



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-16-00024-CV

SPA CASTLE, INC., AND SPA
CASTLE TEXAS, INC.

APPELLANTS

V.

MIURA NORTH AMERICA, INC.,
AND JB INDUSTRIAL
CONTRACTOR, INC.

APPELLEES

FROM THE 16TH DISTRICT COURT OF DENTON COUNTY
TRIAL COURT NO. 2013-10309-16

MEMORANDUM OPINION¹

I. INTRODUCTION

In five issues, Appellants Spa Castle, Inc. and Spa Castle Texas, Inc. (collectively, Spa Castle) challenge the trial court's order granting summary

¹See Tex. R. App. P. 47.4.

judgment in favor of Appellees Miura North America, Inc. and JB Industrial Contractor, Inc. on all of Spa Castle's claims. We will affirm.

II. FACTUAL AND PROCEDURAL BACKGROUND

Spa Castle purchased two Miura LX 300 Boilers, which were manufactured by Miura North America, Inc. and were distributed by JB Industrial Contractor, Inc. The boilers were installed in Spa Castle's Carrollton location in late 2011; but when the boilers were placed in full service in October 2012, they immediately began to shut down because of high heat alarms. After both boilers failed, Spa Castle sued Appellees, alleging breach of oral and written agreements, fraud and fraud in the inducement, design defects, and vicarious liability and sought attorney's fees.

Both Appellees answered and ultimately filed combined no-evidence and traditional motions for summary judgment. Spa Castle filed an "omnibus response" to Appellees' combined summary-judgment motions and attached the affidavits of Victor Chon, a mechanical engineer, and Sam Lee, Spa Castle's chief financial officer, as Spa Castle's only summary-judgment evidence. Appellees asserted numerous, specific objections—spanning sixteen pages in the clerk's record—to virtually every substantive statement set forth in Chon's and Lee's affidavits, arguing that the statements were conclusory, equivocal, not based on personal knowledge, speculative, and not supported by any facts. The trial court sustained all of Appellees' objections to the affidavits and ordered all objected-to statements in the affidavits struck.

The trial court then granted Appellees' combined motions for summary judgment without specifying the grounds. This appeal followed.

III. EXCLUSION OF SPA CASTLE'S SUMMARY-JUDGMENT EVIDENCE

In issue 5C, Spa Castle claims that the trial court abused its discretion by sustaining Appellees' objections to Spa Castle's affidavits.² On appeal, however, Spa Castle does not challenge the trial court's sustaining of any specific objection made by Appellees or identify any particular statements in the affidavits as erroneously struck. Instead, Spa Castle globally and generally complains that the trial court "sustained Appellees' objections."³ Because Spa Castle has not challenged any, much less all, possible grounds supporting the trial court's rulings sustaining Appellees' objections, we hold that Spa Castle has waived this issue. See *In re Blankenship*, 392 S.W.3d 249, 259 (Tex. App.—San Antonio 2012, no pet.) ("When an appellee objects to evidence on several independent

²We address this issue first because we do not consider properly-struck portions of the record in our summary-judgment review as such evidence is not part of the summary-judgment record. See *McCollum v. Bank of N.Y. Mellon Trust Co.*, 481 S.W.3d 352, 362 (Tex. App.—El Paso 2015, no pet.).

³Spa Castle's argument in issue 5C is set forth in its entirety as follows:

The Court summarily sustained the Appellees' objections to the Appellants' summary judgment proof, granting a summary judgment without considering that evidence. [CR-285] Because the Trial Court abused its discretion, Appellants respectfully request this Honorable Court to reverse the Summary Judgment and remand the case to the Trial Court for a jury trial on all issues.

grounds and, on appeal, the appellant complains of the exclusion of evidence on only one of those grounds, the appellant waives any error by not challenging all possible grounds for the trial court's ruling."); see also *Katy Springs & Mfg., Inc. v. Favalora*, 476 S.W.3d 579, 607 (Tex. App.—Houston [14th Dist.] 2015, pet. denied) (holding appellant waived error with regard to trial court's striking of affidavit because appellant failed to challenge on appeal all possible grounds for trial court's ruling); *Tri-Steel Structures, Inc. v. Baptist Found. of Tex.*, 166 S.W.3d 443, 449 (Tex. App.—Fort Worth 2005, pet. denied) (holding appellant's general arguments on appeal—which were non-specific, vague, and not pointed out with sufficient clarity for appellate court to consider—waived challenges to affidavit). Accordingly, we overrule Spa Castle's issue 5C.

IV. THE TRIAL COURT DID NOT ERR BY GRANTING APPELLEES' NO-EVIDENCE SUMMARY JUDGMENT MOTIONS

Spa Castle's second issue appears to challenge the no-evidence summary judgment granted in favor of Appellees.⁴ Appellees' no-evidence summary judgment motion challenged each of the elements for every claim pleaded by

⁴Spa Castle's second issue and argument are set forth in their entirety as follows:

ISSUE NO. 2. ALTERNATIVELY, THE TRIAL COURT ERRED IN GRANTING A SUMMARY JUDGMENT BECAUSE APPELLANTS RAISED DISPUTED ISSUES OF MATERIAL FACT.

Legal arguments and disputed fact issues raised by Appellant on these issues are clearly shown in Appellants' Motion for Summary Judgment and Affidavits attached thereto.

Spa Castle—including breach of contract, fraud and fraud in the inducement, fraud by nondisclosure, product liability for design defect, vicarious liability, and attorney’s fees—and asserted that Spa Castle had no evidence to support these challenged elements of its claims. The only summary-judgment evidence produced by Spa Castle consisted of the affidavits of Chon and Lee. The trial court, however, sustained Appellees’ objections to both affidavits and ordered every objected-to statement in these affidavits struck. Because Spa Castle has failed on appeal to identify any statements in the affidavits that were not struck, if any exist, and has failed to explain how any statements that were not struck raise a genuine issue of material fact as to any element of any claim challenged by Appellees’ no-evidence summary judgment motion, we hold that this issue is waived as inadequately briefed. See Tex. R. App. P. 38.1(i) (requiring appellant’s brief to “contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record”); *Fredonia State Bank v. Gen. Am. Life Ins. Co.*, 881 S.W.2d 279, 284–85 (Tex. 1994) (recognizing long-standing rule that error may be waived through inadequate briefing); *Magana v. Citibank, N.A.*, 454 S.W.3d 667, 680–81 (Tex. App.—Houston [14th Dist.] 2014, pet. denied) (holding party failing to adequately brief complaint waived issue on appeal); see also *McCollum*, 481 S.W.3d at 362 (holding that trial court was required to grant no-evidence motion for summary judgment because nonmovant’s evidence had been struck); *Izaguirre v. Rivera*, No. 14-12-00081-CV, 2012 WL 2814131, at *2–3 (Tex. App.—Houston [14th

Dist.] July 10, 2012, no pet.) (mem. op.) (“Because the trial court granted Rivera’s motion striking all of Izaguirre’s summary-judgment evidence and that ruling has not been challenged, no evidence supports Izaguirre’s appellate arguments.”). We overrule Spa Castle’s second issue.⁵

V. CONCLUSION

Having overruled Spa Castle’s second issue and issue 5C, which are dispositive of this appeal, we affirm the trial court’s summary judgment in favor of Appellees. See Tex. R. App. P. 47.1.

PER CURIAM

PANEL: WALKER and MEIER, JJ.; and KERRY FITZGERALD (Senior Justice, Retired, Sitting by Assignment).

DELIVERED: March 2, 2017

⁵Because we do not consider the movant’s evidence when reviewing a no-evidence summary judgment, we need not address Spa Castle’s third or fourth issues or its issues 5A and 5B, which challenge Appellees’ summary-judgment evidence. And because we affirm the trial court’s summary judgment on no-evidence grounds, we need not address Spa Castle’s first issue challenging whether summary judgment was proper on Appellees’ traditional motions for summary judgment. See Tex. R. App. P. 47.1.