

**Affirmed and Memorandum Opinion filed April 18, 2017.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-16-00362-CV**

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**ERIK DAVIS, Appellant**

**V.**

**JOSEPH GALAGAZA, INDIVIDUALLY, JACKSON LEWIS LLP, AND  
PROTECT CONTROLS, INC., Appellees**

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**On Appeal from the 151st District Court  
Harris County, Texas  
Trial Court Cause No. 2014-66506**

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

The present dispute stems from the settlement and dismissal of a separate lawsuit. Appellant Erik Davis previously sued his former employer, and that suit was dismissed upon a settlement agreement. Davis alleged that his attorney in the prior suit settled without his consent, and he obtained a judgment against that attorney. In the case before us, Davis again sues his former employer, together with the law firm that represented the employer in the prior suit, and an individual

attorney at the law firm. The trial court granted summary judgment to appellees. We affirm.

### **Background**

Davis sued his former employer, Protect Controls, Inc., for employment discrimination. The law firm Jackson Lewis LLP and John Galagaza, an attorney at Jackson Lewis, represented Protect Controls in that suit. Attorney John-Baptist Sekumade represented Davis. The parties reached a purported settlement agreement, and Sekumade represented to Galagaza that Davis had authorized Sekumade to sign the agreement on Davis's behalf. Sekumade then filed a non-suit of Davis's claims against Protect Controls. Davis later contended that Sekumade signed the settlement agreement without Davis's consent.<sup>1</sup>

In the present lawsuit, Davis sued Jackson Lewis, Galagaza, and Protect Controls for fraud, intentional infliction of emotional distress, aiding and abetting a breach of fiduciary duty, and civil conspiracy.<sup>2</sup> The crux of Davis's allegations is that Jackson Lewis and Galagaza knew that Sekumade's signature (on Davis's behalf) on the settlement agreement was fraudulent and forged.

Jackson Lewis and Galagaza moved for traditional and no-evidence summary judgment. The grounds for traditional summary judgment were that: (1) Davis's claims were barred by limitations; (2) Davis's claims were barred by absolute judicial immunity; (3) Davis suffered no damages as a matter of law;

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<sup>1</sup> Davis sued Sekumade for malpractice and obtained a default judgment against Sekumade. Davis contends that, because Sekumade has left the country, he has not been able to collect on that judgment. Public records indicate that Sekumade resigned his bar license in lieu of discipline in 2013. *See* State Bar of Texas, Attorney Profile of Mr. John-Baptist A. 'JB' Sekumade, available at <https://goo.gl/TVFP43> (last accessed April 12, 2017).

<sup>2</sup> Davis also alleged violations of the Texas Penal Code, the Texas Theft Liability Act, and the Texas Disciplinary Rules of Professional Conduct, claims which the trial court dismissed at the outset of the lawsuit.

(4) Davis could not recover for intentional infliction of emotional distress; and (5) the breach-of-fiduciary-duty claim failed for lack of awareness and causation. In their no-evidence motion, Jackson Lewis and Galagaza argued that Davis had no evidence of: (1) damages, for any claim; (2) Davis's distress or defendants' intent to cause distress, regarding the intentional infliction of emotional distress claim; (3) any misrepresentation, knowledge of falsity, or reliance, regarding the fraud claim; and (4) defendants' intent that Sekumade breach any duty to Davis, regarding Davis's claim for aiding and abetting a breach of fiduciary duty. Protect Controls purported to incorporate by reference its co-defendants' motion for summary judgment, and argued that any liability of Protect Controls was derivative of liability of Jackson Lewis and Galagaza.

Davis filed a response and attached an affidavit purporting to authenticate a number of records attached to the affidavit. Jackson Lewis and Galagaza moved to strike Davis's affidavit (and attached documents), which the trial court granted. Davis does not challenge this ruling on appeal.

The trial court granted summary judgment to Jackson Lewis and Galagaza, dismissing Davis's claims against those two defendants with prejudice, without specifying the grounds on which it was granting summary judgment. The trial court separately granted summary judgment to Protect Controls, again without specifying the grounds; this order fully and finally adjudicated all claims against all parties.

Davis timely appealed.

### **Analysis**

Davis raises numerous issues on appeal. In his first issue, he argues that the trial court erred in granting summary judgment. In his second issue, he argues that

the trial court erred in denying Davis's motion to compel production of documentation in reference to Texas Rule of Evidence 503(d)(1) and the Employment Retirement Income Security Act ("ERISA"). In his third issue, he argues that his original petition lists fraud, concealment, aiding and abetting, forgery, and securing execution of documentation by means of deception, as causes of action. In his fourth issue, he argues that Jackson Lewis and Galagaza acted under a conflict of interest. In his fifth issue, he argues that ERISA provides for a six-year statute of limitations for cases of concealment and fraud.<sup>3</sup>

1. *Summary judgment ruling*

Davis contends, in his first issue, that the trial court erred in granting summary judgment. When, as here, the movant urges multiple grounds for summary judgment and the order does not specify which was relied upon to render the summary judgment, the appellant must challenge and negate all independent grounds on appeal. *See Star-Telegram, Inc. v. Doe*, 915 S.W.2d 471, 473 (Tex. 1995). If an appellant fails to challenge all independent grounds on which the trial court may have granted summary judgment, the appellate court must uphold the summary judgment. *See Heritage Gulf Coast Props., Ltd. v. Sandalwood Apartments, Inc.*, 416 S.W.3d 642, 653 (Tex. App.—Houston [14th Dist.] 2013, no pet.).

Davis fails to challenge, among other things, the arguments made by Jackson Lewis and Galagaza that Davis suffered no damages as a matter of law and has no evidence of damages. Because Davis fails to negate all independent grounds asserted below, Davis has not shown error in the trial court's ruling and we must

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<sup>3</sup> Davis raises additional issues in his reply brief. We are not required to consider issues raised for the first time in a reply brief. *DeWolf v. Kohler*, 452 S.W.3d 373, 388 n.13 (Tex. App.—Houston [14th Dist.] 2014, no pet.).

affirm the trial court's grant of summary judgment to Jackson Lewis and Galagaza. *McCrary v. Hightower*, No. 14-15-00550-CV, 2016 WL 6886817, at \*3 (Tex. App.—Houston [14th Dist.] Nov. 22, 2016, no pet.) (op. on reh'g); *Heritage*, 416 S.W.3d at 653.

For the same reason—because Davis fails to challenge the grounds purportedly incorporated into Protect Controls' motion for summary judgment or its argument that its liability is derivative of its co-defendants'—we also affirm the trial court's grant of summary judgment to Protect Controls.

We overrule Davis's first issue.<sup>4</sup>

## 2. *Discovery ruling*

Davis's second issue is that the trial court erred in denying his motion to compel production of documentation. There is no motion to compel in the appellate record, nor is there any argument (or authority) in Davis's brief regarding this issue. Even construing Davis's brief liberally, we cannot conclude that Davis adequately briefed any argument in support of his second issue. *See* Tex. R. App. P. 38.1(i); *Buggelli v. Feltis*, No. 14-07-00027-CV, 2008 WL 4308333, at \*1 (Tex. App.—Houston [14th Dist.] Aug. 28, 2008, no pet.) (mem. op.) (although courts liberally construe briefing, failure to identify evidence, explain contentions, or support argument with legal authority in brief constitutes waiver of issue on appeal).

We overrule Davis's second issue as waived.

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<sup>4</sup> Because we affirm the summary judgment due to Davis's failure to challenge all potential grounds on which the trial court might have relied, we need not address his third, fourth, and fifth issues, which pertain to the merits of the trial court's summary-judgment ruling. *See Stryker v. Broemer*, No. 01-09-00317-CV, 2010 WL 4484176, at \*4 (Tex. App.—Houston [1st Dist.] Nov. 10, 2010, pet. denied) (mem. op.). We overrule those issues as moot.

## **Conclusion**

We affirm the trial court's judgment.

/s/ Kevin Jewell  
Justice

Panel consists of Chief Justice Frost and Justices Brown and Jewell.