Affirmed in part and Reversed and Remanded in part and Majority Opinion and Concurring Opinions filed December 21, 2017.

In The

Fourteenth Court of Appeals

NO. 14-16-00277-CV

ATRIUM MEDICAL CENTER, LP, AND TEXAS HEALTHCARE ALLIANCE, LLC, Appellants

V.

HOUSTON RED C LLC D/B/A IMAGEFIRST HEALTHCARE LAUNDRY SPECIALISTS, Appellee

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On Appeal from the 190th District Court
Harris County, Texas
Trial Court Cause No. 2013-04227A

M A J O R I T Y   O P I N I O N

Appellants Atrium Medical Center, L.P., and Texas Healthcare Alliance, LLC, appeal a judgment in favor of appellee Houston Red C LLC d/b/a ImageFirst Healthcare Laundry Specialists, finding that appellants breached a laundry service agreement and are jointly and severally liable for damages, costs, interest and

attorney's fees. Following a bench trial, the trial court entered amended findings of fact and conclusions of law supporting the judgment for appellee. In four issues on appeal, appellants assert the trial court erred in finding breach of contract, enforcing a liquidated damages clause, applying prejudgment interest, and granting an unsegregated, contested attorney's fee application. We affirm in part and reverse and remand in part.

I. Background

Atrium owns and operates a sixty-bed, long-term acute care hospital in Stafford, Texas. THA is the general partner, part owner, and day-to-day manager of Atrium. ImageFirst is a rental and laundry service company.

In November 2012, Atrium and appellee executed a five-year (260 week) laundry services agreement. The contract provides, in relevant part, the following:

> The length of this agreement is for sixty (60) months from the date of the first delivery and therefore for the same time period unless cancelled by either party, in writing, at least ninety (90) days prior to any termination date. The terms of this contract shall apply to all subsequent increases or additions to such service. There will be a minimum weekly billing of 60% of this agreement value or 60% of the current invoice amount, whichever is greater. Customer may discontinue service at any time provided customer pay Company a cancellation charge of 40% of the agreement value or the current invoice amount, whichever is greater, multiplied by the number of weeks remaining under this agreement. The customer agrees that this cancellation charge is not punitive, but a reimbursement to Company for related investments to service the customer. Customer agrees to pay attorneys fees and cost necessary to collect monies due. The price in effect may be changed annually. A finance charge of 1½% per month, which is equal to 18% per year will be added to all balances not paid within terms of Net 10 EOM. If credit terms are allowed, customer agrees to pay balance due to Company within ten (10) days after the end of the month that said invoices are dated.

In 2013, Atrium was in financial crisis, stemming from an alleged abuse of power, fraud, and embezzlement by Sohail Siddiqui, M.D., the former manager of THA. In April 2013, Atrium failed to pay appellee's invoices. Appellee continued to deliver linens without payment for several months.

Atrium's new chief executive officer, Ahmad Zaid, testified that he tried to work out a payment plan with appellee to ensure no interruption in the delivery of linens to the hospital; however, appellee responded that it would no longer deliver linens without a payment towards Atrium's past due balance. Appellee continued to deliver linens uninterrupted.

On or about September 11, 2013, Zaid allegedly verbally informed appellee that it would no longer use appellee's linens or services, exercising the cancellation provision of the contract. The last day appellee delivered linens to Atrium was on September 2, 2013. Appellee's last invoice to Atrium was on September 6, 2013, for $8,066.79. At the time Atrium's CEO verbally cancelled the contract, 9 months/38-weeks had elapsed under the 60-month/260 week contract, and Atrium had not paid $165,587.33 of the total charges invoiced by appellee.

In November 2013, appellee filed a petition in intervention in appellants' pending lawsuit against Siddiqui in the 190th Judicial District Court of Harris County. In its second amended petition in intervention, appellee asserted claims against appellants, Siddiqui, and several other individual owners[1] for breach of contract, quantum meruit, conversion, suit on sworn account, unjust enrichment, and money had and received. Appellee claimed more than $1 million dollars in damages. After nonsuiting the individual defendants, a bench trial between Atrium, THA, and ImageFirst was held in February 2016.

[1] Robert Scott Poston, Starskey Bomer, and David Dale.

In March 2016, the trial court awarded a final judgment in favor of appellee on its breach of contract claim, finding Atrium and THA were jointly and severally liable for breach of contract and damages. The court determined that appellee was entitled to damages under the terms of the contract, including the liquidated damages provision which the trial court found was not a penalty. The trial court found appellee suffered actual damages "for those amounts due and owing as of September 2013 and for damages calculated under the liquidated damages provision." The trial court awarded the following damages:

- Actual damages: $881,918.28
- Contractual pre-judgment interest: $375,021.20
- Attorney's fees (trial): $110,000.00
- Attorney's fees (appellate): $70,000.00

Total: $1,436,939.48

The trial court further found that appellee was entitled to recover from appellants post-judgment interest accruing at 5% simple interest and all costs of court.

On June 3, 2016, the trial court entered amended findings of fact and conclusions of law in support of the judgment.

II. ISSUES AND STANDARDS OF REVIEW

A. Issues

Appellants challenge the trial court's judgment, claiming in their first issue that the record does not contain legally or factually sufficient evidence to support a finding that appellee should prevail on its breach of contract claim. Alternatively, appellants contend in its second issue, with multiple subparts, that we should reverse and reform the judgment by denying appellee recovery under the contract's liquidated damages clause. In their third issue, appellants maintain that we should reverse and modify the judgment by limiting the contractual prejudgment interest

solely to amounts actually invoiced by appellee. Finally, appellants argue in their fourth issue that we should reverse and modify the judgment by reducing the attorney's fees award to account for fees required to be segregated.

B. Standard or review

Because this was a bench trial, the trial judge issued findings of fact and conclusions of law. We review the trial court's conclusions of law de novo. *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002); *Johnston v. McKinney*, 9 S.W.3d 271, 277 (Tex. App.—Houston [14th Dist.] 1999, pet. denied). Incorrect conclusions of law will not require a reversal if the controlling facts support a correct legal theory. *Id*. The findings of fact in a bench trial have the same force and dignity as a jury verdict, and we review them for legal and factual sufficiency of the evidence under the same standards we apply in reviewing a jury's findings. *West v. Triple B. Servs.*, LLP, 264 S.W.3d 440, 445 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (citing *Ortiz v. Jones*, 917 S.W.2d 770, 772 (Tex. 1996)).

When conducting a legal-sufficiency review, we consider 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, 823 (Tex. 2005). We must credit favorable evidence if a reasonable factfinder could and disregard contrary evidence unless a reasonable factfinder could not. *See id*. at 827. We must determine whether the evidence at trial would enable a reasonable and fair-minded factfinder to find the facts at issue. *See id*. The factfinder is the only judge of witness credibility and the weight to give to testimony. *See id*. at 819. Because findings of fact in a bench trial have the same force and dignity as a jury verdict, we review them for legal sufficiency of the evidence under the same standards we apply in reviewing the jury's findings. *See Anderson v. City of Seven Points*, 806 S.W.2d 791, 794 (Tex. 1991).

When reviewing a challenge to the factual sufficiency of the evidence, we examine the entire record, considering both the evidence in favor of, and contrary to, the challenged finding. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986). After considering and weighing all the evidence, we set aside the fact finding only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Pool v. Ford Motor Co*., 715 S.W.2d 629, 635 (Tex. 1986). The trier of fact is the sole judge of the credibility of the witnesses and the weight to be given to their testimony. *GTE Mobilnet of S. Tex. v. Pascouet*, 61 S.W.3d 599, 615–16 (Tex. App.—Houston [14th Dist.] 2001, pet. denied). We may not substitute our own judgment for that of the trier of fact, even if we would reach a different answer on the evidence. *Maritime Overseas Corp. v. Ellis*, 971 S.W.2d 402, 407 (Tex. 1998). The amount of evidence necessary to affirm a judgment is far less than that necessary to reverse a judgment. *Pascouet*, 61 S.W.3d at 616.

III. ANALYSIS

A. Breach of Contract

In issue one, appellants request we reverse and render a take-nothing judgment, arguing that appellee breached the service agreement before Atrium by overcharging Atrium for the quantities of linens delivered from February 2013, and thereafter. Appellants argue that Atrium did not start falling behind on its payments until April 2013. Appellants contend that appellee's breaches occurred first and were material, and thus, Atrium was discharged of its obligations to further perform under the contract. According to appellants, appellee cannot prevail for breach of contract as a matter of law.

To prevail on a breach of contract claim, a party must establish the following elements: (1) a valid contract existed between the plaintiff and the defendant; (2) the plaintiff tendered performance or was excused from doing so; (3) the defendant

breached the terms of the contract; and (4) the plaintiff sustained damages as a result of the defendant's breach. *West v. Triple B Servs., LLP*, 264 S.W.3d 440, 446 (Tex. App.—Houston [14th Dist.] 2005, no pet.) A breach occurs when a party fails or refuses to do something he has promised to do. *Id*. (citing *Townewest Homeowners Ass'n, Inc. v. Warner Commc'n Inc.*, 826 S.W.2d 638, 640 (Tex. App.—Houston [14th Dist.] 1992, no writ)). When one party to a contract commits a material breach of that contract, the other party is excused from further performance under the contract. *See id*. (citing *Hernandez v. Gulf Group Lloyds*, 875 S.W.2d 691, 692 (Tex. 1994)).

The trial court did not err in finding that appellants are liable for breach of contract. In amended findings of fact and conclusions of law, the trial court found appellee had established a valid contract; that "ImageFirst fully performed its obligations under the Contract;" that verbal and premature cancellation was "a material breach of contract," and that appellee sustained damages as a result of Atrium's breach. The evidence of record supports the trial court's findings. The trial testimony revealed that both parties performed initially as contemplated by the contract—appellee picked-up and delivered linens to Atrium three times a week, providing Atrium with 120% of the inventory they requested, and only billing Atrium for 100%. Due to growing needs by Atrium, however, Atrium required a more frequent delivery and pick-up schedule, *e.g*., every other day. Eventually, Atrium required appellee to pick-up and delivery every single day. Due to the increased schedule, the parties, by agreement, eliminated the "free" 20% of linen. Atrium accepted the increased services and paid invoices that included the adjusted fee through mid-April 2013. Appellants did not plead as an affirmative defense "prior material breach," and the trial court denied appellants' post-trial motion for leave to file an amended answer. Under these circumstances, appellants contention

that appellee did not perform under the contract has no merit. The evidence of record is sufficient to support the trial court's findings; thus, appellants' first issue is overruled.

B. Liquidated Damages

In their second issue, appellants argue, alternatively, appellee should not recover for liquidated damages.

1. Appellants' material breach triggered liquidated damages clause

Appellants assert the record does not contain legally or factually sufficient evidence to support the liquidated damages clause was triggered. Further, appellants contend that appellee's repudiation of the contract bars enforcement of the liquidated damages clause.

In its findings of fact and conclusions of law, the trial court found that *after* Atrium already owed appellee over $165,587.33, appellants materially breached and triggered the liquidated damages clause as follows:

> 33. By failing to pay ImageFirst for the laundry services that ImageFirst provided from April 2013 through September 2013, Atrium committed a material breach of the Contract.
>
> 34. By verbally and prematurely canceling the Contract without any written notice as the Contract requires, Atrium committed a material breach of the Contract, entitling ImageFirst to the amounts provided in the Liquidated Damages Clause.
>
> 38. As a result of Atrium's breach of canceling the Contract with 51-months/222-weeks remaining under the Contract, ImageFirst is entitled to recover under the Contract's Liquidated Damages Provision. ImageFirst's last invoice of $8,066.79 to Atrium is greater than the original Contract amount of $2,616.66. Therefore, ImageFirst is entitled to recover 40% of the last invoice, multiplied by the 222-weeks remaining under the Contract, totaling $716,330.95.

As set forth above, *supra* at III.A., the trial court determined appellee "fully

performed its obligations under the Contract."

The trial court further found that appellee "did not repudiate the Contract." The evidence demonstrated that Atrium stopped making payments to appellee in mid-April 2013; nevertheless, appellee continued services to Atrium until September 2013, when Atrium's CEO verbally terminated the contract. As such, the trial court's finding that appellee was entitled to amounts provided in the liquidated damages clause is supported by sufficient evidence.

2. Liquidated damages provision provides reasonable forecast of appellee's expectation damages

Appellants maintain that even if the liquidated damages clause is triggered it should be governed by the parties' agreement to establish reliance damages, claiming the liquidated damages clause serves as a reimbursement to appellee for related investments to service Atrium. Appellants also claim the reasonableness of the liquidated damages clause should be evaluated by comparison to appellee's reliance damages.

In its findings of fact and conclusions of law, the trial court made findings regarding damages as follows:

> 6. At the time the parties entered into the Contract, the damages ImageFirst would suffer if Atrium breached the Contract were incapable or difficult of estimation at the time the parties signed the Contract because:
>
> a. The parties knew that the volume of the laundry services would fluctuate over time as the census changed and given the needs of the individual patients;
>
> b. The parties could not predict how long linens would last, so ImageFirst's costs could not be determined;
>
> c. The parties could not determine the frequency of deliveries that would be required to service Atrium's account, so ImageFirst's costs could not be determined;

d. The parties could not determine Atrium's rate of loss of ImageFirst's linens, so ImageFirst's costs could not be determined;

e. The parties could not determine the amount ImageFirst's general overhead expenses and resources would be expended to service Atrium's account, so ImageFirst's costs could not be determined.

7. Because ImageFirst's damages in the event of Atrium's breach could not be calculated or estimated at the time the Contract was signed, the Contract provided that if Atrium prematurely canceled the Contract, Atrium would pay ImageFirst "40% of the agreement value or the current invoice amount, whichever is greater, multiplied by the number of weeks remaining under the agreement" (the "Liquidated Damages Provision").

8. ImageFirst arrived at the 40% number in the Liquidated Damages Provision because it was a conservative historical estimate of the net profits, and a reasonable rate of return on the infrastructure investments, over the life of laundry service agreements similar to the Contract.

9. Considering the average revenue ImageFirst receives for the weekly rental of its linens during the linens' lifespan, the average customer's rate of loss and ImageFirst's overhead expenses throughout the performance of a contract like the Contract with Atrium, "40% of the agreement values of the current invoice amount, whichever is greater" is a reasonable forecast of ImageFirst's just compensation under the Contract.

10. The Liquidated Damages Provision is a reasonable forecast of ImageFirst's just compensation over the life of the Contract even though the Liquidated Damages Provision's damages calculation is based only on the most recent one-week invoice as of the date of cancellation instead of being based on an average of all weekly invoices under the Contract through the date of cancellation or even a larger sample size of invoices issued under the Contract.

11. At the time the parties entered into the Contract, ImageFirst had access to damages data and information compiled by ImageFirst's franchisor based on information gathered by all franchisees over an extended period of time. But access to this data and information was not sufficient as of the effective date of the Contract to estimate ImageFirst's damages in the event of breach.

The evidence of record demonstrated that the 40% cancellation charge was a reasonable estimate of appellee's lost profits over the life of the contract. Appellants' interpretation of the cancellation charge, contemplating only reimbursement for appellee's investments, is an attempt to change the cancellation charge into a limitation of liability provision. *See Arthur's Garage, Inc. v. Racal-Chubb Sec. Sys., Inc.*, 997 S.W.2d 803, 810 (Tex. App.—Dallas 1999, no pet.) ("a contractual provision setting an upper limit to the amount recoverable is considered a limitation of liability provision."). Here, the trial court correctly rejected this contention as the cancellation charge has no upper limit and is specifically tied to the 40% of the last invoice over the remaining term.

3. Cancellation charge is enforceable and calls for just compensation

Moreover, appellants contend that even if the parties had agreed to estimate expectation damages, the liquidated damages clause is unenforceable because its formula does not offer a reasonable forecast. Appellants argue that appellee's expectation damages were not incapable or difficult to estimate. Appellants also assert that enforcing the liquidated damages clause would act as an unenforceable penalty.

In *FPL Energy, LLC v. TXU Portfolio Mgmt. Co., LP*, the Texas Supreme Court discussed the enforceability of liquidated damages:

> The basic principle underlying contract damages is compensation for losses sustained and no more; thus, we will not enforce punitive contractual damages provisions. *See Stewart v. Basey*, 150 Tex. 666, 245 S.W.2d 484, 486 (1952). In *Phillips v. Phillips*, we acknowledged this principle and restated the two indispensable findings a court must make to enforce contractual damages provisions: (1) "the harm caused by the breach is incapable or difficult of estimation," and (2) "the amount of liquidated damages called for is a reasonable forecast of just compensation." 820 S.W.2d 785, 788 (Tex. 1991) (citing *Rio Grande Valley Sugar Growers, Inc. v. Campesi,* 592 S.W.2d 340, 342 n. 2 (Tex.

> 1979)). We evaluate both prongs of this test from the perspective of the parties at the time of contracting.

426 S.W.3d 59, 69-70 (Tex. 2014). "While the question may require a court to resolve certain factual issues first, ultimately the enforceability of a liquidated damages provision presents a question of law for the court to decide." *Id*., at 70. The party asserting that a liquidated-damages clause is a penalty provision bears the burden of pleading and proof. *Garden Ridge, LP v. Advance Intern., Inc*., 403 S.W.3d 432, 437–38 (Tex. App.—Houston [14th Dist.] 2013, pet. denied) (citing *Phillips*, 820 S.W.2d at 789; Tex. R. Civ. P. 94).

In this case, the trial court analyzed both *Phillips* prongs, finding difficulty in estimating damages and the reasonableness of damage forecast. *See Phillips v. Phillips*, 820 S.W.2d 785, 788 (Tex. 1991). In its findings of fact and conclusions of law, the trial court observed that at the time the parties entered into the contract, the damages appellee would suffer if Atrium breached the contract were incapable or difficult of estimation because: (a) the parties knew the volume of laundry services would fluctuate over time as the census changed and given the needs of individual patients; (b) the parties could not predict how long linens would last; (c) the parties could not determine the frequency of deliveries that would be required to service Atrium's account; (d) the parties could not determine Atrium's rate of loss of appellee's linens; and (e) the parties could not determine the amount of appellee's general overhead expenses and resources that would be expended to service Atrium's account. Thus, the trial court correctly found appellee's costs could not be determined.

Additionally, the trial court found that because appellee's damages could not be calculated at the time the contract was signed, the contract provided that if Atrium prematurely canceled the contract, Atrium would pay appellee "40% of the agreement value or the current invoice amount, whichever is greater, multiplied by

the number of weeks remaining under the agreement." As set forth in the trial court's findings of fact and conclusions of law, appellee derived 40% because it was a conservative historical estimate of the net profits, and a reasonable rate of return on infrastructure investments, over the life of laundry service agreements similar to the contract.

The trial court further found that appellee arrived at the 40% number because it was a conservative historical estimate of the net profits, and a reasonable rate of return on the infrastructure investments, over the life of laundry service agreements similar to the contract between Atrium and appellee. On this basis, the trial court found that the provision is a reasonable forecast of appellee's just compensation over the life of the contract even though the provision's damages calculation is based only on the most recent one-week invoice as of the date of cancellation instead of being based on an average of all weekly invoices under the contract through the date of cancellation or even a larger sample size invoices issued under the contract.

In its conclusions of law, the trial court determined: the contract is valid and enforceable; the contract is not illusory; and based on the clear and unambiguous language of the contract, the parties' intent at the time of formation was for the liquidated damages provision to serve as a reasonable forecast of appellee's expectation damages in the event of breach, not as a reasonable forecast of appellee's reliance damages in the event of breach. It further determined that the liquidated damages provision was not a penalty. The liquidated damages provision is enforceable because at the time the contract was signed, damages resulting from material breach were very difficult, if not impossible to determine, and the amount of damages was a reasonable estimate of the harm that would be incurred. *See Murphy v. Cintas Corp.*, 923 S.W.2d 663, 666 (Tex. App.—Tyler 1996, writ denied) (upholding liquidated damages provision for 50% of the weekly fees for the

remainder of the 60-month term, noting "[t]o forecast the actual damages to Cintas as a result of Murphy's termination of the contract sixty months in advance would be fraught with uncertainty."); *Oetting v. Flake Uniform & Linen Serv., Inc.*, 553 S.W.2d 793, 797–98 (Tex. Civ. App.—Fort Worth 1977, no writ) (focusing on anticipated profit margin, court held that 85% cancellation charge reasonable). Here, the evidence of record demonstrated 40% was a reasonable forecast.

Appellants failed to prove the liquidated damages provision is an unenforceable penalty. *Garden Ridge, LP*, 403 S.W.3d at 437–38. For the above reasons, appellants' second issue is overruled.

C. Pre-judgment Interest

In their third issue, appellants maintain the court should reverse and modify the judgment by limiting the contractual prejudgment interest solely to amounts actually invoiced by ImageFirst. Appellants maintain that contractual finance charges are limited to "past-due invoices issued by ImageFirst." Thus, appellants argue that appellee is not entitled to recover the finance charge on liquidated damages that were never invoiced.

In its finding of fact and conclusions of law, the trial court found that pursuant to the contract's finance charge provision, the $716,330.95 appellee is entitled to under the liquidated damages provision has been accruing interest at 1½% per month or 18% per year from October 12, 2013, to February 16, 2016. Contrary to appellants' contention, the contract expressly provides for contractual interest on the cancellation of the contract. "A finance charge of 1½% per month, which is equal to 18% per year will be added to all balances not paid within terms of Net 10 EOM."

The terms of the contract do not require amounts to be invoiced to become due or to incur the contractual finance charge. Here, the latest date of the termination

and cancellation charge became due was September 11, 2013. Under the contract, if the cancellation charge was not paid by October 10, it accrued interest of 1½% per month. As such, the evidence of record is sufficient to support the trial court's findings. Thus, appellants' third issue is overruled.

D. Attorney's Fees

In their fourth issue, appellants assert the court should reverse and modify the judgment by reducing the attorney's fees award to account for fees required to be segregated.[2]

In support of an application for $110,000 in attorney's fees, H. Ronald Welsh, counsel for appellee submitted an affidavit and fourteen pages of Welsh LeBlanc LLP's billing report. In Welsh's affidavit, he maintains that a ten percent (10%) reduction of fees properly and fully segregates the fees incurred for the quantum meruit and conversion causes of action from those fees incurred from breach of contract.

Atrium opposed the fee application and submitted a controverting attorney's fees declaration by Helen Patel, directly addressing the segregation issue and establishing $11,473.50 should be excluded from recovery because it relates to time entries in pursuit of appellee's claims against individual defendants. Patel criticizes Welsh's "10% reduction of attorney's fees" because it does not take into account the significant amount of time appellee's counsel spent solely on Siddiqui litigation (*e.g.*, attended depositions of individuals with no knowledge or connection to appellee's claims against appellants and played no part in this lawsuit's trial; reviewed motions and correspondence and attended hearings on issues having no

[2] Appellee filed a petition in intervention in an existing lawsuit initiated by appellants against Siddiqui. In its second amended petition, appellee alleged claims against appellants and several individual doctors. Eventually appellee nonsuited the individual defendants.

bearing on appellee's claims against appellants; propounded discovery on the individual defendants and conducted follow-up work on that discovery; opposed for a substantial period of time appellants' attempts to sever appellee's claims from the Siddiqui litigation; engaged in correspondence with counsel for the individual defendants; and prepared dismissal document for the individual defendants). Patel's affidavit is unrebutted evidence.

We review a trial court's award of attorney's fees under an abuse of discretion standard. *See Ridge Oil Co., Inc. v. Guinn Invs., Inc.*, 148 S.W.3d 143, 163 (Tex. 2004). A party may not recover attorney's fees unless authorized by statute or contract. *Tony Gullo Motors I, L.P. v. Chapa*, 212 S.W.3d 299, 310–11 (Tex. 2006). Texas Civil Practice and Remedies Code section 38.001(8) provides for the recovery of attorney's fees in a suit on a contract. To recover attorney's fees under section 38.001, a party must prevail on the underlying claim and recover damages. *Intercontinental Grp. P'ship v. KB Home Lone Star L.P.*, 295 S.W.3d 650, 653 (Tex. 2009). Under section 38.001, the trial court has no discretion to deny attorney's fees when presented with evidence of the same. *Bocquet v. Herring*, 972 S.W.2d 19, 20 (Tex. 1998). Notwithstanding, a party seeking attorney's fees must segregate based on claims and parties. *See Chapa*, 212 S.W.3d at 313-14. Determinations addressing the need to segregate attorney's fees is a question of law. *CA Partners v. Spears*, 274 S.W.3d 51, 81 (Tex. App.—Houston [14th Dist.] 2008, pet. denied.).

Here, appellee prevailed on its breach of contract claim and recovered damages for that claim; thus, appellee is entitled to recover some amount of attorney's fees under Chapter 38. *See KB Home*, 295 S.W.3d at 653. The trial court's findings of fact and conclusions of law do not discuss fee segregation. Instead, without any explanation, the trial court awarded the full measure of appellee's attorney's fees, $110,000. This was an error and, as stated in *Chapa* "an

unsegregated damages award require[s] a remand." 212 S.W.3d at 314. As such, appellants' fourth issue is sustained.

IV. CONCLUSION

Appellants' issues one, two, and three are overruled. Appellants' issue four is sustained. Thus, the trial court's judgment is affirmed in part, reversed in part, and remanded for reconsideration of attorney's fees.

/s/ John Donovan
Justice

Panel consists of Chief Justice Frost, Justice Donovan, and Justice Wise (Frost, C.J., concurring).