

Affirmed and Memorandum Opinion filed May 2, 2017.



In The

Fourteenth Court of Appeals

NO. 14-15-00591-CV

DEANNE M. HODGE AND BEVERLY A. BARR, Appellants

V.

PINE HILL HOMES, LP, Appellee

**On Appeal from the 190th District Court
Harris County, Texas
Trial Court Cause No. 2011-33839**

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

Pine Hill Homes LP sued Beverly A. Barr as guarantor on a loan. Barr filed a motion for summary judgment that the trial court denied, and the case proceeded to a bench trial. In its final judgment, the trial court found Barr breached the guaranty agreement and awarded damages to Pine Hill. Barr now appeals the denial of her motion for summary judgment and contends that Pine Hill's claim against her is barred by the statute of limitations. Because Barr cannot appeal the denial of the summary judgment motion after a trial on the merits and Barr's contentions are otherwise without merit, we affirm.

Discussion

In March 2007, HB Unlimited, LLC borrowed \$379,999 from Pine Hill. A promissory note was executed, which listed as security an apartment complex owned by HB Unlimited. Contemporaneously, Barr and Deanne M. Hodge signed a guaranty agreement, guaranteeing repayment of the loan.¹ On April 7, 2009, Pine Hill foreclosed on the apartment complex. Pine Hill thereafter sued HB Unlimited and Hodge for the deficiency amount. Pine Hill nonsuited HB Limited in September 2012 and added Barr as a defendant in August 2013, claiming that she breached the guaranty agreement. Barr thereafter filed a motion for summary judgment asserting the four-year statute of limitations barred Pine Hill's claim against her. The trial court denied the motion and the case proceeded to a bench trial on the merits. The trial court's final judgment ordered Barr and Hodge, jointly and severally, to pay Pine Hill the deficiency amount of \$209,739.54 plus pre- and post-judgment interest and court costs. Barr now appeals the denial of her motion for summary judgment.

We generally cannot review a trial court's denial of a motion for summary judgment when the case was thereafter tried on the merits. *Ackermann v. Vordenbaum*, 403 S.W.2d 362, 365 (Tex. 1966). Barr does not assert that any exception to this rule applies in this case, and we are aware of no applicable exception. *See Houston Chronicle Publ'g Co. v. Thomas*, 196 S.W.3d 396, 398 (Tex. App.—Houston [1st Dist.] 2006, no pet.) (discussing exceptions to the rule). Pine Hill briefed this argument. Although Barr filed a reply brief, she neither replied to the argument nor asked this court to consider her appeal as an appeal from the final judgment denying her statute of limitations defense.

¹ Although Pine Hill also sued and obtained judgment against Hodge as a guarantor and Hodge's name is on the notice of appeal and the appellate brief, no issues concerning Hodge are raised on appeal.

Moreover, neither Barr’s motion for summary judgment nor any response thereto are included in our record.² *See Bosch v. Harris Cty.*, No. 14-13-01125-CV, 2015 WL 971317, at *4 n.5 (Tex. App.—Houston [14th Dist.] Feb. 26, 2015) (mem. op.) (“The burden is on the appellant seeking review to see that a sufficient record is presented to show error requiring reversal.”); *W & F Transp., Inc. v. Wilhelm*, 208 S.W.3d 32, 37-39 (Tex. App.—Houston [14th Dist.] 2006, no pet.) (noting the burden has historically been on the appellant to ensure that a sufficient record is presented to show error requiring reversal and discussing the consequences of an insufficient record on appeal). Also, Barr did not include citations to the court reporter’s record wherein evidence in support of her limitations argument, or any request for a ruling thereon, was presented to the trial judge. *See Tex. R. App. P. 38.1(i)* (requiring appellant’s briefs to contain appropriate citations to the record); *Cottledge v. Roberson*, No. 05–12–00720–CV, 2013 WL 1456653, at *1 (Tex. App.—Dallas Apr. 9, 2013, no pet.) (mem.op.) (“Appellant has the burden of directing us to the evidence in the record supporting her contentions. We are not responsible for searching the summary judgment record for evidence to support appellant’s contentions.”).

Because Barr has impermissibly attempted to appeal from the denial of her motion for summary judgment and has otherwise failed to preserve her argument, we overrule her sole issue. We affirm the trial court’s judgment.

/s/ Martha Hill Jamison
Justice

Panel consists of Justices Christopher, Jamison, and Donovan.

² Pine Hill attached to its brief Barr’s answer in which limitations is pleaded.