Affirmed and Memorandum Opinion filed October 24, 2023.

In The

Fourteenth Court of Appeals

NO. 14-22-00184-CV

OTU-UMUOKPU ANAMBRA, USA ASSOCIATION, INC., Appellant

V.

CAROL AGU; EBELE ONWUGAJE; OTU-UMUOKPU ANAMBRA, USA ASSOCIATION, INC. SUGAR LAND BRANCH, TEXAS; OTU-UMUOKPU ANAMBRA INC. INTERNATIONAL, SUGAR LAND; ONYI IKEBUAKU; IFY IBEKWE; EKENE UDOALOR; AMAKA ANYAMENE; CHINWE ONYEJEKWE; DOLLY ORONSAYE; JOY NIKIRU; ONWUEMELIE; AMAKA AZIA; NONYE OKOLO; OBY OBIEFUNA; TINA OJIAKU; GLORIA EZEANI; FLORENCE OJIH; UCHE AKINIYI; CHINWE ONYEJEKWE; LINDER OKPOKO; IFY OMELUDIKE; ANNA NWOSA; NGOZI OBIOZO; HELEN OKAFOR; NKECHI NWANKWO; NKECHI EGBONU; CAROL EKE; ROSEY ONYIA; MILLICENT OKWUEZE; ADAOBI NWAFOR; IFY UKACHUKWU; EUCHERIA ANYICHIE; ESTHER QUIST; GLORIA EZEANI; CHINWE ANYAWU; NKECHI OBI; AND IFEOMA ONI-ORISAN, Appellees

On Appeal from the 151st District Court
Harris County, Texas
Trial Court Cause No. 2019-51430

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

A nonprofit corporation appeals the trial court's judgment after a bench trial in a case involving competing claims among nonprofit corporations and women from the state of Anambra in Nigeria engaged in charitable works. Concluding that the appellant has not shown error in the judgment, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Appellant/plaintiff Otu-Umuokpu Anambra, USA Association, Inc. ("OUA"), a Texas nonprofit corporation filed suit in the trial court against appellees/defendants Carol Agu, Ebele Onwugaje, Otu-Umuokpu Anambra, USA Association, Inc. Sugar Land Branch, Texas, Otu-Umuokpu Anambra Inc. International, Sugar Land (collectively the "Agu Parties"), asserting claims for conversion, fraud, breach of fiduciary duty, and breach of contract. OUA also applied for a temporary restraining order, temporary injunction, and permanent injunction. The Agu Parties filed an answer asserting the affirmative defense of estoppel and counterclaims for declaratory judgment seeking a declaration that various actions of OUA are invalid and ultra vires because OUA failed to comply with its bylaws. The members of OUA are women from the state of Anambra in Nigeria engaged in charitable works.

Appellees/intervenors Onyi Ikebuaku, Ify Ibekwe, Ekene Udoalor, Amaka Anyamene, Chinwe Onyejekwe, Dolly Oronsaye, Joy Nikiru, Onwuemelie, Amaka Azia, Nonye Okolo, Oby Obiefuna, Tina Ojiaku, Gloria Ezeani, Florence Ojih, Uche Akiniyi, Chinwe Onyejekwe, Linder Okpoko, Ify Omeludike, Anna Nwosa, Ngozi Obiozo, Helen Okafor, Nkechi Nwankwo, Nkechi Egbonu, Carol Eke, Rosey Onyia, Millicent Okwueze, Adaobi Nwafor, Ify Ukachukwu, Eucheria Anyichie, Esther Quist, Gloria Ezeani, Chinwe Anyawu, Nkechi Obi, and Ifeoma Oni-Orisan (collectively the "Intervenors") filed a plea in Intervention alleging that they are members in good standing of OUA and seeking only injunctive relief

against OUA.[1]

After a trial to the bench, the trial court rendered a partial judgment in which the court (1) concluded that the Agu Parties and the Intervenors have standing to address OUA's ultra-vires acts; (2) found in favor of the Agu Parties and against OUA as to all of OUA's claims; (3) found in favor of the Agu Parties on their affirmative defense of estoppel; (4) ordered that OUA should take nothing by this suit, except as to trademark issues that had not been tried and as to which the trial court had not yet decided whether the court had jurisdiction; (5) found in favor of the Agu Parties on their declaratory-judgment counterclaim, concluding that OUA's actions in bringing this suit, hiring an attorney, and seeking to expel members were ultra vires and therefore of no legal effect; (6) found against OUA as to its affirmative defenses to the Agu Parties' counterclaims; and (7) concluded that the Intervenors were not entitled to injunctive relief, which the trial court noted was the only relief the Intervenors sought. The trial court issued findings of fact and conclusions of law.

The trial court later signed an order in which it dismissed for lack of subject-matter jurisdiction all claims to the extent they addressed trademark or patent issues, thus making the prior partial judgment final and appealable. OUA has timely appealed. The Intervenors have not appealed.

[1] The Intervenors were a party to the trial court's final judgment, and OUA raised issues against the Intervenors in its appellant's brief. Thus, the Intervenors are appellees in this appeal. See Tex. R. App. P. 3.1(c); *DHI Holdings, L.P. v. Legacy Mortgage Asset Trust 2018-RPLS2*, No. 14-19-00987-CV, 2021 WL 4957023, at *3 (Tex. App.—Houston [14th Dist.] Oct. 26, 2021, pet. denied) (mem. op.).

II. ISSUES AND ANALYSIS

A. Did the trial court err in denying OUA's motion for directed verdict as to OUA's breach of contract, fraud and conversion claims?

Under its first issue, OUA asserts that the trial court erred in denying OUA's motion for directed verdict as to its breach of contract, fraud, and conversion claims.[2] OUA moved for a directed verdict after resting its case-in-chief.[3] When a party moves for a directed verdict in a bench trial, it is actually requesting that the trial court render judgment because there is no jury to direct. *See Sanchez v. Marine Sports, Inc.*, No. 14-03-00962-CV, 2005 WL 3369506, at *1 (Tex. App.—Houston [14th Dist.] Dec. 13, 2005, no pet.) (mem. op.). We construe OUA's motion for directed verdict as a motion for judgment (the "Motion"). *See Onwudiegwu v. Dominguez*, No. 14-14-00249-CV, 2015 WL 4366213, at *5 (Tex. App.—Houston [14th Dist.] July 16, 2015, no pet.) (mem. op.).

OUA asserts that the trial court erred in denying the Motion because the evidence in OUA's case-in-chief conclusively proved OUA's claims for breach of contract, fraud, and conversion. The trial court could not have erred in denying the Motion because the record reflects that the trial court did not deny the Motion; instead, the trial court took the Motion under advisement and never ruled on it. Because this is an appeal from a final judgment following a bench trial, OUA may raise a complaint as to the legal sufficiency of the evidence for the first time on appeal. *See* Tex. R. App. P. 33.1(d). Even construing OUA's first issue as a complaint that the trial evidence or the evidence in OUA's case-in-chief conclusively established OUA's entitlement to judgment on its claims for breach of

[2] The factual background in this appeal is complicated. The record, the parties' contentions, and the briefing are often confusing. Despite these challenges we have made this opinion as brief as practicable and addressed every issue raised and necessary to the final disposition of this appeal.

[3] OUA did not renew its motion after the close of the evidence.

contract, fraud, and conversion, OUA has not challenged the trial court's finding in favor of the Agu Parties on their affirmative defense of estoppel as to these claims. *See Baty v. Protech Ins. Agency*, 63 S.W.3d 841, 857 (Tex. App.—Houston [14th Dist.] 2001, pet. denied) (stating that even if a plaintiff establishes all the elements of its claim, the defendant may avoid liability by establishing the elements of an affirmative defense). OUA has not shown that the trial evidence or the evidence in OUA's case-in-chief conclusively established OUA's entitlement to judgment on any of its claims. *See Armour Pipe Line Co. v. Sandel Energy, Inc.*, 672 S.W.3d 505, 527–28 (Tex. App.—Houston [14th Dist.] 2023, pet. filed) (holding that appellant had not shown that the evidence conclusively proved appellant's entitlement to recover on its breach-of-contract claims); *Baty*, 63 S.W.3d at 857. We overrule OUA's first issue.

B. Has OUA adequately briefed its second, third, and fourth issues?

In its second issue, OUA asks whether the trial court committed "reversible error when [the court] denied Plaintiff OUA's [request for] injunctive relief prohibiting [the Agu Parties] from attending OUA's meetings and events when [the Agu Parties] and their associates admitted to aggressive physical assault that disrupted OUA's meeting (when they were no longer members) that required the intervention of six (6) Houston Police Officers to maintain peace." Though OUA provides a few cites to the reporter's record, its argument under this issue is less than one page. In its opening brief, OUA does not provide any analysis or citations to legal authority in support of the proposition that the trial court erred in denying OUA's request for injunctive relief. Even construing OUA's opening brief liberally, we cannot conclude that OUA adequately briefed its second issue. *See Marathon Petroleum Co. v. Cherry Moving Co.*, 550 S.W.3d 791, 798 (Tex. App.—Houston [14th Dist.] 2018, no pet.). Thus, we find briefing waiver and overrule the second issue. *See id.*

In its third issue OUA asks whether the counterclaims of Agu and Onwugaje were "permissible when they had waived all their rights to sue OUA (as a condition of their membership)." OUA cites parts of the record where it allegedly preserved error on its third issue. OUA also cites section 5.1 of its bylaws. Although this provision says that a member who sues OUA will cease to be a member of OUA, this provision does not say anything about a member waiving any rights. OUA states in a conclusory manner that "[a]s a condition of [m]embership in OUA, [m]embers signed that they agree to waive all rights to bring suit against OUA for any real or perceived wrong." But OUA does not explain how OUA members allegedly waived all rights to sue OUA. OUA does not cite any legal authorities, nor does OUA provide any analysis in support of the proposition that Agu and Onwugaje waived their rights to sue OUA. Even construing OUA's opening brief liberally, we cannot conclude that OUA adequately briefed its third issue. *See id*. Thus, we find briefing waiver and overrule the third issue. *See id.*

In its fourth issue OUA asks whether the trial court committed "reversible error when it ordered that an unrelated entity can use another's name, identity, logo, uniform, music, literature to mislead the public about a non-existing affiliation without the consent of the owner of such name, identity, logo, uniform, music and literature." In its opening brief, although OUA cites to the appellate record, OUA does not provide any argument, analysis or citations to legal authority in support of the proposition that the trial court erred by ordering that an unrelated entity may use another's name, identity, logo, uniform, music, literature to mislead the public about a non-existing affiliation without the consent of the owner of such name, identity, logo, uniform, music and literature. Even construing OUA's opening brief liberally, we cannot conclude that OUA adequately briefed its fourth

issue. *See id*. Thus, we find briefing waiver and overrule the fourth issue. *See id*.

C. Did the trial court take the action alleged by OUA in its fifth issue?

In its fifth issue OUA asks, "[c]an a merger of two separate Texas corporate entities occur without the knowledge of their officers, approval of their boards of directors, and shareholders, as ordered by the trial court?" A review of the record, including the trial court's findings of fact and conclusions of law, shows that the trial court did not order or conclude that such a merger had occurred or should occur. The trial court did not find or conclude that any merger had occurred, nor did the trial court order that any merger should take place. Therefore, we overrule the fifth issue. *See Graybar Elec. Co. v. LEM & Assocs., L.L.C.*, 252 S.W.3d 536, 545 n.11 (Tex. App.—Houston [14th Dist.] 2008, no pet.); *Kupersmith v. Weitz*, No. 14-05-00167-CV, 2006 WL 3407832, at *3, n.1 (Tex. App.—Houston [14th Dist.] Nov. 28, 2006, no pet.) (mem. op.).

D. Did OUA preserve error in the trial court as to its sixth and seventh issues?

Attorney Jimmie L. J. Brown, Jr. signed the Agu Parties' live pleading as lead counsel, and attorney John E. Oronsaye signed the pleading as co-counsel for the Agu Parties. Oronsaye also signed the plea in intervention as lead counsel for the Intervenors. The reporter's record reflects that Brown represented the Agu Parties at trial, and that Oronsaye represented the Intervenors at trial. Under its sixth issue OUA asserts that the trial court erred by allowing Oronsaye to serve as counsel for both the Agu Parties and OUA. OUA claims that Oronsaye served as counsel for OUA because Oronsaye represented the Intervenors in their plea in intervention, which OUA contends constitutes a derivate action asserting claims belonging to OUA.[4] Under its seventh issue OUA asserts that the trial court erred

[4] The Intervenors did not state in their plea in intervention that they were asserting a derivative

by allowing Oronsaye to serve as counsel for both the Agu Parties and the Intervenors. These complaints do not fall within the narrow scope of the fundamental-error doctrine recognized by the Supreme Court of Texas. *See In re B.L.D.*, 113 S.W.3d 340, 350–52 (Tex. 2003). Therefore, preservation of error in the trial court is required for appellate review of each of these complaints. *See In re L.M.I.*, 119 S.W.3d 707, 711 (Tex. 2003); *In re S.J.*, No. 06-09-00043-CV, 2009 WL 2048078, at *2–3 (Tex. App.—Texarkana, Jul. 16, 2009, no pet.) (mem. op.); *In re W.H.M.*, No. 01-00-01396-CV, 2003 WL 22254713, at *5 (Tex. App.—Houston [1st Dist.] Oct. 2, 2003, pet. denied) (mem. op.).

Just before opening statements were made at trial, OUA sought to be heard on an oral motion to strike the plea in intervention. In this motion OUA asserted various complaints, including a complaint that if the trial court allowed the plea in intervention to go forward, then Oronsaye would "technically" be representing both OUA and the Agu Parties.[5] The trial court refused to hear this motion and stated that OUA should have filed this motion and had a hearing set on it in advance of trial. OUA did not obtain an adverse ruling on this motion to strike, and OUA did not object to any alleged refusal by the trial court to rule on this motion. Thus, OUA failed to preserve error on its sixth or seventh issue by means of this motion to strike. *See* Tex. R. App. P. 33.1(a); *San Jacinto River Auth. v. Gonzalez*, 657 S.W.3d 713, 725 (Tex. App.—Houston [14th Dist.] 2022, no pet.). OUA has not cited and we have not found any place in the record where OUA preserved error in the trial court as to its sixth or seventh issue. Concluding that OUA failed to preserve error, we overrule its sixth and seventh issues. *See* Tex. R. App. P. 33.1(a); *In re L.M.I.*, 119 S.W.3d at 711; *In re S.J.*, 2009 WL 2048078, at *2–3; *In*

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action or that they were asserting claims belonging to OUA.

[5] OUA did not raise the complaint made in its seventh issue.

re W.H.M., 2003 WL 22254713, at *5.

E. Do sections 21.552 and 21.553 of the Texas Business Organizations Code apply to OUA?

Under its eighth issue OUA asserts that the trial court erred by allowing the Intervenors to assert a "Shareholder Derivative Action" even though the Intervenors had not made a pre-suit written demand on OUA to cure the complained of defects within ninety days, as allegedly required by sections 21.552 and 21.553 of the Texas Business Organizations Code. *See* Tex. Bus. Organs. Code Ann. §§ 21.552, 21.553 (West, Westlaw through 2023 2d C.S.). We presume, without deciding, that OUA preserved error on this complaint in the trial court and that the Intervenors' claims were derivative claims.[6] Sections 21.552 and 21.553 of the Texas Business Organizations Code do not apply to nonprofit corporations like OUA. *See* Tex. Bus. Organs. Code Ann. § 21.553 (stating that "[a] shareholder may not institute a derivative proceeding until the 91st day after the date a written demand is filed with the **corporation** stating with particularity the act, omission, or other matter that is the subject of the claim or challenge and requesting that the corporation take suitable action") (emphasis added); Tex. Bus. Organs. Code Ann. § 21.002 (West, Westlaw through 2023 2d C.S.) (defining "corporation" as used in Chapter 21 of the Business Organizations Code as "a domestic for-profit corporation subject to this chapter"); *Carmichael v. Tarantino Props., Inc.*, 604 S.W.3d 469, 478–79 (Tex. App.— Houston [14th Dist.] 2020, no pet.). Therefore, this complaint lacks merit, and we overrule the eighth issue. *See* Tex. Bus. Organs. Code Ann. §§ 21.002, 21.552, 21.553; *Carmichael*, 604 S.W.3d at 478–79.

[6] In the trial court's judgment, the court did not grant the Intervenors any relief on any of their claims.

F. Did OUA preserve error in the trial court as to its ninth issue?

In its ninth issue, OUA asks whether the trial court reversibly erred in granting "expelled Defendants reinstatement when no such remedy or relief was sought by any Defendant in this case." This complaint does not fall within the narrow scope of the fundamental-error doctrine recognized by the Supreme Court of Texas. *See In re B.L.D.*, 113 S.W.3d at 350–52. Therefore, preservation of error in the trial court is required for appellate review of this complaint. *See Halla v. Halla*, No. 14-06-01126-CV, 2007 WL 2367600, at *3 (Tex. App.—Houston [14th Dist.] Aug. 21, 2007, no pet.); *Boggs v. Bottomless Pit Cooking Team*, 25 S.W.3d 818, 826 (Tex. App.—Houston [14th Dist.] 2000, no pet.). OUA has not cited and we have not found any place in the record where OUA preserved error in the trial court as to its ninth issue. Concluding that OUA failed to preserve error, we overrule the ninth issue. *See* Tex. R. App. P. 33.1(a); *In re L.M.I.*, 119 S.W.3d at 711; *Halla*, 2007 WL 2367600, at *3; *Boggs*, 25 S.W.3d at 826.

III. CONCLUSION

OUA has not shown that the trial evidence or the evidence in OUA's case-in-chief conclusively established OUA's entitlement to judgment on any of its claims. OUA has not adequately briefed its second, third, and fourth issues. The fifth issue lacks merit because the trial court did not take the action challenged by OUA in its fifth issue. Though required to do so, OUA did not preserve error in the trial court on its sixth, seventh, and ninth issues. Sections 21.552 and 21.553 of the Texas Business Organizations Code do not apply to nonprofit corporations like OUA. Thus, OUA's eighth issue, in which OUA relies on these statutes, lacks merit. Because OUA has not shown error in the judgment, we overrule OUA's

issues and affirm the trial court's judgment.[7]

/s/ Randy Wilson
Justice

Panel consists of Chief Justice Christopher and Justices Bourliot and Wilson.

[7] The trial court made numerous findings of fact and conclusions of law. To dispose of the issues raised and necessary to the final disposition of this appeal, we have not had to address most of these findings and conclusions. The only declaration made by the trial court in its judgment based on the Agu Parties' counterclaims was its declaration that OUA's actions in bringing suit, hiring an attorney, and seeking to expel members were ultra vires and therefore of no legal effect. Unless a finding or conclusion stated all or part of this declaration, any finding or conclusion by the trial court was not a declaration of the trial court. To the extent that we have disposed of this appeal without addressing the trial court's findings and conclusions, we did not need to address these findings and conclusions. *See Taylor v. Ogg*, No. 01-02-00557-CV, 2004 WL 213660, at *7 (Tex. App.—Houston [1st Dist.] Feb. 5, 2004, no pet.) (mem. op.); *Fuqua v. Fuqua*, 528 S.W.2d 896, 897–98 (Tex. Civ. App.—Houston [14th Dist.] 1975, writ ref'd n.r.e.). We neither approve nor disapprove any of these unaddressed findings or conclusions.