

**Affirmed and Memorandum Opinion filed November 29, 2016.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-15-00944-CV**

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**DAVID SOLIZ AND SOLIZ AUTOMOTIVE, INC., Appellants**

**V.**

**DARWIN HANEY, Appellee**

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**On Appeal from the 270th District Court  
Harris County, Texas  
Trial Court Cause No. 2013-55761**

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

Appellants David Soliz and Soliz Automotive, Inc. (collectively, “Soliz”) appeal the trial court’s judgment after a jury verdict in favor of appellee Darwin Haney. On appeal, Soliz contends that this court should reform the judgment to include a credit for the amount of a judgment Soliz obtained against Haney in a justice of the peace court. Soliz also contends that the evidence is factually insufficient to support the award. We affirm the trial court’s judgment and dismiss Haney’s cross-appeal on his own motion.

## FACTUAL BACKGROUND<sup>1</sup>

Darwin Haney's Kia Spectra was rear-ended at a stop sign. His insurance company assessed the damages and recommended David Soliz's automotive repair shop. Haney dropped off the Spectra for repairs and received a rental car from Soliz.

Over the next two weeks, Soliz's repair estimate grew to \$4,172.00, including administrative fees, storage fees, and rental fees. Haney asked Soliz to stop doing any more repairs, and requested a quote for him to pick up the Spectra in its existing condition. When Haney went to retrieve the Spectra, however, he was unable to pay Soliz's bill, so he returned the rental car in a damaged condition and left the Spectra at the automotive shop.

Soliz filed suit against Haney in a justice court for breach of contract. In July 2013, Soliz was awarded \$1,037.33, court costs, and post-judgment interest. According to Soliz, Haney still has not paid the amount of this judgment.

Two months later, Haney filed an independent action against Soliz in the 270th District Court. Haney alleged numerous claims against Soliz, including conversion, Deceptive Trade Practices Act violations, negligence, and breach of contract. Haney sought actual damages, including loss of use and the market value of the car, reasonable attorney's fees, court costs, expenses, punitive damages, and treble damages under the Act. Haney also sought the return of the Spectra. Soliz filed a general denial and its "Original Counterclaim and Third Party Petition" alleging, *inter alia*, res judicata.

The trial court imposed death penalty sanctions against Soliz for discovery

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<sup>1</sup> The appellate record does not include a reporter's record. The factual background is drawn primarily from the unchallenged statements in Soliz's statement of facts and the clerk's record. *See* Tex. R. App. P. 38.2(a)(1)(B).

abuse by entering a default judgment. The trial court then tried the case to a jury on damages only. The jury awarded Haney damages of \$2,500.00 for loss of use and \$5,200.00 for loss in market value. The jury also awarded an additional \$500.00 based on its finding that Soliz knowingly engaged in the conduct alleged.

On August 8, 2015, the trial court signed a final judgment in favor of Haney for \$8,200.00, and also ordered Soliz to return Haney's Spectra within thirty days of the judgment. Soliz filed a motion for new trial, which was overruled by operation of law.

### **ANALYSIS OF SOLIZ'S ISSUES**

On appeal, Soliz raises two issues: (1) the trial court's judgment should be reformed to credit the amount of the judgment Soliz obtained against Haney in justice court; and (2) the evidence is factually insufficient to support the award. Because Soliz failed to properly brief his first issue and did not provide a reporter's record to support his second issue, we affirm.

#### **I. Request that the Judgment be Reformed to Include Credit for Amount of Earlier Judgment**

In his first issue, Soliz contends that, based on Texas Civil Practice and Remedies Code section 31.004, the trial court's judgment should be reformed to include a credit in the amount Haney owes Soliz from the earlier judgment Soliz obtained against Haney in justice court. In relevant part, section 31.004 provides:

A judgment or a determination of fact or law in a proceeding in a lower trial court is not res judicata and is not a basis for estoppel by judgment in a proceeding in a district court, except that a judgment rendered in a lower trial court is binding thereto as to recovery or denial of recovery.

Tex. Civ. Prac. & Rem. Code § 31.004(a).<sup>2</sup> Soliz also generally discusses the application of res judicata and collateral estoppel in a county court following a justice court judgment in *Houtex Ready Mix Concrete & Materials v. Eagle Construction & Environmental Services, L.P.*, 226 S.W.3d 514, 520–21 (Tex. App.—Houston [1st Dist.] 2006, no pet.).<sup>3</sup> Soliz then makes the following argument:

Soliz was awarded \$1037.33 plus the court costs and post judgment interest at 5% per annum. Even if the claims brought again in trial court are not barred res judicata, the judgment rendered in the Justice of the Peace Court should still stand. The statute specifically states that judgment rendered in lower court is binding on the parties as to the recovery. The amount the David Soliz is ordered to pay Darwin Haney should be reduced by the \$1,037.33 Soliz was awarded in the earlier judgment.

Even if Soliz is correct that the justice court judgment “should still stand,” he does not explain how res judicata applies to the facts of this case, and he offers no argument, substantive analysis, or citations to the record to support his request that this court reform the trial court’s judgment based on another court’s judgment. Moreover, although the record shows that Soliz asserted res judicata in his pleadings, he does not direct us to any place in the record where he brought this affirmative defense to the trial court’s attention and obtained a ruling, and we have found none.

An appellant’s brief must contain “a clear and concise argument that includes appropriate citations to legal authority and the appellate record.” *See* Tex.

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A lower trial court includes a justice of the peace court. Tex. Civ. Prac. & Rem. Code § 31.004(c).

<sup>3</sup> Although Soliz relies on *Houtex*, that case involved an appeal from an action in a county court rather than a district court and thus relied on section 31.005 rather than section 31.004. *See* 226 S.W.3d at 518–20.

R. App. P. 38.1(i); *Canton-Carter v. Baylor College of Medicine*, 271 S.W.3d 928, 931 (Tex. App.—Houston [14th Dist.] 2008, no pet.). Failure to cite legal authority or to provide substantive analysis of the legal issues presented results in waiver of the complaint. *Canton-Carter*, 271 S.W.3d at 931. Further, it is not this court’s duty to review the record, research the law, and then fashion a legal argument for an appellant who fails to do so. *Id.* at 931–32. Because Soliz has failed to properly brief this issue, we conclude that the issue is waived.

Even if we were to attempt to determine whether res judicata applies to Haney’s claims, section 31.004 bars as res judicata “only those claims that were actually litigated” in the justice court. *See Webb v. Persyn*, 866 S.W.2d 106, 107 (Tex. App.—San Antonio 1993, no writ). Because the relatively sparse clerk’s record sheds little light on the proceedings below and we were not provided with a reporter’s record, we are unable to compare the claims actually litigated in the justice court with the claims made the basis of the trial court’s judgment. Without more, the mere fact that a party has obtained a judgment against his opponent in justice court does not necessarily mean that the amount of that judgment must be credited to a judgment in favor of the opponent in a separate action in a district court. *See id.* We overrule Soliz’s first issue.

## **II. Sufficiency of the Evidence**

In his second issue, Soliz argues that the evidence is factually insufficient to support the award of the lost market value of the Spectra and the return of the Spectra (along with loss of use damages) to Haney. Soliz asks that we reform the judgment so that Haney is not unjustly rewarded.

After reciting the standard of review for factual sufficiency of the evidence, Soliz argues that an individual who prevails on a conversion claim is entitled to either the value of the property or the return of the property and damages for loss

of use, but generally may not recover for both the market value and the return and loss of use of the property. Soliz acknowledges that “[o]n occasion, both measures of damages are used if the Appellee would be inadequately compensated without both awards,” but argues that “there is no evidence that this is the case.”

Soliz did not request a reporter’s record of the trial in the district court.<sup>4</sup> “When an appellant challenges the sufficiency of evidence supporting the trial court’s judgment against him, he cannot prevail without first meeting his burden of presenting a sufficient record on appeal because it is presumed that the omitted portions of the record support the trial court’s judgment.” *Cisneros v. Cisneros*, No. 14-14-00616-CV, 2015 WL 1143125, at \*3 (Tex. App.—Houston [14th Dist.] Mar. 12, 2015, no pet.) (mem. op.) (citing *Schafer v. Conner*, 813 S.W.2d 154, 155 (Tex. 1991) (per curiam); *Pub., Inc. v. Cnty. of Galveston*, 264 S.W.3d 338, 341 (Tex. App.—Houston [14th Dist.] 2008, no pet.)). Absent a reporter’s record, this court is unable to determine what evidence was presented at trial and whether it is factually insufficient to support the judgment; further, we must apply the presumption that the omitted portions of the record support the trial court’s judgment. *See id.*; *Schafer*, 813 S.W.2d at 155; *Pub., Inc.*, 264 S.W.3d at 341. We therefore overrule Soliz’s second issue.

### **HANEY’S CROSS-APPEAL**

Haney filed a notice of cross-appeal. Because Haney concludes that Soliz’s failure to file a reporter’s record precludes this court from addressing Soliz’s issues, Haney moves this court to dismiss his cross-appeal. *See Tex. R. App. P.*

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<sup>4</sup> When the reporter’s record was not filed in this case, this court issued an order warning Soliz that we may consider and decide only those issues that do not require a reporter’s record unless Soliz filed and paid for the record. Nevertheless, Soliz did not file a reporter’s record, nor did he appeal to as provided in Texas Rule of Appellate Procedure 34.6(c) based on a partial report’s record. *See Tex. R. App. P.* 34.6(c).

42.1(a)(1). We grant the motion and dismiss Haney's cross-appeal.

**CONCLUSION**

We overrule Soliz's issues and affirm the trial court's judgment. We dismiss Haney's cross-appeal on his motion.

/s/ Ken Wise  
Justice

Panel consists of Justices Jamison, McCally, and Wise.