

Reversed and Remanded and Memorandum Opinion filed April 29, 2025.



In The

Fourteenth Court of Appeals

NO. 14-24-00170-CV

EURO PROPERTY LLC, Appellant

V.

NABEEL HUSSAIN, AND KARINA FRANCO, Appellees

**On Appeal from the 215th District Court
Harris County, Texas
Trial Court Cause No. 2022-02763**

MEMORANDUM OPINION

In a single issue on appeal, appellant Euro Property LLC, argues that the trial court erred in granting no-evidence summary judgment in favor of appellees Nabeel Hussain and Karina Franco. We sustain Euro's sole issue, reverse the trial court's order granting the no-evidence summary judgment and remand the case to the trial court for further proceedings.

I. BACKGROUND

In February 2017, Hussain formed Supra 777, LLC to purchase and hold title to a parcel of real property (“the Property”) in Houston. When the Property was acquired, it was a single-family residence, but Hussain used the Property to operate a used car dealership under the name “Houston Direct Auto.”

In December 2019, Hussain and his spouse, Franco, commenced a construction project to convert the single-family residence into an approximately 2900 square feet auto dealership and office building. Before a conversion project such as this one, the City of Houston requires construction plans to be submitted, approved, and a certificate of occupancy (“C/O”) to be obtained before the property can be occupied or opened to the public. The City will only issue a C/O after it inspects the property to ensure that improvements on it comply with City codes and regulations.

It is undisputed that appellees never obtained a C/O for the Property, and the City rejected appellees’ conversion plans for noncompliance with City codes and regulations. After their construction plans were twice denied, in September 2020, appellees went ahead with the unapproved conversion project.

In 2021, the members of Euro saw a flyer created by appellees advertising the Property for sale. The flyer represented that the Property was an office building and lot being used as a used car dealership. The flyer represented the building on the Property had been “recently renovated” with many “flexible uses.” The flyer depicted used cars for sale parked on the lot. It represented that the Property for sale included “state of the art cameras and security system.” The members of Euro were also shareholders of Auto Selection, Inc., which operated its own car dealership on a property it was renting from a third party. Euro contacted Franco and expressed interest in relocating their car dealership from the rented property to

the Property. Franco introduced herself to Euro as an agent for her husband, Hussain, who she claimed owned the Property. When members of Euro visited the Property with Franco, they saw that it was being occupied and operated as a used car business under the name Houston Direct Auto as depicted in the flyer. Franco represented to them that the Property had been renovated in 2020 and 2021 and had many uses.

The members of Euro observed offices, office equipment and furniture, and persons working in the offices on the Property. The employees were introduced to Euro as Houston Direct Auto employees. The members of Euro specifically asked Franco if the Property had a C/O because a C/O was required by the State in order to have a dealer license to operate. They also told appellees Euro was interested in relocating its used car dealership to the Property. Both Franco and Hussain, individually, represented to Euro that the Property had a C/O but that the document had been misplaced.

Euro entered into a commercial contract in July 2021 with Supra to purchase the Property for \$1,650,000. The contract expressly provided that Euro was accepting the property “AS IS WHERE IS” and granted Euro a 20-day feasibility period to inspect the Property. In the seller’s disclosures, it represented that there were no “material physical defects in the improvements” on the Property and that there was no “condition on the Property that violates any law or ordinance.” The contract further provided the “state of the art cameras and security system” would be part of the sale and would remain on the Property.

Neither Franco nor Hussain ever disclosed to Euro that (1) the City denied the construction plans to convert the Property from a single-family residence to commercial property, (2) appellees went ahead with the conversion without the City’s approval, (3) the Property did not have a C/O, and (4) appellees were

occupying the Property without a C/O in violation of the City codes and ordinances.

After purchasing and taking possession of the Property, Euro discovered that the Property did not have a C/O and that the City required changes or corrections to material defects in the improvements before a C/O could be obtained from the City. Euro hired contractors to complete and/or remediate the construction required by the City, which took approximately one year and \$120,000 to complete.

Euro further alleged it lost \$220,000 in rent because the Property could not be occupied and operated as a used car dealership until the C/O was obtained. Because Auto Selection could not occupy the Property for approximately one year, Euro abated rent for eleven months totaling \$220,000 in lost rent.

Euro additionally discovered that Franco and Hussain removed the state-of-the-art cameras and security system that were contractually included in the sale of the property. Euro spent over \$18,000 to purchase cameras and a security system for the Property.

In January 2022, Euro filed suit against Supra, Hussain and Franco collectively for fraud, fraud in a real estate transaction, and fraud in the inducement. The trial court entered a default judgment entered against Supra and awarded Euro \$358,000. However, Hussain and Franco filed a no-evidence motion for summary judgment on all of Euro's claims against them, which the trial court granted after oral hearing. This appeal followed.

II. ANALYSIS

In its sole issue, Euro argues that the trial court erred by granting Franco and Hussain's no-evidence motion for summary judgment.

A. Standard of review and applicable law

In a no-evidence motion for summary judgment, the movant represents that there is no evidence of one or more essential elements of the claims for which the nonmovant bears the burden of proof at trial. Tex. R. Civ. P. 166a(i). The burden then shifts to the nonmovant to present evidence raising a genuine issue of material fact as to the elements specified in the motion. *Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 582 (Tex. 2006). In reviewing a no-evidence summary judgment, we ascertain whether the nonmovant pointed out summary-judgment evidence raising a genuine fact issue as to the essential elements attacked in the no-evidence motion. *Johnson v. Brewer & Pritchard, P.C.*, 73 S.W.3d 193, 207 (Tex. 2002).

Thus, on its claim for common law fraud and/or fraud in the inducement, Euro needed to present evidence raising a genuine issue of fact that: (1) Franco and Hussain made a material representation to Euro; (2) the representation was false; (3) when the representation was made, appellees either knew it was false or made it recklessly, as a positive assertion, without knowledge of its truth; (4) the representation was made with the intent that Euro act on it; (5) Euro relied upon the representation; and (6) the representation caused Euro injury. *See In re FirstMerit Bank*, 52 S.W.3d 749, 758 (Tex. 2001).

And on its claim for statutory fraud, Euro needed to present evidence raising a genuine issue of fact that there was a:

- (1) false representation of a past or existing material fact, when the false representation is
 - (A) made to a person for the purpose of inducing that person to enter into a contract; and
 - (B) relied on by that person in entering into that contract; or
- (2) false promise to do an act, when the false promise is
 - (A) material;
 - (B) made with the intention of not fulfilling it;

(C) made to a person for the purpose of inducing that person to enter into a contract; and

(D) relied on by that person in entering into that contract.

Tex. Bus. & Com. Code Ann. § 27.01(a).

B. Application

1. Was the affidavit conclusory?

Franco and Hussain argue that Euro failed to present any competent summary judgment evidence of fraud. More specifically, Franco and Hussain assert that they objected to Euro's main piece of evidence—an affidavit from Eyad Qassas, Euro's authorized agent—as “incompetent, unqualified, conclusory, objectionable, and insufficient to constitute summary judgment evidence.” *See Ryland Group, Inc. v. Hood*, 924 S.W.2d 120, 122 (Tex. 1996) (observing that conclusory affidavits do not raise fact issues); *see also Hou-Tex, Inc. v. Landmark Graphics*, 26 S.W.3d 103, 112 (Tex. App.—Houston [14th Dist.] 2000, no pet.) (an objection that an affidavit is conclusory relates to a defect in a substance and thus may be raised for the first time on appeal, regardless of whether the trial court ruled on the objection below). “A conclusory statement is one that does not provide the underlying facts to support the conclusion.” *Paragon Gen. Contractors, Inc. v. Larco Const., Inc.*, 227 S.W.3d 876, 883 (Tex. App.—Dallas 2007, no pet.).

Appellees contended that Qassas's affidavit was conclusory on the basis that Euro did not provide any receipts or proof of payment to support the allegations that Euro spent over \$120,000 to fix the issues flagged by the City and over \$18,000 to purchase a new camera and security system for the Property. However, to defeat appellees' motion for no-evidence summary judgment, Euro simply needed to raise fact issues on its claims, not marshal all of its proof. *See Sw. Elec. Power Co. v. Grant*, 73 S.W.3d 211, 215 (Tex. 2002). Instead of generally averring

that Euro had been injured, the affidavit provided the underlying facts alleging how it had been injured, why the repairs and camera system were necessary, and the costs Euro had incurred. In this regard, the affidavit was “clear, positive, and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted.” Tex. R. Civ. P. 166a(c). Therefore, we conclude that the affidavit was not conclusory and constituted competent summary judgment evidence.

2. Was a fact issue raised?

Considering all of the summary-judgment evidence, there is at least some evidence that both Franco and Hussain represented to Euro that the City issued a C/O for the property, even though they knew the property did not have a C/O. There is some evidence that Franco and Hussain made this representation with the intent that Euro act on it—and that Euro actually relied on the representation—because they knew Euro was looking to have a car business operate on the property, which required a C/O. There is some evidence that Euro was injured because it allegedly lost \$220,000 in rent payments, had to pay \$120,000 to fix the property to obtain a C/O, and had to pay over \$18,000 to buy a new camera and security system.

Nevertheless, Hussain and Franco argue that no-evidence summary judgment was appropriate because the contract for the sale of the property contained an “AS IS WHERE IS” clause. A valid “as-is clause” negates the causation element as a matter of law. *See Prudential Ins. Co. of Am. v. Jefferson Assocs.*, 896 S.W.2d 156, 161 (Tex. 1995). However, the presence of an “as-is” provision is not determinative in every circumstance. *Id.* at 162. For instance, a buyer is not bound by an “as-is” agreement when the “as-is” agreement was “induced by fraudulent representation or concealment of information[.]” *Id.* There was some evidence, as detailed above, that the as-is clause was induced by

fraudulent representation because Franco and Hussain represented to Euro that the Property had a C/O, knowing that Euro was specifically looking for property with a C/O, even though Franco and Hussain knew the property did not have a C/O.

Thus, given the totality of the evidence, we conclude the as-is clause in this case did not negate causation as a matter of law and Euro raised a genuine issue of fact on all elements of its claims. Accordingly, we conclude the trial court erred in granting no-evidence summary judgment in favor of Franco and Hussain. We sustain Euro's sole issue.

III. CONCLUSION

We reverse the portion of the trial court's final judgment awarding a take-nothing summary judgment in favor of Hussain and Franco on Euro's claims against them and remand the case to the trial court for further proceedings consistent with this opinion.

/s/ Tonya McLaughlin
Justice

Panel consists of Justices Wilson, Hart, McLaughlin.