**Affirmed in part and reversed and remanded in part and Memorandum Opinion filed March 30, 2017.**


**In The**

# Fourteenth Court of Appeals

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**NO. 14-16-00357-CV**

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**GLYNN WALKER AND MELINDA DEA WALKER, Appellants**

**V.**

**WILLIAM RALPH LAYNE WALKER AKA LAYNE WALKER & RONALD LINN WALKER, Appellees**

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**On Appeal from the 10th District Court**
**Galveston County, Texas**
**Trial Court Cause No. 15-CV-0354**

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

Appellants Glynn and Melinda Walker sued Glynn's father and brother regarding the ownership of a beach house in Port Bolivar, Texas. Glynn and Melinda claim that Glynn's father, appellee Ronald Walker, orally gave them the property on which they built a beach house, and then after a dispute arose wrongfully conveyed the property and beach house to Glynn's brother, appellee Layne Walker. Glynn and Melinda brought suit to quiet title based on a claim of

oral parol gift of realty, and also asserted claims for damages based on promissory estoppel, unjust enrichment, and breach of fiduciary duty. The trial court granted summary judgment against Glynn and Melinda on all claims.

We conclude that the trial court properly granted summary judgment on the claim for an oral parol gift of realty because there is no evidence of an intent to make a gift *in praesenti*, or present gift, of the property. The trial court also properly granted summary judgment on the claim for breach of fiduciary duty because there was no evidence of a fiduciary duty owed to Glynn or Melinda. The trial court erred, however, in granting summary judgment on the claims for promissory estoppel and unjust enrichment. We thus affirm in part, and reverse and remand in part, the trial court's judgment.

## BACKGROUND

Layne Walker located six beach front lots in the Bolivar township of Galveston County, Texas. Layne approached his father Ronald about purchasing the lots. Ronald, who had owned a beach cabin in Port Bolivar when he was a young man, wanted to provide his sons Glynn and Layne with a beach experience similar to his own and decided to purchase the six lots. According to Glynn, Ronald told him that he, Ronald, would purchase the six lots (known as lots 13, 14, 15, 16, 17, and 18) and would give them to the brothers, but the brothers would "have the burden" of building houses on the lots. In July 2013, Ronald purchased the lots for $15,000 per lot in two closings.[1] The deeds to the lots were put in Ronald's name alone.

[1] At closing, Ronald obtained title to 75 percent of the interest in the lots. The Bolivar Development Corporation, a defunct company, retained 25 percent of the interest in the lots. Ronald filed a lawsuit in January 2014 to obtain the remaining 25 percent title to the property. That lawsuit was concluded in the Fall of 2014, with Ronald being declared the owner of full title to the lots.

Though they initially planned to use three lots each in building their respective homes, ultimately Glynn and Layne agreed that Glynn would use lots 17 and 18, and Layne would use lots 13, 14, 15, and 16. Ronald told the boys "design your own places and build them," and he would "help [them] as far as I can." Shortly after Ronald purchased the lots, each of his sons set up a bank account for the construction of the beach houses. Glynn's account was named "Glynn Walker Construction Account." Ronald was a co-owner and signer on the account. Glynn took out a home equity loan on his current home in Port Neches in the amount of $135,000. All proceeds of that loan went directly into the Glynn Walker Construction Account. Ronald knew of the home equity loan and went to the bank with Glynn when he obtained the loan. Though the record does not provide details, it appears that Glynn's brother Layne also took out a home equity loan to use in building a beach house on the lots designated for his use.

In September 2013, construction began on the side-by-side beach homes and was largely completed by March of the following year. Glynn and Melinda made all of the decisions regarding the building of their beach home. For example, they chose the flooring, granite, colors, door knobs, light fixtures, and cabinets for the house. Glynn testified that he used the funds in the Glynn Walker Construction Account to pay for construction on his beach house and that he also did some of the work himself. The funds in the Glynn Walker Construction Account contained the money from the home equity loan Glynn took on his Port Neches home, as well as funds from Ronald. From the time construction began, Ronald had been making monthly deposits into both Glynn's and Layne's construction accounts. The amounts deposited each month varied, but over the course of approximately eighteen months, Ronald had deposited over $110,000 into each of their accounts.

Glynn testified that the construction of his beach house ultimately cost between $230,000 and $240,000.

From March 2014, when the homes were completed, until March 2015, the parties and their families appear to have used the beach homes. Ronald would visit the beach homes when the families were present and stated that he always stayed in Layne's beach home when he was at the beach because Layne had built an extra room for his use.[2] Though he had visited the home built by Glynn, he had never spent the night in Glynn's beach house. Ronald paid the property taxes on the home and Glynn paid the insurance and utilities.

In March 2015, Ronald was visiting Layne's beach house with Layne's family. An issue arose regarding the presence of Glynn's high school aged son and the son's girlfriend at Glynn's beach house without any adults present. Ronald called Glynn and voiced his concerns regarding the use of Glynn's house and Glynn's son then left. Shortly thereafter, Glynn and Melinda went to the beach house and began removing their personal property and furnishings from the beach house. Ronald asked that the two families sit down for a talk. Ronald, Layne, Layne's wife Cynthia, Glynn and Melinda did so, but during the course of the meeting things got heated and Ronald went back to Layne's house next door. Layne and his wife Cynthia came over to Ronald and told him of a statement made by Melinda after Ronald left. According to Ronald, they told him that Melinda said she could rent her beach house to whoever she wanted and "there is nothing you can do about it." Melinda disputes using the words they attribute to her and contends she said only that it was within her right to invite whoever she wanted to the beach house. Ronald testified that, after the meeting, he knew that "there would

[2] The room also was to be used for Ronald's handicapped nephew who visited the beach with them on occasion.

never be a relationship between the two families that could in any way be continued" and he had a concern that this would "become the worst nightmare that two families could endure." Ronald instructed Layne[3] to prepare two deeds for execution. Layne did so and on March 26, 2015, Ronald executed two deeds that conveyed to Layne by "Special Warranty Gift Deed," all of the lots, including lots 17 and 18 containing Glynn's beach house.

Glynn learned of the conveyance a few days later. Layne and Glynn communicated by phone and text, and Layne eventually told Glynn not to return to the property. Glynn then hired a moving company to remove the remainder of his personal property from the house, including certain fixtures such as appliances and built-ins. Glynn and Melinda state they continue to make payments in the amount of $1,015 per month on the home equity loan used to construct the beach house they are no longer able to use. Layne and Ronald both said they "begged" Glynn to sit down with them and bring receipts for costs spent on the house so that they could pay Glynn for those costs, but that Glynn would not do so.

Shortly after they removed their property and fixtures, Glynn and Melinda filed this lawsuit. In their live pleading, Glynn and Melinda allege that they own equitable title to lots 17 and 18, along with the improvements to the property, through an oral parol gift of realty from Ronald. They also seek to enforce his promise and obtain monetary damages from Ronald under a theory of promissory estoppel, and from Layne under theories of unjust enrichment and breach of fiduciary duty. The trial court initially granted a request for a temporary restraining order against Ronald and Layne, but dissolved the restraining order and denied a request for injunctive relief against them after an evidentiary hearing.

[3] Layne is a licensed attorney in the State of Texas.

Ronald and Layne filed a traditional and no-evidence motion for summary judgment on all claims asserted by Glynn and Melinda. In the motion, Ronald and Layne argued that Ronald had an absolute right to dispose of the property, the statute of frauds barred any oral promise to transfer real property, and Glynn and Melinda had waived or were estopped to deny Ronald's ownership of the property. Ronald and Layne also asserted that neither attorneys' fees nor exemplary damages were recoverable, and that they had not been unjustly enriched at Glynn and Melinda's expense. Ronald and Layne then included a paragraph under the heading "No Evidence," stating that "Plaintiffs have produced no evidence, whatsoever, of an enforceable gift of real property, or entitlement to monetary damages, including, but not limited to, exemplary damages or attorney's fees. . . . undue influence, fiduciary breach, or unjust enrichment."

The trial court granted summary judgment on all claims of Glynn and Melinda without specifying the grounds for its decision, or whether it was granting traditional or no-evidence summary judgment. Glynn and Melinda filed a motion to modify, correct, or reform the judgment, which was overruled by operation of law. This appeal followed.

## ANALYSIS

In one issue Glynn and Melinda challenge the trial court's order granting summary judgment on all of their claims against Ronald and Layne. For the reasons set forth below, we overrule in part, and sustain in part, Glynn and Melinda's issue.

### A. *Standards of review.*

The summary judgment standards of review are well-known. We review de novo the trial court's order granting summary judgment. *Ferguson v. Bldg.*

*Materials Corp. of Am.*, 295 S.W.3d 642, 644 (Tex. 2009) (per curiam); *Wyly v. Integrity Ins. Solutions*, 502 S.W.3d 901, 904 (Tex. App.—Houston [14th Dist.] 2016, no pet.). We consider the evidence in the light most favorable to the non-movant, and indulge reasonable inferences and resolve all doubts in its favor. *See City of Keller v. Wilson*, 168 S.W.3d 802, 824 (Tex. 2005); *Wyly*, 502 S.W.3d at 904. "We credit evidence favorable to the non-movant if reasonable fact finders could and disregard contrary evidence unless reasonable fact finders could not." *Wyly*, 502 S.W.3d at 904.

When both no-evidence and traditional grounds for summary judgment are asserted, we first review the trial court's order under the no-evidence standard. *PAS, Inc. v. Engel*, 350 S.W.3d 602, 607 (Tex. App.—Houston [14th Dist.] 2011, no pet.). To prevail on a no-evidence summary judgment, the movant must allege that no evidence exists to support one or more essential elements of a claim for which the non-movant bears the burden of proof at trial. Tex. R. Civ. P. 166a(i); *Kane v. Cameron Int'l Corp.*, 331 S.W.3d 145, 147 (Tex. App.—Houston [14th Dist.] 2011, no pet.). A no-evidence motion may not be conclusory, but must instead give fair notice to the non-movant as to the specific element of the non-movant's claim that is being challenged. *See Timpte Indus., Inc. v. Gish*, 286 S.W.3d 306, 310-11 (Tex. 2009). The non-movant must then present evidence raising a genuine issue of material fact on the challenged elements. *Kane*, 331 S.W.3d at 147. A fact issue exists where there is more than a scintilla of probative evidence. *See Buck v. Palmer*, 381 S.W.3d 525, 527 (Tex. 2012) (per curiam). More than a scintilla of evidence exists if the evidence rises to a level that would allow reasonable and fair-minded people to differ in their conclusions as to the existence of a vital fact. *Dworschak v. Transocean Offshore Deepwater Drilling, Inc.*, 352 S.W.3d 191, 196 (Tex. App.—Houston [14th Dist.] 2011, no pet.) (citing

*Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 601 (Tex. 2004)).

To prevail on a traditional motion for summary judgment, a movant must establish that no genuine issue of material fact exists so that the movant is entitled to judgment as a matter of law. Tex. R. Civ. P. 166a(c); *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009). Summary judgment is appropriate if the movant conclusively negates at least one essential element of the plaintiff's claim. *Wyly*, 502 S.W.3d at 905.

**B. *Glynn and Melinda's claims for relief.***

Glynn and Melinda contend on appeal that the trial court erred in granting summary judgment on their claims for an oral parol gift of real property, promissory estoppel, unjust enrichment, and breach of fiduciary duty. We address the trial court's summary judgment with regard to each claim in turn.

**1. *Oral parol gift of realty.***

The well-settled general rule in Texas is that a conveyance of real property must be in writing. *See Dawson v. Tumlinson*, 242 S.W.2d 191, 192 (Tex. 1951) ("The law in this state as to parol sales and parol gifts of real property was fully and carefully stated in *Hooks v. Bridgewater*, 111 Tex. 122, 229 S.W. 1114 (1921), 15 A.L.R. 215, and the law as there stated has been consistently followed."); *see also* Tex. Prop. Code § 5.021 (West 2004) ("A conveyance of an estate of inheritance, a freehold, or an estate for more than one year, in land and tenements, must be in writing and must be subscribed and delivered by the conveyor or by the conveyor's agent authorized in writing."); Tex. Bus. & Com. Code § 26.01(a), (b)(4) (West 2009) ("Statute of Frauds.").

An exception to the requirement of a written conveyance exists, however, if a party establishes the elements of a parol gift of real estate in equity. *See Dawson*,

242 S.W.2d at 192-93; *Estate of Wright*, 482 S.W.3d 650, 657 (Tex. App.—Houston [14th Dist.] 2015, pet. denied). To establish a valid parol gift of realty enforceable in equity, a party must show: (1) a gift *in praesenti*, that is a present gift; (2) possession of the realty by the donee with the donor's consent; and (3) permanent and valuable improvements to the realty by the donee with the donor's consent, or other facts demonstrating that the donee would be defrauded if the gift were not enforced. *Estate of Wright*, 482 S.W.3d at 657; *see also Flores v. Flores*, 225 S.W.3d 651, 655 (Tex. App.—El Paso 2006, pet. denied). The requirements are strictly construed and, at trial, are subject to a heightened burden of proof. *See Estate of McNutt*, No. 04-14-0010-CV, 2016 WL 519732, at *3 (Tex. App.—San Antonio Feb. 10, 2016, pet. pending); *see also Oadra v. Stegall*, 871 S.W.2d 882, 892 (Tex. App.—Houston [14th Dist.] 1994, no writ) (clear and convincing evidence applies to claims involving inter vivos gifts).[4]

**a. *The motion for summary judgment.***

Ronald and Layne moved for a no-evidence summary judgment on the ground that Glynn and Melinda have no evidence of "an enforceable gift of real property." On appeal, Glynn and Melinda contend that this fails to sufficiently specify the elements of the oral parol gift claim for a no-evidence summary judgment. We agree that the no-evidence portion of the motion for summary judgment does not specify the three elements outlined above regarding an oral gift of realty. We conclude, however, that the motion was sufficiently specific under the facts of this case with regard to the oral gift of realty claim. Ronald and Layne argued that there was no gift *in praesenti* and that there was no evidence of an

[44] Ronald and Layne urge us to apply the heightened clear and convincing evidence standard of review to this appeal. We decline to do so. Courts do not apply the clear and convincing evidence standard at the summary judgment stage. *See Huckabee v. Time Warner Entm't Co., L.P.*, 19 S.W.3d 413, 421-22 (Tex. 2000) (noting difficulties involved if heightened standard were applied to summary judgment review).

enforceable gift. Glynn and Melinda were able to respond thoroughly and did so by pointing out the evidence they contended raised genuine issues of material fact on each element of the claim. *See Timpte Indus.*, 286 S.W.3d at 311 (fair notice given where record revealed no confusion as to the assertions of no evidence and non-movant was able to respond thoroughly as to elements challenged). And, because both sides attached evidence in the context of the motions, our task is simply to determine whether a fact issue exists. *See Buck*, 381 S.W.3d at 527 n.2 (in hybrid no-evidence and traditional motion for summary judgment where both sides attach evidence, "[t]he ultimate question is simply whether a fact issue exists.").

**b. *There is no evidence of a present gift.***

To establish a gift *in praesenti*, or present gift, the purported donee must show that the donor, at the time he makes the gift, intended an immediate divestiture of the rights of ownership out of himself, and a consequent immediate vesting of such rights in the donee. *Estate of Wright*, 482 S.W.3d at 657; *Thompson v. Dart*, 746 S.W.2d 821, 825 (Tex. App.—San Antonio 1988, no writ) ("'In praesenti' means at the present time; it is used in opposition to *in futuro*."). The possession asserted by the donee must be in the nature of an owner's right to control the property. *Thompson*, 746 S.W.2d at 825; *Troxel v. Bishop*, 201 S.W.3d 290, 297 (Tex. App.—Dallas 2006, no pet.). Statements to the effect that a donor is "going to give," or will give the gift at some later date, do not show an intent to make a present gift. *See Flores*, 225 S.W.3d at 657; *Thompson*, 746 S.W.2d at 827; *Massey v. Lewis*, 281 S.W.2d 471, 474 (Tex. App.—Texarkana 1955, writ ref'd n.r.e.).

Glynn and Melinda attached to their response to the motion for summary judgment various affidavits and the transcript from the evidentiary hearing on their

request for a temporary injunction. That evidence included the following concerning the alleged gift:

- Glynn testified: "in the Summer of 2013, my dad bought six lots in the Bolivar town site of which he gifted to my brother and I."
- According to Glynn, Ronald said "I'll buy the lots. I'll give them to y'all, but y'all have the burden of building the houses. And we talked about it and we both thought that was a very good deal, and we did it."
- Glynn stated in his affidavit that Ronald said he was purchasing beach lots for both Glynn and Layne.
- Ronald did not tell Glynn that he would retain ownership of the lots until Ronald's death.
- Ronald told Glynn and Layne "y'all design your own place, build it. I will help you as far as I can."
- Ronald knew that Glynn and Melinda were taking out a home equity loan for the construction of the beach house, and in fact was present with Glynn at the bank at the time Glynn got the loan.
- Ronald referenced the houses as "Glynn's house" or "Layne's house."
- Ronald told Melinda "It is his (Glynn[sic]) house, he can build whatever he wants it doesn't matter to me." He then proceeded to state that he "was excited to have purchased the property for his boys."
- With regard to getting an actual deed, Glynn said that Ronald told him "I'll transfer to y'all whenever you're ready." There was no controversial discussion about transferring the deed and Glynn "couldn't feel better about my deed being secured than with my dad." They discussed it a couple of times as the months went on and they decided to wait to transfer the deed until the suit to quiet title against the Bolivar Development Company concluded.
- When the suit to quiet title against the Bolivar Development Company finished, Ronald called Glynn and said "Hey, congratulations. You now own 100 percent of your property."

- Two family friends testified that they understood from talking to Glynn and Layne that the land was purchased and given to the brothers.

Ronald also testified regarding his intent with regard to the beach lots. Ronald stated that he never intended to deed the property to Glynn and Layne. Rather, he always intended that the brothers would inherit the property upon Ronald's death. To that end, he executed a will in January 2014 specifically bequeathing the properties to Glynn and Layne respectively.[5] Ronald further stated that he intended for the brothers to independently construct homes on the lots with the understanding that they would not get them until he died, and that he hoped to fund most, if not all, of the construction. Ronald placed over $110,000 in a joint bank account for the construction of the house and maintained the account in his name as well as Glynn's name. Ronald contemplated making the beach property his home during his lifetime if he could get a homestead exemption on both of the properties but ultimately did not do so.

Reviewing the evidence in the light most favorable to Glynn and Melinda, and indulging all inferences in their favor as we must, we conclude that there is no evidence that Ronald intended an *immediate* divestiture of the rights of ownership out of himself, and a consequent immediate vesting of such rights in Glynn. The statements of Ronald pointed to by Glynn were all to the effect that Ronald would

[5] Ronald and Layne argue on appeal that the will "conclusively negates any alleged present intent." Ronald and Layne did not make this argument in their motion for summary judgment and it, therefore, cannot support the trial court's summary judgment on appeal. *See Sci. Spectrum, Inc. v. Martinez*, 941 S.W.2d 910, 912 (Tex. 1997) ("A motion for summary judgment must itself expressly present the grounds upon which it is made, and must stand or fall on these grounds alone."). Even if the argument had been preserved, we do not agree that the will conclusively negated a present intent in this case. A will speaks only "at the time of the testator's death, and the estate's property cannot be assessed until that date. The will can only give things possessed by the testator at his death." *Estate of Wright*, 482 S.W.3d at 658. Similarly, the will in this case, executed in January 2014, cannot negate as a matter of law an oral gift of property allegedly made in July 2013 (if a gift had been made).

give the title to the property to Glynn at some point in the future. Ronald told Glynn he *would* give him the property (as opposed to he *immediately* gives) and that he *would* transfer the property whenever Glynn was ready. In fact, the description of the land Glynn alleges was given changed over time—*i.e.*, what would originally be three lots each to both brothers became two lots for Glynn and four lots for Layne, and the original 75 percent interest originally purchased by Ronald became 100 percent after the Bolivar Development Company litigation concluded. We hold that these are not statements of an immediate gift but rather reflect an intent to give the land to Glynn at some point in the future. *See, e.g.*, *Flores*, 225 S.W.3d at 657 (offer to give property to son to live in when son finished his enlistment in military not sufficient); *Thompson*, 746 S.W.2d at 826-27 (statements of "going to give" or "was giving them the ranch" not sufficient); *Massey*, 281 S.W.2d at 474 (statements "stay with me, take care of me, and the place is yours" or "do what you want, the property is yours" were not sufficient to show intent to make present gift).

In *Estate of Wright*, we addressed the sufficiency of the evidence to support a trial court's finding of a present intent to make an oral gift of real property. *See Estate of Wright*, 482 S.W.3d at 653, 657-58. We found sufficient evidence of a present intent to make a gift existed where the donor stated "that was it," the house was the donee's and at the same time discontinued any additional rental payments from the donee. *Id.* Language by Ronald in this case, after the completion of the Bolivar Development Company litigation congratulating Glynn for "now owning 100% of his property" at first appears similar to the language found sufficient in *Estate of Wright*. We find it distinguishable, however, because the language used by Ronald in this case referred to the fact that the remaining 25 percent previously held by the Bolivar Development Company was now owned based on the

conclusion of the Bolivar litigation. It does not establish that Ronald intended an immediate gift of the property.

Ronald instead continued to act as the owner of the property even after Glynn's home was built. For example, Ronald paid all of the property taxes on the home and voiced his concerns over how Glynn's high school aged son was using the home. *See Thompson*, 746 S.W.2d at 827 (alleged donor paying property taxes and continuing to generally act as owner is indication no divestiture of property had occurred); *see also Troxel*, 201 S.W.3d at 296 (to constitute gift, owner must release all dominion and control over the property). After the disagreement at the family meeting, Glynn began moving his property out of the home and ultimately removed all of his belongings and fixtures from the property in response to Layne's demand to leave. Glynn's conduct in vacating the premises, even if done to maintain the peace, was inconsistent with his claim of being the owner of the property. *See Thompson*, 746 S.W.2d at 827; *see also Dawson*, 242 S.W.2d at 194 (noting importance of showing possession was held by the alleged donee in the nature of an owner of the property).

There is testimony that Ronald referred to the home as Glynn's home, that he purchased the property for his boys, and that Glynn could build whatever home he wanted. The statements, however, do not show an intent to make an immediate transfer of the property to Glynn as an owner of the property, as opposed to a permitted user of the property as Ronald claimed was his intent. *See Sharp v. Stacey*, 535 S.W.2d 345, 351 (Tex. 1976) (references to "Junior's place" or that farm belonged to Junior was equally consistent with status as tenant farmer and thus "did not constitute any evidence that Junior occupied the farm as owner."). The statements are equally consistent with Ronald's contention that he purchased the property for the boys to build homes on and use with their families during his

lifetime and then pass to the boys upon his death. Likewise, the statements from the two family friends that they understood the property to be Glynn's because of their discussions with Glynn and Layne are no evidence of *Ronald's* intent with regard to the lots.

The record does set forth evidence that Ronald intended at some point in the future to give Glynn and Layne the lots for the beach homes. In fact, Ronald states in his motion for summary judgment that "Ronald L. Walker at one time intended to bequeath the two beach houses to his two sons." There is simply no evidence, however, that Ronald intended an immediate divestiture of all of his rights and control to the lots in favor of his sons. As a result, there is no evidence of a gift *in praesenti*, and the trial court properly granted summary judgment on the claim for title to the property based on an oral parol gift. We overrule Glynn and Melinda's challenge to the summary judgment on that claim.

**2. *The promissory estoppel claim.***

Glynn and Melinda assert that they may recover reliance damages under a claim of promissory estoppel. Although promissory estoppel is generally used as a defensive theory, it may be asserted as an affirmative claim for damages. *See Boales v. Brighton Builders, Inc.*, 29 S.W.3d 159, 166 (Tex. App.—Houston [14th Dist.] 2000, pet. denied); *see also Mann v. Robles*, No. 13-14-00190-CV, 2016 WL 1274690, at *3 (Tex. App.—Corpus Christi-Edinburg Mar. 31, 2016, pet. denied). Glynn and Melinda argue that theirs is an affirmative claim for damages. The elements of an affirmative claim for promissory estoppel are: (1) a promise; (2) foreseeability by the promisor of reliance on the promise; and (3) substantial reliance by the promisee to its detriment. *See Boales*, 29 S.W.3d at 166 (citing *English v. Fischer*, 660 S.W.2d 521, 524 (Tex. 1983)); *see also Collins. v. Walker*, 341 S.W.3d 570, 573-74 (Tex. App.—Houston [14th Dist.] 2011, no pet.) (claim

applies where enforcing the promise is necessary to avoid injustice). The damages in an affirmative claim for promissory estoppel are the amounts necessary to restore the promisee to the position in which he would have been had he not relied on the promise. *See Fretz Constr. Co. v. S. Nat'l Bank*, 626 S.W.2d 478, 483 (Tex. 1981); *Allied Vista, Inc. v. Holt*, 987 S.W.2d 138, 142 (Tex. App.—Houston [14th Dist.] 1999, pet. denied); *see also Frost Crushed Stone Co., Inc. v. Odell Geer Constr. Co., Inc.*, 110 S.W.3d 41, 47 (Tex. App.—Waco 2002, no pet.).

Defensively, promissory estoppel may be applied to bar the application of the Statute of Frauds and allow the enforcement of an otherwise unenforceable oral agreement. *See generally Exxon Corp. v. Breezevale Ltd.*, 82 S.W.3d 429, 438 (Tex. App.—Dallas 2002, pet. denied). In their motion, Ronald and Layne asserted only traditional grounds for summary judgment on the promissory estoppel claim. Specifically, they argued (1) Ronald could "never have anticipated that his alleged promise might cause any injury to Plaintiffs" and (2) Glynn and Melinda have not sustained a definite and substantial injury. Ronald and Layne further moved for summary judgment on the ground that promissory estoppel is available only if there was a promise to sign an existing document transferring title. However, these elements relate only to a defensive use of promissory estoppel and not to an affirmative claim for damages.

In their motion for summary judgment, Ronald and Layne relied on *Nagle v. Nagle*, a case in which the Texas Supreme Court addressed the elements for promissory estoppel when asserted as a counter-defense to a claim to enforce an agreement barred by the Statute of Frauds. 633 S.W.2d 796, 800 (Tex. 1982). The *Nagle* court explained: "[C]ourts will enforce an oral promise to sign an instrument complying with the Statute of Frauds if: (1) the promisor should have expected that his promise would lead the promisee to some definite and substantial injury; (2)

such an injury occurred; and (3) the court must enforce the promise to avoid injustice." *Id.* (citing *"Moore" Burger, Inc. v. Phillips Petroleum Co.*, 492 S.W.2d 934 (Tex. 1973)). Glynn and Melinda argue on appeal that they do not attempt, by their promissory estoppel claim, to enforce the terms of the oral parol gift of realty. Instead, they seek reliance damages based on the promise made by Ronald that he would transfer title to the property to them.[6] Their live pleading, however, asks for both reliance damages and an exemption from the Statute of Frauds to enforce Ronald's oral promise to transfer the property. As Glynn and Melinda do not address the defensive use of a promissory estoppel cause of action in their issues or briefing to this Court, we conclude they have waived any error on appeal concerning the defensive use of promissory estoppel to preclude application of the Statute of Frauds. *See* Tex. R. App. P. 38.1(h) (failure to provide substantive analysis waives issue on appeal).

Nevertheless, we review Ronald and Layne's summary judgment evidence to determine whether they conclusively negated any element of Glynn and Melinda's affirmative promissory estoppel claim for reliance damages. As to foreseeability of reliance[7] and substantial reliance to Glynn and Melinda's

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[6] Ronald and Layne argue that Glynn and Melinda have asserted a new argument on appeal by recognizing in their briefing that promissory estoppel is not a proper vehicle for obtaining actual title to the property. *See Wheeler v. White*, 398 S.W.2d 93, 97 (Tex. 1965) (under promissory estoppel, promisee may recover "no more than reliance damages measured by the detriment sustained."). We disagree that they have made a new argument. Glynn and Melinda pleaded for reliance damages under their promissory estoppel claim in their Third Amended Petition. In their response to the motion for summary judgment, Glynn and Melinda made clear that "[t]his promissory estoppel claim is only brought in the alternative if there is a finding that there was no present gift under oral parol gift."

[7] In their appellees' brief, Ronald and Layne also argue that Glynn and Melinda could not have justifiably relied on Ronald's promise to provide them with legal title given that the terms of Ronald's will granted legal title only upon his death. Ronald and Layne did not assert this ground in their motion for summary judgment. We will not consider it on appeal. *See Sci. Spectrum*, 941 S.W.2d at 912.

detriment, Ronald and Layne made only a conclusory statement in their motion that Ronald could never have anticipated that his alleged promise might cause any injury to Glynn and Melinda. Reviewing all of the evidence in the light most favorable to the non-movants shows the opposite. Ronald concedes that he encouraged Glynn and Melinda to build a house on the lot—he said to them "y'all design your own place, build it. I will help you as far as I can." Glynn testified that Ronald also told him that he would transfer the deed to Glynn whenever Glynn was ready. Ronald knew that Glynn and Melinda were taking out a home equity loan of $135,000 to use in building the beach house. In fact, Ronald went to the bank with Glynn when he obtained the loan and knew of the joint banking account Ronald had with Glynn for construction of the house. Ronald conceded at the temporary injunction hearing that he legitimately owed Glynn "approximately $80,000 but he still won't give me the verified receipts." This evidence is sufficient to raise a genuine issue of material fact with regard to whether Ronald could have anticipated that his promise would lead to Glynn and Melinda's reliance and that Glynn and Melinda substantially relied upon Ronald's promise to their detriment.[8]

We conclude that Glynn and Melinda waived any error as to a defensive use of promissory estoppel with respect to title to the property and affirm the summary judgment as to that portion of the promissory estoppel claim. We conclude further that there are genuine issues of material fact with regard to the affirmative claim of promissory estoppel for reliance damages. We thus sustain Glynn and Melinda's

[8] Ronald and Layne also argue that the promissory estoppel claim is not available because there was no promise to sign an existing written document transferring title. In support, they cite *Exxon Corp.*, 82 S.W.3d at 429 and *Beta Drilling, Inc. v. Durkee*, 821 S.W.2d 739 (Tex. App.—Houston [14th Dist.] 1992, pet. denied). These cases both involve the defensive use of promissory estoppel, which Glynn and Melinda have waived. Further, the written document requirement does not apply to an affirmative promissory estoppel claim for reliance damages. *See Mann*, 2016 WL 1274690, at *3 & n.7.

issue with respect to the trial court's order granting summary judgment on that claim.

### 3. *The unjust enrichment claim.*

Unjust enrichment is an equitable doctrine that allows recovery in quasi-contract or restitution if a contemplated agreement is "unenforceable, impossible, not fully performed, thwarted by mutual mistake, or void for other legal reasons." *French v. Moore*, 169 S.W.3d 1, 11 (Tex. App.—Houston [1st Dist.] 2004, no pet.). It is typically found to apply where one person has obtained a benefit from another by fraud, duress, or the taking of an undue advantage. *Burlington N. R. Co. v. S.W. Elec. Power Co.*, 925 S.W.2d 92, 97 (Tex. App.—Texarkana 1996), *aff'd sub nom S.W. Elec. Power Co. v. Burlington N. R. Co.*, 966 S.W.2d 467 (Tex. 1998). The remedy is not proper simply because it might be more expedient or generally fair that some compensation be afforded or because the benefits amount to a windfall. *See Heldenfels Bros. v. City of Corpus Christi*, 932 S.W.2d 39, 42 (Tex. 1992). The right to recover under an unjust enrichment theory does not depend on the existence of a wrong. *See Bransom v. Standard Hardware, Inc.*, 874 S.W.2d 919, 927 (Tex. App.—Fort Worth 1994, writ denied); *see also Oxford Fin. Cos., Inc. v. Velez*, 807 S.W.2d 460, 465 (Tex. App.—Austin 1991, writ denied). The doctrine is based on the equitable principle that one who receives benefits, even passively, which would be unjust to retain ought to make restitution for those benefits. *See Mowbray v. Avery*, 76 S.W.3d 663, 679 (Tex. App.—Corpus Christi 2002, pet. denied).

In the motion for summary judgment, Ronald and Layne state summarily in the no-evidence paragraph that Glynn and Melinda produced no evidence of unjust enrichment. They do not specify what element of the unjust enrichment theory they are challenging. As a result, the no evidence motion was deficient and will not

support summary judgment. *See Wyly*, 502 S.W.3d at 907 (conclusory no-evidence motion that did not specify elements was improper and would not support summary judgment).

Ronald and Layne also challenged the unjust enrichment theory on traditional grounds. Without citing any legal authority, they argued summary judgment should be granted because the transfer of ownership from Ronald to Layne was "entirely legal" and thus not in any manner unjust. This ground does not entitle Ronald and Layne to summary judgment. To obtain restitution on a theory of unjust enrichment, a wrongful act need not be shown. *See Oxford Fin. Cos.*, 807 S.W.2d at 466; *see also Bransom*, 874 S.W.2d at 927 ("A right of recovery under unjust enrichment is essentially equitable and does not depend on the existence of a wrong."). Whether the conveyance from Ronald to Layne was "entirely legal" does not conclusively negate the unjust enrichment claim and summary judgment on that ground is improper.

We conclude that Ronald and Layne did not conclusively establish their right to judgment as a matter of law on the claim for unjust enrichment. We sustain Glynn and Melinda's issue to the extent that the trial court granted summary judgment on the unjust enrichment claim.

**4. *The breach of fiduciary duty claim.***

Glynn and Melinda alleged that Layne owed them a fiduciary duty based on years of handling family transactions and that he breached that duty by obtaining their beach home. Layne moved under Rule 166a(i) for summary judgment on the grounds that there was no evidence of a fiduciary breach. He also asserted he did not owe a fiduciary duty based on mere subjective trust by Glynn or Melinda. We agree that Glynn and Melinda failed to adduce evidence that Layne owed either of

them a fiduciary duty with respect to the beach home, and thus there is no evidence of a fiduciary breach.

It is well-settled that certain relationships, such as attorney-client, partnership, or trustee, give rise to a fiduciary duty as a matter of law. *Meyer v. Cathey*, 167 S.W.3d 327, 330-31 (Tex. 2005). Our law also recognizes that certain relationships may give rise to an informal fiduciary duty based on "a moral, social, domestic or purely personal relationship of confidence and trust." *Id.* at 331; *see Assoc. Indem. Corp. v. CAT Contracting, Inc.*, 964 S.W.2d 276, 287 (Tex. 1998); *Lee v. Hasson*, 286 S.W.3d 1, 14 (Tex. App.—Houston [14th Dist.] 2007, pet. denied). Informal fiduciary duties will not be created lightly. *See Schlumberger Tech. Corp. v. Swanson*, 959 S.W.2d 171, 177 (Tex. 1997); *Hasson*, 286 S.W.3d at 14. Some relationships involving trust and confidence simply do not rise to the stature of a fiduciary relationship. *See Schlumberger Tech. Corp.*, 959 S.W.2d at 176-77. Subjective trust of one person in another is also not sufficient to create a duty. *See Swinehart v. Stubbeman, McRae, Sealy, Laughlin & Browder, Inc.*, 48 S.W.3d 865, 880 (Tex. App.—Houston [14th Dist.] 2001, pet. denied). "[A] confidential relationship is a two-way street: 'one party must not only trust the other, but the relationship must be mutual and understood by both parties.'" *Id.* at 882 (citing *Hoover v. Cooke*, 566 S.W.2d 19, 26 (Tex.Civ.App.—Corpus Christi 1978, writ ref'd n.r.e.)).

Family relationships may give rise to an informal fiduciary duty between family members where there is sufficient evidence of a relationship of trust and confidence. *See Young v. Fawcett*, 376 S.W.3d 209, 214 (Tex. App.—Beaumont 2012, no pet.) ("[F]amily relationships—where a person trusts in and relies upon a close member of her core family unit—may give rise to a fiduciary duty when equity requires."). A mere family relationship, however, by itself is generally not

sufficient. *Tex. Bank & Trust Co. v. Moore*, 595 S.W.2d 502, 508 (Tex. 1980) (aunt/nephew relationship, even where nephew assisted aunt, was not, standing alone, sufficient to establish fiduciary relationship); *Kilpatrick v. Kilpatrick*, No. 02-12-00206-CV, 2013 WL 3874767, at *4 (Tex. App.—Fort Worth July 25, 2013, pet. denied) ("[t]he fact that Kelly, Tim, and Devin are brothers does not, by itself, establish that a fiduciary relationship existed between them."). We will examine the actualities of the relationship between the parties in determining the existence of a confidential fiduciary relationship. *Swinehart*, 48 S.W.3d at 880. Where there is no evidence to establish the relationship or the facts are undisputed, a court may determine the question as a matter of law. *See Meyer*, 167 S.W.3d at 330; *Swinehart*, 48 S.W.3d at 880.

In response to the motion for summary judgment, Glynn and Melinda stated "Plaintiffs placed their trust and confidence in Defendant Layne Walker based on years of handling family transactions." Melinda, however, produced no evidence showing any facts establishing a relationship of trust and confidence specifically between her and Layne. The fact that Layne is Melinda's brother-in-law alone is not sufficient. *See Moore*, 595 S.W.2d at 508; *see also Kilpatrick*, 2013 WL 3874767, at *4 ("Similarly, family relationships, although a factor in determining whether a fiduciary duty exists, are not enough alone to establish a fiduciary relationship."). There is no evidence showing that she sought Layne's advice or guidance on any matter, nor evidence of any other circumstances suggesting a relationship of trust and confidence between them. The trial court properly granted summary judgment on Melinda's claim against Layne for breach of fiduciary duty.

In support of his claim that a special relationship of trust and confidence existed, Glynn cites the following as evidence creating a fiduciary duty:

- Layne contacted the sellers of the six beach lots and negotiated the price of the lots that Ronald then purchased;
- Layne stated in his deposition that he has either officially or unofficially (the record is not clear as to which) bailed Glynn's "butt out of cracks behind closed doors." There is no evidence as to when this occurred or under what circumstances.
- Layne had a power of attorney with regard to his mother and Layne drafted sales documents and correspondence for their deceased mother's home, which Layne and Glynn jointly owned through inheritance.
- Layne acted as the "liaison attorney" between the family and Tom McQuage, the attorney of record for Ronald in the Bolivar Development Company litigation.
- Layne handled legal issues with regard to the "family mineral interests" owned by Ronald.

We conclude that the evidence cited by Glynn is no more than a scintilla of evidence of a fiduciary duty owed by Layne to Glynn. There is no evidence showing that Glynn was often guided by the judgment or advice of Layne, or that Glynn put any particular trust and confidence in Layne with regard to Glynn's financial decisions. *See, e.g.*, *Lee*, 286 S.W.3d at 15 (long-time family friend helped plaintiff going through divorce, who was inexperienced in financial issues, make financial decisions and provided extensive emotional support). Nor is there any evidence indicating that Layne recognized that Glynn was relying on him to the extent that a fiduciary duty arose. *See Young*, 376 S.W.3d at 215 (under "extraordinary facts of case," evidence indicated the parties' recognized that a confidential relationship existed and a fiduciary duty had been imposed). Glynn argues generally that there was a history of Layne handling "family transactions," but he does not point to any evidence establishing that he relied upon or put his confidence in Layne with regard to any specific "family transactions."

The bulk of the evidence pointed to by Glynn relates to interests owned by Ronald, not Glynn. The negotiation of the beach lots, acting as the liaison attorney in the Bolivar Development Company litigation, and handling legal issues for the "family mineral interests" were done by Layne on behalf of Ronald, not on behalf of Glynn. Ronald was the purchaser of the lots, Ronald was the named party in the Bolivar Development Company litigation, and Ronald was the owner of the mineral interests. Thus, any duty owed by Layne would be to Ronald, not Glynn.

The statement that Layne, an attorney, had represented Glynn, either officially or unofficially, to get Glynn out of trouble, is also not evidence of a fiduciary duty in this case. There is no evidence as to the date or circumstances of this representation. Even if a fiduciary duty could be established with regard to those circumstances, it would not necessarily establish a fiduciary duty for every transaction between Layne and Glynn. *See Heritage Gulf Coast Props., Ltd. v. Sandalwood Apartments, Inc.*, 416 S.W.3d 642, 651 (Tex. App.—Houston [14th Dist.] 2013, no pet.) (existence of fiduciary relationship between parties in one transaction does not always give rise to fiduciary relationship in any transaction involving those parties).

With regard to the sales documents and correspondence on the mother's house that Layne and Glynn inherited and presumably owned as cotenants, there is no evidence that Layne was acting as an attorney or agent on behalf of Glynn. We note that cotenants in real property do not ordinarily owe fiduciary duties to each other. *See Scott v. Scruggs*, 836 S.W.2d 278, 282 (Tex. App.—Texarkana 1992, writ denied) ("Absent a special relationship there is no fiduciary obligation owed by one cotenant to the others."). Layne did state that he handled the paperwork part of the sales transaction for their mother's property with his brother's permission, but that alone does not establish a fiduciary duty. *See id.* Even if a fiduciary

obligation arose with respect to that property, however, it would not establish a fiduciary relationship with regard to the beach property at issue in this case. *See Sandalwood*, 416 S.W.3d at 651 (mere existence of a pre-existing and contemporaneous relationship between parties on one transaction does not create fiduciary relationship for all transactions involving the parties).

The evidence adduced by Glynn does not rise to the level of an informal fiduciary relationship of trust and confidence. The trial court properly granted summary judgment on the breach of fiduciary duty claim. We overrule Glynn and Melinda's issue as to that claim.

#### 5. *The claims for attorneys' fees and exemplary damages.*

In their motion for summary judgment, Ronald and Layne argued that Glynn and Melinda cannot recover attorneys' fees or exemplary damages on any of their claims. Glynn and Melinda do not challenge the summary judgment granted on their request for attorneys' fees and exemplary damages. We thus affirm the trial court's judgment on the attorneys' fees and exemplary damages claims. *See Jarvis v. Rocanville Corp.*, 298 S.W.3d 305, 313 (Tex. App.—Dallas 2009, pet. denied) (party asserting general issue complaining of trial court's summary judgment must provide argument negating all grounds on which summary judgment was granted).

### C. *Ronald and Layne's Affirmative Defenses.*

Ronald and Layne also moved for summary judgment against Glynn and Melinda on grounds of waiver and estoppel. In support, Ronald and Layne pointed to an application for a sewer permit that Glynn submitted for his beach house. In that sewer application, the owner of the property is listed as Ronald. According to Ronald and Layne, the statement on the sewer application listing Ronald as the owner waived or estopped Glynn and Melinda from denying Ronald's ownership

of the property. We disagree.

Waiver and estoppel are affirmative defenses on which Ronald and Layne bore the burden of proof. *See Nowak v. DAS Inv. Corp.*, 110 S.W.3d 677, 680 (Tex. App.—Houston [14th Dist.] 2003, no pet.) ("Only when a party conclusively proves every element of its affirmative defense is it entitled to summary judgment."). We conclude that Ronald and Layne did not meet their summary judgment burden of establishing the affirmative defenses of waiver and estoppel.

Waiver is an intentional relinquishment of a known right or intentional conduct inconsistent with claiming the right. *Clear Lake Ctr., L.P. v. Garden Ridge, L.P.*, 416 S.W.3d 527, 542 (Tex. App.—Houston [14th Dist.] 2013, no pet.). The elements of waiver are: (1) an existing right, benefit, or advantage held by a party; (2) the party's actual knowledge of its existence; and (3) the party's actual intent to relinquish the right, or intentional conduct inconsistent with the right. *Ulico Cas. Co. v. Allied Pilots Ass'n*, 262 S.W.3d 773, 778 (Tex. 2008). Ronald and Layne failed to establish as a matter of law that Glynn actually intended to relinquish his right to deny Ronald's ownership by filing the sewer permit. The evidence establishes, at a minimum, a fact issue as to why Glynn listed Ronald as the owner on the sewer permit application.

Glynn testified that he listed Ronald as the owner because Ronald was still the record title holder and he was told to use Ronald's name. Equitable title and legal title are distinct bases for establishing ownership to property. *See Neeley v. Intercity Mgmt. Corp.*, 623 S.W.2d 942, 951 (Tex. App.—Houston [1st Dist.] 1981, no writ) (recognizing distinction between equitable and legal title). Listing Ronald as owner based on the deed records was not inconsistent with the claim that

Glynn held an equitable interest in the property, and does not show a waiver of his rights in this case.[9]

Estoppel "generally prevents one party from misleading another to the other's detriment or to the misleading party's own benefit." *Ulico Cas. Co.*, 262 S.W.3d at 778. Estoppel requires proof of, among other things, detrimental reliance on the statement by the party asserting estoppel. *See id.* Ronald and Layne failed to establish any detrimental reliance by them on the statement made in the sewer permit application. In their motion for summary judgment, they state simply that Glynn made a statement that he now contends was untrue so that he could obtain the benefit of a wastewater system. This is not proof, nor even an argument, that Ronald and Layne (the parties asserting estoppel) relied on the statement to their detriment. As a result, Ronald and Layne failed to meet their summary judgment burden to conclusively establish each element of their affirmative defense and summary judgment on that ground was improper. *See Clear Lake Ctr.*, 416 S.W.3d at 542-43.

We sustain Glynn and Melinda's issue with regard to the affirmative defenses of waiver and estoppel.

**D. *The timing of the summary judgment.***

Glynn and Melinda argue that the trial court erred in granting summary judgment prior to the expiration of the discovery deadline. In support, they point to

[9] In their appellees' brief, Ronald and Layne argue that Glynn and Melinda waived their claim because they failed to intervene in the trespass to try title action against the Port Bolivar Development Company. Although Ronald and Glynn argued below that "Glynn Walker's failure to intervene in that [Bolivar Development Company] case forever bars his right to complain of the decision," they did not argue, as they now do on appeal, that the failure to intervene constituted a waiver of their right to claim an equitable interest. We therefore do not consider this new waiver argument as grounds for affirming the summary judgment. *Sci. Spectrum, Inc.*, 941 S.W.2d at 912.

the comment to Rule 166a(i) indicating a motion should not be filed prior to the expiration of the discovery period and to their request for a continuance.

We review a trial court's order denying additional time for discovery under a clear abuse of discretion standard of review. *See Joe v. Two Thirty Nine Joint Venture*, 145 S.W.3d 150, 161 (Tex. 2004); *Carter v. MacFadyen*, 93 S.W.3d 307, 310 (Tex. App.—Houston [14th Dist.] 2002, pet. denied). A party seeking additional time to respond to a motion for summary judgment must file an affidavit specifying the evidence sought, the materiality of the evidence, and due diligence exercised to obtain the evidence. *Carter*, 93 S.W.3d at 310. Conclusory allegations of a need for additional time are not sufficient. *Id.*

Glynn and Melinda included a paragraph in their response to the motion for summary judgment asking for additional time for discovery if the trial court felt evidence was lacking. They did not explain to the trial court what additional discovery was necessary, the materiality of such evidence, or the due diligence exercised to obtain such evidence. As a result, the trial court did not abuse its discretion in denying more time to conduct discovery. *Id.* at 310-11.

Glynn and Melinda also contend the trial court erroneously granted judgment prior to the end of the discovery period. We disagree. Though the motion was filed prior to the expiration of the discovery period, the trial court did not grant summary judgment until after the period ended. Texas Rule of Civil Procedure 166a(i) allows a party to file a no-evidence motion for summary judgment after "an adequate time for discovery." Tex. R. Civ. P. 166a(i). An adequate time for discovery is determined by the nature of the claims, the evidence needed to controvert the motion, the length of time the case has been on file and any deadlines set by the court. *Carter,* 93 S.W.3d at 311.

In this case, Glynn and Melinda asserted four causes of action, all centered

on the allegation that Ronald had wrongfully conveyed the beach property to Layne. When the motion for summary judgment was filed, the parties had conducted discovery over the course of several months, parties had been deposed, and the trial court had already conducted an evidentiary hearing on the request for temporary injunctive relief. The motion was filed approximately a month and a half before discovery closed, and was set for submission without oral hearing thirty-nine days later. Glynn and Melinda were able to respond to the motion and attach deposition testimony, affidavits, and documentary evidence in support of their response. The trial court did not grant the motion for another eighteen days after the submission date. Reviewing these factors, we cannot say that the trial court abused its discretion with regard to the timing of the summary judgment. *See Carter*, 93 S.W.3d at 311; *see also Joe*, 145 S.W.3d at 162. Finding no abuse of discretion, we overrule this complaint.

## DENIAL OF REQUEST FOR SANCTIONS

Ronald and Layne request sanctions against Glynn and Melinda for filing a frivolous appeal. We deny the request for sanctions. Texas Rule of Appellate Procedure 45 authorizes a court of appeals, in its discretion, to award just damages in cases where an appeal is objectively frivolous. *See Glassman v. Goodfriend*, 347 S.W.3d 772, 782 (Tex. App.—Houston [14th Dist.] 2011, pet. denied) (en banc). Given that we have reversed the trial court's order granting summary judgment on several of Glynn and Melinda's claims, we conclude the appeal was not frivolous. The motion for sanctions under Texas Rule of Appellate Procedure 45 is denied.

## CONCLUSION

Accordingly, we reverse the trial court's judgment in favor of appellees Ronald Walker and Layne Walker on the claims for promissory estoppel and unjust enrichment, and on the affirmative defenses of waiver and estoppel. We

affirm the trial court's judgment on the remaining claims and remand for further proceedings.

/s/ John Donovan
Justice

Panel consists of Justices Christopher, Jamison, and Donovan.