



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-21-00111-CV

Lisa **FLORES**,
Appellant

v.

Mario **DE LA OSSA** and Navy Federal Credit Union,
Appellees

From the 150th Judicial District Court, Bexar County, Texas
Trial Court No. 2020-CI-24502
Honorable David A. Canales, Judge Presiding

Opinion by: Beth Watkins, Justice

Sitting: Rebeca C. Martinez, Chief Justice
Luz Elena D. Chapa, Justice
Beth Watkins, Justice

Delivered and Filed: May 18, 2022

AFFIRMED

This an appeal from an order dissolving a prejudgment writ of garnishment that appellant Lisa Flores obtained against appellees Mario De La Ossa and Navy Federal Credit Union. We affirm.

BACKGROUND

De La Ossa hired Flores, a realtor, to list and sell a San Antonio property. Flores renovated the property and paid for the improvements herself. According to Flores, De La Ossa agreed to fully reimburse her once the property sold; De La Ossa contends he did no such thing. De La Ossa

fired Flores before the property sold. But when he fired Flores, De La Ossa agreed to make “reasonable efforts” to “provide funds” to Flores for her “self-initiated incurred renovation expenses” after the property sold. The property sold. Flores sued De La Ossa for breach of contract, seeking recovery of the renovation expenses.

In an ancillary proceeding that is the subject of this appeal, Flores applied for an ex parte pre-judgment writ of garnishment in the amount of \$71,210.09. She attached her affidavit, which the trial court admitted into evidence, stating the basis for that amount: Flores spent \$77,210.09 renovating the property but De La Ossa had only paid her \$6,000. She did not, however, attach any supporting documentation. The trial court granted the application and ordered that the “maximum value of property or indebtedness that can be garnished is \$81,210.09”—the full amount Flores sought plus \$10,000 in costs. Flores caused the writ to be executed, garnishing De La Ossa’s bank accounts at Navy Federal Credit Union.

When De La Ossa learned of the garnishment order, he moved to dissolve it. He argued that the garnishment order was improper because Flores presented no evidence to support the amount she claims to be owed and her claims were for uncertain and unliquidated damages. De La Ossa attached an affidavit averring that he fired Flores for not delivering on the services she was hired for and she “was well aware she was not entitled to reimbursement of any expenses she took on at her own risk concerning the property.” Two days later, Flores filed an amended application, identical to the first but with supporting exhibits including:

- a bill reflecting twenty-two categories of work performed, the total cost for each category, and the balance due of \$71,210.09;
- the email from De La Ossa terminating her; and

- a letter from De La Ossa offering a settlement of \$5,000.

After a hearing, the trial court dissolved the writ of garnishment.¹ Flores appeals.

ANALYSIS

Standard of Review

Appellate courts review a trial court's decision to grant or deny a motion seeking dissolution of a writ of garnishment under an abuse of discretion standard. *Gen. Elec. Capital Corp. v. ICO, Inc.*, 230 S.W.3d 702, 705 (Tex. App.—Houston [14th Dist.] 2007, pet. denied). A trial court “abuses its discretion if its decision is arbitrary, unreasonable, or without reference to guiding principles.” *In re Gen. Elec. Co.*, 271 S.W.3d 681, 685 (Tex. 2008).

Applicable Law

The purpose of a garnishment action is to capture property, money, or credits of a debtor held in the possession of a third party, like a bank, and apply it to the payment of a debt. *Bank One, Tex., N.A. v. Sunbelt Sav., F.S.B.*, 824 S.W.2d 557, 558 (Tex. 1992) (per curiam). Because it may impound the money or property of an alleged debtor even before a judgment is obtained against him, and brings into court strangers to the main suit, the remedy of garnishment is summary and harsh. *Beggs v. Fite*, 106 S.W.2d 1039, 1042 (Tex. 1937). Therefore, a garnishment order must strictly conform with statutory requirements. *Id.*

“Section 63.001 of the Civil Practice and Remedies Code states *what* the plaintiff must show to the court in order to obtain a pre-judgment writ, and Rule 658 guides the plaintiff in *how* it can show the statutory requirements of section 63.001 based on a belief.” *Almanza Bus. Group, LLC v. CBI Logistic Servs. L.L.C.*, No. 04-18-00321-CV, 2019 WL 2110120, at *2 (Tex. App.—

¹ The appellate record does not contain a reporter's record from the January 26, 2021 hearing on the motion to dissolve the writ of garnishment. There is no indication the hearing was evidentiary, so we presume the hearing was non-evidentiary and the trial court considered only the evidence on file with the clerk. *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 781–83 (Tex. 2005).

San Antonio May 15, 2019, pet. denied) (mem. op.); *see also* TEX. CIV. PRAC. & REM. CODE ANN. § 63.001; TEX. R. CIV. P. 658. Under the Texas Civil Practice and Remedies Code:

A writ of garnishment is available if . . . a plaintiff sues for a debt and makes an affidavit stating that: (A) the debt is just, due, and unpaid; (B) within the plaintiff's knowledge, the defendant does not possess property in Texas subject to execution sufficient to satisfy the debt; and (C) the garnishment is not sought to injure the defendant or the garnishee[.]

TEX. CIV. PRAC. & REM. CODE § 63.001(2). Under Rule 658 of the Texas Rules of Civil Procedure, an application must (1) “be supported by affidavits of the plaintiff . . . or other person having knowledge of relevant facts,” (2) “comply with all statutory requirements,” and (3) “state the grounds for issuing the writ and the specific facts relied upon by the plaintiff to warrant the required findings by the court.” TEX. R. CIV. P. 658. “The application and any affidavits shall be made on personal knowledge and shall set forth such facts as would be admissible in evidence; provided that facts may be stated based upon information and belief if the grounds of such belief are specifically stated.” *Id.* A writ of garnishment “may be issued when the plaintiff's claim arises out of contract either express or implied, and the demand is liquidated[.]” *Cleveland v. San Antonio Bldg. & Loan Ass'n*, 223 S.W.2d 226, 228 (Tex. 1949). Liquidated means “the amount of the claim is not contingent, is capable of being definitely ascertained by the usual means of evidence, and does not rest in the discretion of the jury.” *Id.* Conversely, “when the damages are unliquidated and in their nature uncertain, the demand is not subject to garnishment.” *Waples-Platter Grocer Co. v. Tex. & Pac. Ry. Co.*, 68 S.W. 265, 266 (Tex. 1902).

A defendant whose property or account has been garnished may, by sworn written motion, seek to dissolve “the writ of garnishment, and the order directing its issuance, for any grounds or cause, extrinsic or intrinsic.” TEX. R. CIV. P. 664a. “Such motion shall admit or deny each finding of the order directing the issuance of the writ except where the movant is unable to admit or deny the finding, in which case movant shall set forth the reasons why he cannot admit or deny.” *Id.*

“The writ shall be dissolved unless, at such hearing, the plaintiff shall prove the grounds relied upon for its issuance[.]” *Id.*

Application

Flores argues the trial court abused its discretion in dissolving the writ because she complied with the applicable statutes by supplying an affidavit stating: (1) the debt is just, due, and unpaid; (2) within her knowledge, De La Ossa does not possess property in Texas subject to execution sufficient to satisfy the debt; and (3) the garnishment is not sought to injure De La Ossa or Navy Federal Credit Union. But De La Ossa, in his affidavit, denied any contract exists. The general rule is that claims for unliquidated damages—such as damages for breach of contract which can be determined only by the finder of fact—are not subject to garnishment. *Waples-Platter Grocer Co.*, 68 S.W. at 266; see *In re ATW Investments, Inc.*, No. 04-17-00045-CV, 2017 WL 1066803, at *2–3 (Tex. App.—San Antonio Mar. 22, 2017, orig. proceeding) (mem. op.) (garnishment inappropriate in breach of contract case where plaintiffs never identified the specific contracts in question). A debt may be garnishable only if the liability is absolute and certain and the amount of the liability can be ascertained by the contract itself. *Cleveland*, 223 S.W.2d at 228; see *BBX Operating, LLC v. Am. Fluorite, Inc.*, No. 09-19-00279-CV, 2021 WL 3196513, at *3 (Tex. App.—Beaumont July 29, 2021, pet. denied) (mem. op.) (garnishment appropriate during breach of contract suit where plaintiff’s supporting evidence of unpaid revenues included affidavit, testimony from a bankruptcy hearing, deposition testimony, and a partial summary judgment order declaring debt owed but withheld).

On this record, we hold the trial court did not act arbitrarily or unreasonably by concluding Flores did not prove the liability absolute and certain or that the amount of the liability can be ascertained by the contract itself and, as a result, did not “provide the grounds relied upon for” the writ’s issuance. See TEX. R. CIV. P. 664a. Accordingly, the trial court did not abuse its discretion

in granting the motion to dissolve the writ of garnishment. *Id.*; *Gen. Elec. Capital Corp.*, 230 S.W.3d at 705. We overrule Flores' sole appellate issue.

CONCLUSION

Having concluded that Flores did not strictly conform with the statutory requirements for the writ of garnishment's issuance, we affirm the trial court's order dissolving it.

Beth Watkins, Justice