 354 S.W.3d at 392. And in *Brown*, there would have been no reason for the Texas Supreme Court to mention that "Brown does not seek a remand for the trial court to consider sanctions" if the court's holding was based solely on Brown's earlier failure to seek sanctions from the trial court. *See Brown* , 262 S.W.3d at 370 ("We do not believe it proper to sua sponte grant relief Brown has not sought.").

Appellate courts can, however, grant less relief than requested. For example, an appellate court usually is granting less relief than requested when it modifies the judgment or suggests and accepts remittitur in lieu of a new trial. And courts frequently grant the lesser relief of remand when rendition is requested. *See Tony Gullo Motors I, L.P. v. Chapa*, 212 S.W.3d 299, 314 (Tex. 2006) ("Chapa's failure to segregate her attorney's fees does not mean she cannot recover any. . . . [A]n unsegregated damages award requires a remand. Accordingly, remand is required."). And in *Stevens*, it would have been unnecessary for the Texas Supreme Court to point out that the petitioner "specifically requested that this Court not remand for a new trial and prayed only for rendition" if the court was limited to the relief prayed for and could not have granted the lesser relief of remand. *See Stevens*, 11 S.W.3d at 186.

The rule that appellate courts can grant less relief than requested, but cannot grant more relief than requested, is consistent with the rule that obtains in trial courts. *Compare G&H Towing Co. v. Magee*, 347 S.W.3d 293, 298 (Tex. 2011) (per curiam) (stating that when a trial court grants more relief than requested, the judgment is erroneous) *with S. Cty. Mut. Ins. Co. v. First Bank & Trust of Groves*, 750 S.W.2d 170, 173–74 (Tex. 1988) (reversing where the intermediate appellate court's strict-liability finding "[went] further than any relief the Bank requested" in its pleadings or in its appellate brief).

Because the Turnaround Parties have not asked us to render judgment regarding any specific claim but instead seek only remand, we conclude that remand is the relief to which they are entitled. *See Enzo Invs., LP*, 468 S.W.3d at 654; *Advanced Personal Care, LLC*, 437 S.W.3d at 49; *Garza*, 431 S.W.3d at 108–10.

B. Parties on Remand

We also must identify which plaintiffs' claims must be relitigated against which defendants. Although we generally reverse the judgment only as to the parties who have successfully appealed it, that rule does not apply when the rights of appealing and nonappealing parties are interwoven or dependent on one another. *See Sonat Expl. Co. v. Cudd Pressure Control, Inc.*, 271 S.W.3d 228, 236–37 (Tex. 2008).

1. The claims of Bharati Shah and Indus are not remanded.

Although Shah's wife Bharati and their company Indus Associates, LLC are not mentioned in the judgment, the record shows that in answering a petition in intervention, they asserted their own claims, including cross-claims against the Turnaround Parties. The record does not show that those claims were nonsuited or

severed, so they appear to be part of the final judgment before us. The judgment expressly states that it "disposes of all claims and all parties, and is appealable."

Bharati Shah and Indus did not appeal the portion of the judgment expressly denying all relief that was not granted, and their rights are not interwoven with or dependent on the rights of the Turnaround Parties. Because their unsuccessful claims are separable without unfairness, we sever the portion of the judgment denying them any relief and exclude their claims from the scope of remand. *See Starkey v. Graves*, 448 S.W.3d 88, 113 n.34 (Tex. App.—Houston [14th Dist.] 2014, no pet.).

2. The Borrowers' claims against the Turnaround Parties and US TMG, LLC are remanded.

On the defense side of the case, the trial court held the Turnaround Parties, US TMG, LLC, and the Tenant liable to the Borrowers, but only the Turnaround Parties appealed. We conclude, however, that because the trial court found that the Turnaround Parties, US TMG, and the Tenant committed every alleged misdeed "individually and collectively" against each Borrower "individually and collectively" and held all of them jointly and severally liable for the Borrowers' actual damages, the rights of all of these individuals and entities are so interwoven and interdependent that we must reverse the judgment against all of them. *See Truck Drivers, Chauffeurs, Warehousemen & Helpers, Local No. 941 v. Whitfield Transp., Inc.*, 154 Tex. 91, 102, 273 S.W.2d 857, 863 (1954) (op. on reh'g); *Lockhart v. A.W. Snyder & Co.*, 139 Tex. 411, 424–25, 163 S.W.2d 385, 392 (1942); *Starkey*, 448 S.W.3d at 113 n.34 (holding that the plaintiff's various claims against multiple defendants could not be separated without unfairness where the plaintiff allegedly sustained "the same two measures of damages in the same amounts, regardless of which parties were liable or the conduct on which liability was based").

Although we reverse the judgment against all of the persons and entities that the trial court held liable in its final judgment, the record shows that the Tenant had ceased to be a party to the case before trial. Because there were no claims by or against the Tenant by the time of trial, there are no claims by or against the Tenant to remand.

VII. CONCLUSION

For the foregoing reasons, we sever the portion of the judgment denying any relief to Bharati Shah and Indus Associates, LLC; reverse the remainder of the judgment; and remand the cause—the parties to which are Zaidi, Chagla, Prestige, the General Partner, US TMG, LLC, the Landlord, and Pankaj Shah—for a new trial.

/s/ Tracy Christopher
Justice

Panel consists of Chief Justice Frost and Justices Christopher and Donovan (Frost, C.J., dissenting).