

Affirmed and Memorandum Opinion filed September 20, 2022.



In The

Fourteenth Court of Appeals

NO. 14-21-00375-CV

MICHAEL R. WILLIAMS, Appellant

V.

JIMGLO YELLOWSTONE, LLC, Appellee

**On Appeal from the 270th District Court
Harris County, Texas
Trial Court Cause No. 2020-11162**

MEMORANDUM OPINION

In this pro se appeal from a final judgment rendered after a nonjury trial, Michael R. Williams (the “Tenant”) argues that the district court lacked subject matter jurisdiction to render a judgment in favor of Jimglo Yellowstone, LLC (the “Landlord”). In what appears to be two alternative arguments, the Tenant also argues that he should not have been held liable on the merits and that the evidence is insufficient to support the district court’s findings. For the reasons given below, we overrule all of these arguments and affirm the district court’s judgment.

BACKGROUND

In October 2019, the Landlord and the Tenant entered into a commercial lease agreement for premises that the Tenant intended to use as a bar. In February 2020, not long after the first rent payment was due, the Tenant filed suit against the Landlord in district court. The Tenant asserted claims for breach of contract, breach of warranty, intentional infliction of emotional distress, and violations of the Deceptive Trade Practices Act. The Tenant based all of these claims on allegations that the Landlord had failed to obtain the necessary permits for the Tenant to operate his bar. The Landlord denied the allegations and counterclaimed for breach of contract, seeking damages for unpaid rent.

In May 2020, after filing the counterclaim in district court, the Landlord filed a separate forcible detainer action in justice court. The Tenant did not answer or appear for trial in justice court, and in July 2020, the Landlord obtained a default judgment, which awarded the Landlord possession of the premises as well as damages for past due rent.

The Tenant's parallel action in district court proceeded to a nonjury trial in April 2021. After a single day of testimony, the district court rendered judgment against the Tenant on all of his claims and in favor of the Landlord on its counterclaim for unpaid rent that became due after the judgment in justice court.

The Tenant now appeals from this judgment.

JURISDICTIONAL CHALLENGE

The Tenant's leading argument is that the district court lacked subject matter jurisdiction. The Tenant did not bring this jurisdictional challenge during the proceedings below. In fact, the Tenant was the party who initiated the action in the district court. Nevertheless, subject matter jurisdiction cannot be waived and can be

challenged at any time. *See Alfonso v. Skadden*, 251 S.W.3d 52, 55 (Tex. 2008) (per curiam).

District courts are courts of general jurisdiction, and all claims are presumed to fall within their jurisdiction unless the Legislature or Congress has provided that they must be heard elsewhere. *See* Tex. Const. art. V, § 8 (“District Court jurisdiction consists of exclusive, appellate, and original jurisdiction of all actions proceedings, and remedies, except in cases where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other court, tribunal, or administrative body.”); Tex. Gov’t Code § 24.008 (“The district court may hear and determine any cause that is cognizable by courts of law or equity and may grant any relief that could be granted by either courts of law or equity.”); *Dubai Petro. Co. v. Kazi*, 12 S.W.3d 71, 75 (Tex. 2000) (“For courts of general jurisdiction, the presumption is that they have subject matter jurisdiction unless a showing can be made to the contrary.”).

The Landlord asserted a counterclaim for breach of contract, which is the type of cause for which district courts generally have jurisdiction. *See Diocese of Galveston-Houston v. Stone*, 892 S.W.2d 169, 174 (Tex. App.—Houston [14th Dist.] 1994, orig. proceeding) (“Civil district courts generally have jurisdiction over the type [of] claims the real party in interest, May, asserts: breach of contract, intentional infliction of emotional distress and negligence/gross negligence.”). The Landlord also asserted in its live pleading that the amount in controversy for this counterclaim was between \$100,000 and \$200,000, which is above the minimum jurisdictional floor of \$500 for district courts. *See* Tex. Gov’t Code § 24.007(b). The district court awarded damages to the Landlord within that range, and we conclude that it had the subject matter jurisdiction to do so, unless the Tenant can show that the Landlord’s claim had to be heard elsewhere.

The Tenant counters that the district court could not have had jurisdiction because there is legislation requiring all disputes between landlords and tenants to be heard in justice court. The Tenant never identifies this legislation, which was his burden. *See* Tex. R. App. P. 38.1(i). His argument must also fail because it is contrary to our body of law. Justice courts have limited jurisdiction, and civil matters tried in such courts cannot have an amount in controversy that exceeds \$20,000. *See* Tex. Gov't Code § 27.031(a)(1). The Tenant sought twice that amount in his own affirmative claims for relief. The Landlord likewise sought more than that amount in its counterclaim. Accordingly, the justice court could not have had jurisdiction over all of the parties' disputes.

The Tenant also argues that the district court could not have exercised jurisdiction during the time in which he had the right to appeal the default judgment in the forcible detainer action. Once again, the Tenant cites to no authority in support of this argument. The Tenant's argument must also fail on the merits because forcible detainer actions are not exclusive and do not bar concurrent suits in district court for unpaid rent. *See* Tex. Prop. Code § 24.008 ("An eviction suit does not bar a suit for trespass, damages, waste, rent, or mesne profits."); *Salaymeh v. Plaza Centro, LLC*, 264 S.W.3d 431, 435–36 (Tex. App.—Houston [14th Dist.] 2008, no pet.) ("Forcible detainer actions are cumulative of any other remedy that a party may have in the courts of this state.").

Because the Tenant has not shown that the Landlord's counterclaim for breach of contract could not be heard in district court, we overrule his jurisdictional challenge.

MERITS CHALLENGES

The Tenant also makes two merits challenges, which we construe as alternative arguments in the event that we reject his jurisdictional challenge.

The Tenant first contends that he was excused from paying rent because he conclusively established an affirmative defense to the Landlord's counterclaim for breach of contract. The specific contours of this defense are not entirely clear from the Tenant's brief. The Tenant suggests at certain points in his brief that the Landlord committed a prior material breach by failing to provide a premises that was free from defects. At other points in his brief, the Tenant refers to Section 93.002 of the Texas Property Code, which provides that a tenant can terminate the lease if the landlord causes the interruption of utilities or removes certain property. In any event, the Tenant had the burden of proving an affirmative defense during the trial, and the Tenant never ordered an official copy of the trial transcript. He ordered a reporter's record that consisted of just the trial exhibits. The clerk's record appears to contain a copy of the trial transcript, which was attached to a request for findings of fact, but the Tenant never cites to this transcript in his brief. Without proper citations to an official record, the Tenant has not shown that he conclusively established any defense. *See* Tex. R. App. P. 38.1(i); *see also Feldman v. Marks*, 960 S.W.2d 613, 614 (Tex. 1996) (per curiam) ("If an appellant fails to present a complete statement of facts on appeal, the appellate court must presume that the omitted portions are relevant and support the trial court's judgment.").

The Tenant also argues in a reply brief that the district court's findings are unsupported by legally sufficient evidence. We overrule this argument because it was raised for the first time in a reply brief, which means that it was waived. *See Metro. Transit Auth. of Harris Cnty. v. Douglas*, 544 S.W.3d 486, 498 (Tex. App.—Houston [14th Dist.] 2018, pet. denied) ("Arguments raised for the first time in a reply brief are waived.").

CONCLUSION

The judgment of the district court is affirmed.

/s/ Tracy Christopher
Chief Justice

Panel consists of Chief Justice Christopher and Justices Wise and Hassan.