

Affirmed and Memorandum Opinion filed August 29, 2023.



In The

Fourteenth Court of Appeals

NO. 14-22-00294-CV

SHANMUGAM BALUR SANKARAN, Appellant

V.

VFS SERVICES (USA) INC., Appellee

**On Appeal from the 269th District Court
Harris County, Texas
Trial Court Cause No. 2021-40692**

MEMORANDUM OPINION

Appellant Shanmugam Balur Sankaran brought suit against VFS Services (USA) Inc., (“VFS”) for breach of contract, negligence, unjust enrichment, and alleged Penal Code violations related to VFS’s handling of Sankaran’s travel documents.¹ The trial court rendered a final take-nothing summary judgment, dismissing all of Sankaran’s claims.

¹ Sankaran is a pro se litigant, both on appeal and in the trial court.

In five issues, Sankaran argues the trial court erred by: rendering summary judgment in favor of VFS (issues 1 and 2); granting VFS’s objections to Sankaran’s discovery requests (issue 3); and granting VFS’s motion to compel Sankaran to answer VFS’s discovery requests (issue 4).² We affirm.

I. BACKGROUND

VFS manages the administrative tasks related to visa, passport, and consular services for the Office of Consulate General of India (“the Embassy”) for people residing in the United States. Sankaran sought to cancel his Indian passport and obtain a renunciation certificate. In November 2020, Sankaran used VFS’s website to process his renunciation certificate and paid VFS \$231.74. As part of the process, VFS required Sankaran to send in several personal documents, including his original Indian passport, U.S. passport, driver’s license, and an income-tax return.

In July 2021, Sankaran filed suit against VFS asserting breach-of-contract and negligence causes of action related to VFS’s delay in processing his renunciation certificate and returning his personal documents. On the breach-of-contract claim, he asserted that he was entitled to compensatory damages and “damages for emotional distress.” Specifically, Sankaran alleged that he was unable to travel to India due to VFS’s delay in processing his documents, which caused him mental anguish because he was unable to attend his father’s funeral in India in December 2020. On his negligence claim, Sankaran likewise sought to

² Sankaran also presents a fifth issue in his brief, arguing generally that it is not legal to withhold personal documents without consent. Because Sankaran does not assert any error on the part of the trial court, there is nothing for this court to review with respect to issue 5. *See Canton-Carter v. Baylor Coll. of Med.*, 271 S.W.3d 928, 931 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (issues on appeal do not meet requirements of Texas Rules of Appellate Procedure if they do not point out any error allegedly committed by trial court); *see also* Tex. R. App. P. 38.1(f), (i). Accordingly, we dismiss issue 5.

recover for his severe mental anguish, in addition to property damages, and punitive and exemplary damages due to VFS's alleged "gross negligence and/or malice."

In September 2021, VFS filed a traditional motion for summary judgment, primarily alleging Sankaran did not demonstrate that he suffered any recoverable damages. Sankaran filed a response to VFS's motion for summary judgment, admitting that he had recently received his cancelled Indian passport from VFS and that he had received his renunciation certificate from VFS on July 7, the day he filed his original petition. The trial court denied the original motion for summary judgment.

In October 2021, Sankaran filed a motion to compel VFS to respond to discovery requests, which the trial court denied; the trial court also granted VFS's motions to limit Sankaran's discovery and compel Sankaran to respond to discovery. Sankaran filed a motion to reconsider the denial of his motion to compel VFS's discovery. The trial court granted the motion in part and denied it in part, ordering VFS to provide responsive information and overruling VFS's objections to a select few interrogatories, but otherwise sustaining VFS's objections to the rest of the interrogatories and to Sankaran's requests for production.

In November 2021, VFS filed an amended motion for summary judgment, arguing that Sankaran's recently-filed discovery responses conceded that Sankaran sustained no recoverable damages. Additionally, VFS contended that the economic-loss rule barred any recovery on his negligence claims. VFS also pointed out that in Sankaran's response to the original motion for summary judgment, he admitted that his cancelled Indian passport and renunciation certificate were returned to him.

In response, Sankaran filed an amended petition, adding claims for unjust enrichment and violations of various Penal Code provisions. In December 2021, the trial court ruled on and signed an order, which stated, “all of Plaintiff’s claims and causes of action against Defendant are dismissed, with prejudice, [e]xcept Plaintiff’s claim for breach of contract. Also, Plaintiff’s claims of non-economic damages and property damage are Dismissed.”

In February 2022, VFS filed a second amended motion for summary judgment, arguing that Sankaran’s breach-of-contract claim should also be dismissed because Sankaran did not produce any evidence of recoverable damages. Furthermore, VFS alleged that after the trial court granted the first amended motion for summary judgment, VFS tendered the fees it received from Sankaran as an accord and satisfaction. Even though VFS refused to concede that Sankaran was entitled to any refund, it sent a cashier’s check for \$56.74 to Sankaran and filed a notice of accord and satisfaction and tender of plaintiff’s sole remaining damages. *See* Uniform Commercial Code, Tex. Bus. & Com. Code Ann. § 3.311. According to VFS, the check covered the nominal fees that VFS received that might be construed as ostensible damages Sankaran suffered. In its motion, VFS additionally alleged that as of February 2022, “VFS has not received a refund of the fees that it tendered to Mr. Sankaran on December 30, 2021.” Because Sankaran had no recoverable damages, VFS alleged that the suit was brought in bad faith. The trial court signed a “final order” in March 2022, granting VFS’s second amended motion for summary judgment and dismissing all of Sankaran’s claims against VFS with prejudice. *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 205 (Tex. 2001) (stating that an order or judgment is final for purposes of appeal if it “finally disposes of all claims and parties”).

Sankaran filed a timely notice of appeal challenging the final judgment.

II. ANALYSIS

A. Summary judgment

In issues 1 and 2, Sankaran argues that the trial court erred in rendering summary judgment in favor of VFS. Specifically, he alleges the trial court erred by granting VFS's first amended motion for summary judgment dismissing his negligent unjust enrichment, and Penal Code violation claims, and by granting the second amended motion for summary judgment dismissing his breach-of-contract claim.

1. Standard of review & applicable law

A party moving for traditional summary judgment must establish there is no genuine issue of material fact and it is entitled to judgment as a matter of law. *See* Tex. R. Civ. P. 166a(c); *Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 215–16 (Tex. 2003). A defendant moving for summary judgment must conclusively negate at least one element of the plaintiff's theory of recovery or plead and conclusively establish each element of an affirmative defense. *Centeq Realty, Inc. v. Siegler*, 899 S.W.2d 195, 197 (Tex. 1995). If the defendant establishes its right to summary judgment, then the burden shifts to the plaintiff to raise a genuine issue of material fact. *Id.* We review the granting of summary judgment de novo. *Knott*, 128 S.W.3d at 215.

2. Application

a. Negligence and gross negligence claims

In its first amended motion for summary judgment, VFS argued there is no genuine issue of material fact regarding Sankaran's recoverable damages for his negligence claim. We agree with VFS.

Sankaran acknowledged that he was not seeking recovery for lost wages,

lost earning capacity, or medical expenses; thus, Sankaran did not seek economic damages. Sankaran sought to recover “property damages,” but provided no evidence of his property being damaged; in fact, he admitted that by the time he filed suit, VFS had already returned his cancelled Indian passport.

VFS additionally argues there is no evidence of malice on the part of VFS because nothing in the record reflects that VFS specifically intended “to cause substantial injury or harm” to Sankaran. Tex. Civ. Prac. & Rem. Code Ann. § 41.001(7) (defining malice to mean “a specific intent by the defendant to cause substantial injury or harm to the claimant”). Likewise, VFS asserts there is no evidence that VFS’s actions constituted gross negligence because VFS’s alleged conduct did not involve any extreme degrees of risk. Tex. Civ. Prac. & Rem. Code Ann. § 41.001(11) (defining gross negligence to mean “an act or omission: (A) which when viewed objectively from the standpoint of the actor at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and (B) of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.”).

Because there is no evidence demonstrating that VFS specifically intended to cause substantial harm to Sankaran, we agree with VFS that Sankaran failed to raise genuine issues of fact on his gross negligence claims for exemplary and punitive damages. Tex. Civ. Prac. & Rem. Code Ann. § 41.001(5) (defining exemplary damages to mean “any damages awarded as a penalty or by way of punishment but not for compensatory purposes. Exemplary damages are neither economic nor noneconomic damages. ‘Exemplary damages’ includes punitive damages.”).

The only other damage Sankaran pleaded with his negligence claim was

mental anguish. However, Texas does not recognize a general legal duty to avoid negligently inflicting mental anguish on another. *See City of Tyler v. Likes*, 962 S.W.2d 489, 494 (Tex. 1997) (“For many breaches of legal duties, even tortious ones, the law affords no right to recover for resulting mental anguish.”). In addition, while mental-anguish damages are recoverable in virtually all personal-injury cases, a claimant’s right to recover such damages is limited if the plaintiff did not suffer a physical injury resulting from the defendant’s breach. *Mindi M. v. Flagship Hotel, Ltd.*, 439 S.W.3d 551, 564 (Tex. App.—Houston [14th Dist.] 2014, pet. granted, judgment vacated w.r.m.).

Without a physical injury, a plaintiff may recover mental-anguish damages only if the case falls into one of three categories. *Likes*, 962 S.W.2d at 495. The first category is for claims in which the defendant engaged in intentional or malicious conduct, such as assault and battery, or defamation. *Id.* The second type of claim occurs when mental-anguish damages are the foreseeable result of a duty arising out of a special relationship, such as physician-patient. *Id.* at 496. The third is for particularly shocking and disturbing events in which mental anguish is a highly foreseeable result. *Id.* These claims include wrongful-death suits and actions for bystander recovery when a plaintiff was in close proximity to a close family member’s serious injury. *Id.* Sankaran’s negligence claim fits into none of these categories. And even if it did, Sankaran’s claim that he “suffered severe mental anguish and stress” does no more than create a mere surmise or suspicion that he experienced mental anguish. *See Moore v. Bushman*, 559 S.W.3d 645, 650 (Tex. App.—Houston [14th Dist.] 2018, no pet.) (evidence that only raises a mere suspicion is insufficient to raise a fact issue).

Because Sankaran did not raise a genuine issue of material fact on damages recoverable pursuant to his negligence claims against VFS, we conclude that the

trial court did not err when it rendered summary judgment on that claim. *Id.*

b. Unjust-enrichment claim

In its first amended motion for summary judgment, VFS argued that Sankaran’s unjust-enrichment claim should be dismissed because he had already received his cancelled Indian passport and renunciation certificate. We agree with VFS.

To prevail on an action for unjust enrichment, a plaintiff must prove: “one person has obtained a benefit from another by fraud, duress, or the taking of an undue advantage.” *Southwestern Bell Telephone Co. v. Marketing on Hold*, 308 S.W.3d 909, 921 (Tex. 2010) (quoting *Heldenfels Bros., Inc. v. Corpus Christi*, 832 S.W.2d 39, 41 (Tex. 1992)); see Comm. on Pattern Jury Charges, State Bar of Tex., *Texas Pattern Jury Charges: Business • Consumer • Insurance • Employment* PJC 101.44 (2022).

Sankaran alleged that VFS was enriched by collecting fees without returning his documents. However, Sankaran admitted that VFS returned his cancelled Indian passport and that he ultimately received the document that he paid for: his renunciation certificate. Thus, there is no evidence that VFS wrongly secured or passively received any benefit. *See id.*

Because Sankaran did not raise a genuine issue of material fact regarding his unjust enrichment claim, we conclude that the trial court did not err in rendering summary judgment on this claim. *See* Tex. R. Civ. P. 166a(c).

c. Penal Code claims

In his amended petition, Sankaran alleged that VFS tampered with a governmental record and tampered with or fabricated physical evidence. *See* Tex. Penal Code Ann. §§ 37.09–.10. In its first amended motion for summary judgment,

VFS asserted that Sankaran could not pursue alleged criminal violations against VFS in a civil lawsuit. We agree with VFS. Texas does not recognize private causes of action for Penal Code violations. *See Brown v. De La Cruz*, 156 S.W.3d 560, 566 (Tex. 2004) (no private cause action for penal statute unless Legislature has clearly granted standing to bring such actions). Sankaran has not demonstrated his entitlement to bring a private cause of action for his Penal Code claims; accordingly, the trial court did not err in rendering summary judgment on his Penal Code claims. *See* Tex. R. Civ. P. 166a(c).

d. Breach-of-contract claim

To prevail on a breach-of-contract claim, a plaintiff must establish the following elements: (1) a valid contract existed between the plaintiff and the defendant; (2) the plaintiff tendered performance or was excused from doing so; (3) the defendant breached the terms of the contract; and (4) the plaintiff sustained damages as a result of the defendant's breach. *See Pathfinder Oil & Gas, Inc. v. Great W. Drilling, Ltd.*, 574 S.W.3d 882, 890 (Tex. 2019).

By using its website and by availing himself of the services on VFS's website, Sankaran agreed to the explicit terms and conditions for use of the website, which state that VFS "cannot be liable for any delay in processing, granting or rejecting the renunciation as this is the sole prerogative of the Embassy of India." The website additionally states that VFS shall have no liability to any person relying on a renunciation application for "any loss of profit, revenue, contract, business, profession, or other occupation; for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever." Sankaran did not plead that VFS breached any specific provisions of the terms and conditions as listed on the website.

Additionally, we note that Sankaran also alleges the existence of a contract-

in-fact.³ Sankaran asserts that VFS breached the alleged contract-in-fact by failing to return the renunciation certificate and Indian passport. But as we observed above, VFS has returned both of those items to Sankaran.

We conclude that Sankaran has not demonstrated that VFS breached the terms of the contract. *See Pathfinder*, 574 S.W.3d at 890. Accordingly, the trial court did not err in rendering summary judgment on Sankaran’s breach-of-contract claim. *See* Tex. R. Civ. P. 166a(c).

We overrule issues 1 and 2.

B. Discovery

In issues 3 and 4, Sankaran argues the trial court erred by: (1) granting VFS’s objections to Sankaran’s discovery requests and (2) granting VFS’s motion to compel Sankaran to answer VFS’s discovery requests.

1. Standard of review

We review a trial court’s discovery rulings for an abuse of discretion. *See Ford Motor Co. v. Castillo*, 279 S.W.3d 656, 661 (Tex. 2009). Generally, “[a] trial court abuses its discretion when it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law.” *Id.* More specifically, “[a] trial court abuses its discretion when it denies discovery going to the heart of a party’s case or when that denial severely compromises a party’s ability to present a viable defense.” *Id.* at 663. “[A] party may obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action” and appears to be reasonably calculated to lead to the discovery of admissible

³ In his amended petition, Sankaran pleaded that VFS breached a contract-in-fact by: (1) failing to return the renunciation certificate and his Indian passport; (2) failing to update the status of his application; (3) “failing to investigate the issue”; (4) “failing to share ‘the Truth’”; and (5) “failing to disclose Defendant higher authority [sic] for escalation.” We do not address arguments 2, 3, 4, or 5 because Sankaran does not raise them on appeal.

evidence. *See* Tex. R. Civ. P. 192.3(a). Discovery requests must reflect a “reasonable expectation of obtaining information” that would aid in resolving the dispute and “must be ‘reasonably tailored’ to include only relevant matters.” *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003) (orig. proceeding) (per curiam) (citing *In re Am. Optical Corp.*, 988 S.W.2d 711, 713 (Tex. 1998) (orig. proceeding)).

If the trial court abuses its discretion in making a discovery ruling, the complaining party must still show harm on appeal to obtain a reversal. Tex. R. App. P. 44.1(a). Harmful error is error that “probably caused the rendition of an improper judgment” or “probably prevented the appellant from properly presenting the case to the court of appeals.” *Id.*

2. Sankaran’s discovery requests

In the present case, Sankaran requested the following discovery:

A. INTERROGATORIES

1. Provide gross annual revenue, net taxable income, and detail the number of consumers Appellee has served over the past three years.
2. Provide detailed information about all of Appellee’s US operations.
3. Provide detailed information about all litigation Appellee has been a party to.

B. REQUESTS FOR PRODUCTION

1. Produce Appellee’s contract with the Consulate General of India.
2. Produce Appellee’s tax returns from 2016 through present.
3. Produce all of Appellee’s communications with the Consulate General of India.

C. REQUESTS FOR ADMISSION

1. Admit you don’t have documents to defend your general denial.
2. Admit you were negligent in handling Appellant’s complaints about stress.

3. Admit you provided intentional infliction of emotional distress on Appellant.

None of these discovery requests go to the “heart” of Sankaran’s case. *Ford*, 279 S.W.3d at 663. We already concluded above that Sankaran failed to demonstrate that VFS breached the terms of the contract. The trial court could have reasonably concluded that further discovery would not help Sankaran establish the base elements of his claims. Stated differently, producing VFS’s tax returns or VFS’s contract with the Embassy of India would not help Sankaran establish the damages he suffered or that VFS breached its contract with Sankaran. The answers to the requested admissions would not provide any helpful information; VFS ultimately provided many documents in support of its denial. Whether VFS was negligent is irrelevant if Sankaran cannot prove any damages, and there is no evidence to suggest VFS intended to cause emotional distress to Sankaran. Therefore, we conclude that the trial court did not abuse its discretion in partially granting VFS’s objections to Sankaran’s discovery requests. *See id.*

We overrule issue 3.

3. VFS’s Motion to Compel

VFS repeatedly requested that Sankaran provide written discovery responses. After Sankaran refused to do so, VFS filed a motion to compel. VFS sought information regarding Sankaran’s claims and potential damages, such as information related to medical treatment and lost wages. There is nothing in the record to indicate that VFS’s discovery requests were improper or made with the intent to harass Sankaran. VFS simply sought information related to Sankaran’s potential claims for damages. Thus, we cannot conclude that the trial court abused its discretion. *See id.*

We overrule issue 4.

III. CONCLUSION

We affirm the judgment of the trial court as challenged on appeal.

/S/ Charles A. Spain
Justice

Panel consists of Justices Zimmerer, Spain, and Hassan.