COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00373-CV

JEFF FRITTS — APPELLANT

V.

MARY PAT MCDOWELL, CMP FAMILY LIMITED PARTNERSHIP, AND LESLIE HALEY — APPELLEES

FROM THE 158TH DISTRICT COURT OF DENTON COUNTY
TRIAL COURT NO. 15-08338-442

MEMORANDUM OPINION[1]

I. INTRODUCTION

This is a summary-judgment appeal from a suit seeking judicial foreclosure of a judgment lien against two properties. In five issues, Appellant Jeff Fritts challenges the trial court's summary judgment, which denied all the relief he

[1]*See* Tex. R. App. P. 47.4.

sought in his motion for summary judgment, granted the motion for summary judgment filed by Appellees Mary Pat McDowell and CMP Family Limited Partnership on their affirmative defense of release, awarded Mary Pat and CMP attorney's fees, and released Appellee Leslie Haley's property from Fritts's lien. For the reasons set forth below, we will affirm.

II. Factual and Procedural Background

At the center of the underlying case are two pieces of property—3600 Scenic Drive in Flower Mound, Texas, and a smaller, contiguous strip of land—that Mary Pat and CMP[2] sold to Haley. Because prior to the sale of the properties numerous events occurred that are relevant to the present appeal—including the prior suit from which Fritts obtained the judgment lien at issue, as well as various transactions with nonparties—we set forth a detailed factual and procedural background.

A. Fritts Files Suit Against the McDowells and Obtains a Judgment

In 2008, Fritts filed suit in Dallas County against Mary Pat, her husband Joseph C. McDowell (Cole), and several entities they owned. While Fritts's suit was pending, Mary Pat and Cole divorced, and Mary Pat was awarded her sole and separate property, which included 3600 Scenic Drive. Fritts's suit was resolved in January 2011 when the trial court entered judgment (the Final Judgment) in favor of Fritts and against the McDowells and one of their entities,

[2]Mary Pat is the majority owner and manager of CMP.

jointly and severally, and awarded attorney's fees to Fritts. Fritts abstracted the Final Judgment in the Denton County real property records in April 2011, and he refiled the abstract of the Final Judgment the following month (collectively, the Judgment Lien).

B. Cole and Mary Pat Sign the Investment Agreement Transferring Assets between their Entities

In February 2012, Cole and Mary Pat entered into an Investment Agreement in which CMP and Mary Pat transferred certain property to an entity owned by Cole called Safe Parking, Ltd., and as consideration for the transferred property, Cole and Safe Parking transferred to CMP a 20% interest in Safe Parking. As additional consideration, Mary Pat agreed "to dedicate at least 5 hours per week, subject to her personal schedule, to the activities and management of Safe Parking."

C. Fritts Obtains a Charging Order

In March 2012, when no amount of the Judgment Lien had been paid by Mary Pat,[3] Fritts obtained a Charging Order. The trial court found that CMP is Mary Pat's alter ego and ordered that any distributions owed to Mary Pat or CMP be paid to Fritts to satisfy her portion of the Final Judgment.[4]

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[3]After the Final Judgment was entered, Cole filed for Chapter 7 bankruptcy and received a discharge of the amount he owed Fritts under the Final Judgment.

[4]Fritts recorded notice of the Charging Order in the Denton County real property records on January 16, 2013.

D. Fritts Enters into a Settlement Agreement and Release

In June 2013, Fritts filed suit against Cole, Safe Parking, and the general partner of Safe Parking, which is an entity known as smmramjcm, LLC. Two months later, Safe Parking filed a Chapter 11 bankruptcy.[5] Fritts's lawsuit was transferred to the bankruptcy court and was given an adversary proceeding cause number. In April 2014, the parties in the bankruptcy case entered into a "Compromise, Global Settlement Agreement[,] and Mutual Release" (the Settlement Agreement) to resolve Fritts's adversary proceeding. The Settlement Agreement referenced the Investment Agreement, specifically stating that

> [o]n or about February 22, 2012, Cole McDowell, Safe Parking, Mary Pat, and CMP Family Limited Partnership ("CMP"), entered into that certain *Investment Agreement*, pursuant to which CMP transferred title in certain property interests to Safe Parking (the "Transferred Property"), and, in return, Safe Parking and Cole McDowell agreed to provide CMP with a twenty percent (20%) interest in Safe Parking, certain proprietary information related to automated parking, and in the future real estate investments, developments, and activities of Cole McDowell and Safe Parking[,] and Mary Pat agreed to devote at least five hours per week, without compensation, to the activities of Safe Parking.

The Settlement Agreement states that "Fritts, through counsel[,] received a copy of the *Investment Agreement*." The Settlement Agreement further states that

> Fritts . . . hereby waives, releases, and forever discharges, Safe Parking, . . . Cole McDowell, and the GP, and all of their directors, officers, shareholders, employees, representatives, agents, attorneys, affiliates, successors, and predecessors, from any and all claims, obligations, counterclaims, offsets, demands, actions,

[5]Parker Properties 1100, Ltd., an entity owned by Mary Pat, also filed for Chapter 11 bankruptcy, and the two bankruptcy cases were jointly administered.

> causes of action, and liabilities, of whatsoever kind and nature, character and description, whether in law or equity, whether concerning tort, contract, or under other applicable law, whether known or unknown, and whether anticipated or unanticipated, which he ever had, now has, or may ever have, including, without limitation, any claim asserted in the 2008 Lawsuit,[6] the Adversary Proceeding, or by way of the Final Judgment[7] or Charging Order;[8] provided, however, that nothing herein releases any Party from any obligation imposed upon them in this Agreement.

The bankruptcy court approved the Settlement Agreement. After Cole tendered payment in accordance with the terms of the Settlement Agreement, Fritts executed a document entitled "Complete Release Of Joseph Coleman McDowell, Jr." in December 2014 and reiterated in substantially similar language the release provision from the Settlement Agreement.[9]

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[6]The Settlement Agreement defines the term "2008 Lawsuit" as the suit Fritts filed in August 2008 under cause number DC-08-08859-E in the 101st District Court in Dallas County.

[7]The Settlement Agreement defines the term "Final Judgment" as the final judgment dated January 6, 2011, in cause number DC-08-08859-E in the 101st District Court in Dallas County.

[8]The Settlement Agreement defines the "Charging Order" as the one entered against Mary Pat and CMP on March 1, 2012, in cause number DC-08-08859-E in the 101st District Court in Dallas County.

[9]The Complete Release states the following:

> I, Jeff Fritts, former plaintiff in adversary proceeding number 13-04109 filed in the US. Bankruptcy Court for the Eastern District of Texas, Sherman Division, (the "Bankruptcy Court") and a party to that certain *Compromise, Global Settlement Agreement[,] and Mutual Release* (the "Settlement Agreement") dated April 8, 2014, which is Exhibit "A" to the *Debtors' First Modified Amended Joint Consolidated Plan of Reorganization* (the "Plan") filed in the jointly administered bankruptcy case number 13-41892 before the

E. Mary Pat and CMP Sell Property to Haley

In June 2015, Mary Pat sold 3600 Scenic to Haley. As part of the same transaction, CMP sold Haley a contiguous strip of land containing 1.2957 acres (the Smaller Tract) and conveyed to Mary Pat an easement over 3600 Scenic.

F. Fritts Files Suit Against Appellees

In September 2015, Fritts filed suit against Haley, Mary Pat, and CMP requesting a judicial foreclosure on 3600 Scenic and the Smaller Tract and a declaratory judgment that title to those properties rests in him alone and that Appellees have no claim to those properties. Fritts also sought to have the trial court cancel and declare null and void Mary Pat's easement over 3600 Scenic. In the alternative, Fritts asserted a claim under the Uniform Fraudulent Transfer Act to void the sale of the Smaller Tract, alleging that the Smaller Tract was sold at an artificially low sales price to defraud him, and asserted an alternative claim

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> Bankruptcy Court, hereby (i) accept the enclosed check in the amount of $170,250.00, (ii) acknowledge that Joseph Coleman McDowell, Jr., Safe Parking, Ltd., and smmramjcm, LLC (collectively, the "McDowell Parties") have fully performed under the Settlement Agreement and the Plan (as the Plan pertains to obligations owed to me, Jeff Fritts), and (iii) therefore, for myself and for any person or entity which may claim through me, hereby waive, release, forever discharge, each and all of the McDowell Parties, their directors, officers, shareholders, employees, representatives, agents, attorneys, affiliates, successors, and predecessors from any and all claims, obligations, counterclaims, offsets, demands, actions, causes of action, and liabilities of whatever kind and nature, character[,] and description, whether in law or equity, whether concerning tort, contract, or under applicable law, whether known or unknown, and whether anticipated or unanticipated, which I ever had, now have, or may ever have, including, without limitation, any claim or obligation related to the Settlement Agreement or the Plan.

for an easement of necessity over the Smaller Tract in case he was successful in foreclosing on 3600 Scenic but not successful in foreclosing on the Smaller Tract.

G. Appellees Answer and File Counterclaims against Fritts

Mary Pat and CMP filed a general denial, asserted affirmative defenses, and alleged that Fritts's causes of action were groundless and brought in bad faith.

One month after they filed their answer, Mary Pat and CMP, through their attorney, sent a demand letter to Fritts's attorneys to immediately dismiss the suit because Mary Pat and CMP "fit squarely within the definition of the released parties" as set forth in the Settlement Agreement.

When their demand was not met, Mary Pat and CMP filed a counterclaim against Fritts for breach of contract, asserting that Fritts had violated the Settlement Agreement by filing suit against them and by continuing to attempt to collect monies from them based on the Final Judgment and the Charging Order. Mary Pat and CMP also sought a declaratory judgment that they had both been released as a result of the Settlement Agreement, that Fritts had materially breached the Settlement Agreement, that Fritts's suit was groundless and brought in bad faith and for the purpose of harassment, and that they were entitled to recover their attorney's fees from Fritts.

Haley filed a general denial and asserted several affirmative defenses. Haley also filed conditional counterclaims against Fritts, asserting that if the trial

court determined that Fritts's Judgment Lien had attached to 3600 Scenic, then she was entitled to a declaration of an equitable subrogation lien in the amount that she had paid to release the deed of trust against 3600 Scenic and a judgment for the judicial foreclosure of her equitable subrogation lien against 3600 Scenic.

H. Competing Motions for Summary Judgment

Mary Pat and CMP filed a traditional motion for summary judgment on their counterclaims for breach of contract and for declaratory judgment based on their affirmative defense of release.

Fritts filed a combined no-evidence and traditional motion for summary judgment against Appellees. In his traditional motion, he argued that he was entitled to judicial foreclosure of his Judgment Lien against 3600 Scenic, a declaration that title rests in him, and a declaration that Appellees have no claim to 3600 Scenic; that because the Charging Order found that CMP was the alter ego of Mary Pat, Fritts's Judgment Lien attached to the Smaller Tract; and that Haley is not entitled to be equitably subrogated to the rights and lien position of the deed of trust. In his no-evidence motion, he argued, among other things, that there is no evidence to support the essential elements of Mary Pat and CMP's affirmative defense of release.

Haley filed her own motion for traditional summary judgment on her affirmative defense of equitable subrogation and incorporated Mary Pat and CMP's motion for summary judgment, stating that it "demonstrates that Fritts'[s]

judgment lien and charging order have been released through a settlement agreement."

I. Summary-Judgment Ruling

The trial court held a hearing on the three motions for summary judgment and granted Mary Pat and CMP's motion for summary judgment. In the final judgment, the trial court stated that Fritts had raised no genuine material fact as to one or more essential elements of Mary Pat and CMP's affirmative defense of release; that Fritts had released Mary Pat and CMP from the Final Judgment and the Charging Order as a matter of law; that as a result of the release of Mary Pat and CMP, Fritts's Judgment Lien was null, void, and released as to 3600 Scenic and the Smaller Tract; and that Mary Pat and CMP were entitled to recover reasonable and necessary attorney's fees. The trial court also ruled that all relief sought by Fritts against Appellees was denied.[10]

[10]Haley's motion for summary judgment on her affirmative defense was mooted by the trial court's ruling denying Fritts's motion for summary judgment as to all three Appellees. *See Estrada v. Mijares*, 407 S.W.3d 803, 805 n.1 (Tex. App.—El Paso 2013, no pet.) ("The trial court did not rule on Dr. Tan's motion for summary judgment[,] and the court instead concluded that the summary judgment in favor of Mijares rendered moot all of Estrada's claims against Dr. Tan."). And because Haley's counterclaims were contingent on the trial court's finding that Fritts's Judgment Lien had attached to 3600 Scenic—a finding that the trial court did *not* make—Haley's contingent counterclaims are moot. *See Tex. Utils. Elec. Co. v. Sharp*, 962 S.W.2d 723, 727 (Tex. App.—Austin 1998, pet. denied) ("Because the trial court determined that the contingency would not happen, i.e., that TUEC could not deduct the future rentals under the operating leases as "debt," the issue presented in the Comptroller's contingent counterclaim was moot."). The trial court's judgment is therefore final for purposes of appeal. *See generally Martinez v. Wilson Plaza Assocs., L.P.*, No. 13-02-00697-CV, 2004 WL 2471785, at *2 (Tex. App.—Corpus Christi Nov. 4,

III. THE TRIAL COURT'S RULINGS ON THE COMPETING SUMMARY-JUDGMENT MOTIONS WERE PROPER

In his first issue, Fritts argues that he did not release his claims against Mary Pat or CMP.

A. Summary-Judgment Standard of Review

We review a summary judgment de novo. *Travelers Ins. Co. v. Joachim*, 315 S.W.3d 860, 862 (Tex. 2010). We consider the evidence presented in the light most favorable to the nonmovant, crediting evidence favorable to the nonmovant if reasonable jurors could, and disregarding evidence contrary to the nonmovant unless reasonable jurors could not. *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009). We indulge every reasonable inference and resolve any doubts in the nonmovant's favor. *20801, Inc. v. Parker*, 249 S.W.3d 392, 399 (Tex. 2008). A defendant is entitled to summary judgment on an affirmative defense if the defendant conclusively proves all the elements of the affirmative defense. *Frost Nat'l Bank v. Fernandez*, 315 S.W.3d 494, 508–09 (Tex. 2010), *cert. denied*, 562 U.S. 1180 (2011); *see* Tex. R. Civ. P. 166a(b), (c). To accomplish this, the defendant-movant must present summary-judgment evidence that conclusively establishes each element of the affirmative defense. *See Chau v. Riddle*, 254 S.W.3d 453, 455 (Tex. 2008).

2004, no pet.) (mem. op.); *Walker v. City of Georgetown*, 86 S.W.3d 249, 253–54 (Tex. App.—Austin 2002, pet. denied).

When both parties move for summary judgment and the trial court grants one motion and denies the other, the reviewing court should review both parties' summary-judgment evidence and determine all questions presented. *Mann Frankfort*, 289 S.W.3d at 848. The reviewing court should render the judgment that the trial court should have rendered. *See Myrad Props., Inc. v. LaSalle Bank Nat'l Ass'n*, 300 S.W.3d 746, 753 (Tex. 2009); *Mann Frankfort*, 289 S.W.3d at 848.

B. The Law on Construing Releases

The interpretation of a release is to be decided by the court as a question of law. *Mem'l Med. Ctr. of E. Tex. v. Keszler*, 943 S.W.2d 433, 434 (Tex. 1997). A release discharges only those persons or entities that it names or specifically identifies. *McMillen v. Klingensmith*, 467 S.W.2d 193, 196 (Tex. 1971). One can claim the protection of a release only if the release refers to him or her by name or with such descriptive particularity that his or her identity or connection with the event is not in doubt. *Duncan v. Cessna Aircraft Co.*, 665 S.W.2d 414, 420 (Tex. 1984). The test in determining the parties included in a release is whether a stranger could readily identify the released party. *Id.* at 419–20.

Under Texas law, a release is a contract and is subject to the rules governing contract construction. *See Williams v. Glash*, 789 S.W.2d 261, 264 (Tex. 1990). When construing a contract, courts must give effect to the true intentions of the parties as expressed in the written instrument. *Lenape Res. Corp. v. Tenn. Gas Pipeline Co.*, 925 S.W.2d 565, 574 (Tex. 1996). When

interpreting a contract, we examine the entire agreement in an effort to harmonize and give effect to all provisions of the contract so that none will be meaningless. *MCI Telecomms. Corp. v. Tex. Utils. Elec. Co.*, 995 S.W.2d 647, 652 (Tex. 1999). The language in a contract is to be given its plain grammatical meaning unless doing so would defeat the parties' intent. *DeWitt Cty. Elec. Coop., Inc. v. Parks*, 1 S.W.3d 96, 101 (Tex. 1999). Further, unless the agreement shows the parties used a term in a technical or different sense, the terms are given their plain, ordinary, and generally accepted meaning. *Heritage Res., Inc. v. NationsBank*, 939 S.W.2d 118, 121 (Tex. 1996).

C. Analysis

Here, the Settlement Agreement does not specifically name Mary Pat or CMP. Instead, the release provision of the Settlement Agreement identifies the released parties as Safe Parking's "directors, officers, shareholders, employees, representatives, agents, attorneys, affiliates, successors, and predecessors." We therefore must determine whether the Settlement Agreement, when viewed as a whole, contains sufficiently descriptive language to identify Mary Pat and CMP as released parties by virtue of their association with Safe Parking; if so, we must then determine what effect the release has on Fritts's Judgment Lien.

1. The Settlement Agreement Sufficiently Identifies Mary Pat as a Released Party

We first review the Settlement Agreement to determine whether a stranger could readily identify Mary Pat as a released party. As set forth above, the

Settlement Agreement describes the Investment Agreement in which Cole and Safe Parking exchanged assets with Mary Pat and CMP. The Settlement Agreement specifically states that as part of the Investment Agreement, Mary Pat agreed to devote at least five hours per week to the activities of Safe Parking. The Settlement Agreement also states that Fritts received a copy of the Investment Agreement. As more fully described in the Investment Agreement, during the five hours per week that Mary Pat was required to devote to Safe Parking, she was to spend that time on the activities of Safe Parking, as well as on the "management of Safe Parking." *See Schomburg v. TRW Vehicle Safety Sys., Inc.*, 242 S.W.3d 911, 913 (Tex. App.—Dallas 2008, pet. denied) ("When a release refers to a related document, that document should be considered when reviewing a release."). Mary Pat's activities demonstrate that she is an agent of Safe Parking. *See Hartford Cas. Ins. Co. v. Walker Cty. Agency, Inc.*, 808 S.W.2d 681, 687 (Tex. App.—Corpus Christi 1991, no writ) (describing an agent as one authorized by another to transact business or manage some affair for the other). Because the release provision of the Settlement Agreement released Safe Parking's agents "from any claim asserted in the 2008 Lawsuit, . . . or by way of the Final Judgment or Charging Order," as a matter of law, the Settlement Agreement contains sufficiently descriptive language to allow a stranger to readily identify Mary Pat as a released party. *See Kalyanaram v. Burck*, 225 S.W.3d 291, 300 (Tex. App.—El Paso 2006, no pet.) (holding that "employees" was sufficiently descriptive to identify employees of university); *Stafford v.*

Allstate Life Ins. Co., 175 S.W.3d 537, 543 (Tex. App.—Texarkana 2005, no pet.) ("Given their similar names *and their inclusion within the settlement agreement itself*, even a stranger to the transaction would have little trouble identifying Allstate Settlement Corporation and Allstate Life Insurance Corporation as affiliates of Allstate Insurance Company.") (emphasis added); *see also Schomburg*, 242 S.W.3d at 915 (holding that the term "component suppliers" in release was sufficiently descriptive to identify TRW, which was the supplier of the seatbelt restraint system).

2. The Settlement Agreement Sufficiently Identifies CMP

We next review the Settlement Agreement to determine whether a stranger could readily identify CMP as a released party. As stated in the Settlement Agreement, CMP received a 20% interest in Safe Parking as part of the Investment Agreement entered into between Cole, Safe Parking, Mary Pat, and CMP.

Fritts acknowledges that CMP received an ownership interest in Safe Parking as part of the Investment Agreement but argues that CMP does not come within the class of parties released by the Settlement Agreement because the term "shareholder" covers only those who own an interest in a corporation, not those who own an interest in an LLC or a partnership. *See* Tex. Bus. Orgs. Code Ann. § 1.002(81) (West Supp. 2016) (defining "[s]hareholder").

Applying the rules of construction, which require us to review the document as a whole rather than focus on an isolated phrase, we note that the Settlement

Agreement sets forth a detailed history of the transactions involving Cole, Mary Pat, and several of the entities that they owned; that it describes the 2008 Lawsuit in which Fritts sued Cole and Mary Pat; and that it sets forth the terms of the Investment Agreement, showing how CMP came to own a 20% interest in Safe Parking. *See generally State Farm Ins. Co. v. Beaston*, 907 S.W.2d 430, 433 (Tex. 1995) ("[C]ourts must be particularly wary of isolating from its surroundings or considering apart from other provisions a single phrase, sentence, or section of a contract"). Such details would be extraneous and would be rendered meaningless if the parties to the Settlement Agreement intended to release only Safe Parking.[11] *See Am. Mfrs. Mut. Ins. Co. v. Schaefer*, 124 S.W.3d 154, 159 (Tex. 2003) (requiring courts to give effect to all contractual provisions so that none will be rendered meaningless). The Settlement Agreement, when read as a whole, demonstrates that the parties' intent was to release any claim against any individual or entity who owned an interest in or was involved with the operation of Safe Parking, including CMP; thus, as a matter of law, the Settlement Agreement contains sufficiently descriptive language to allow a stranger to readily identify CMP as a released

[11]As stated in Mary Pat and CMP's motion for summary judgment,

> But for Mary Pat and CMP's involvement in the Settlement Agreement, there would have been no reason to include any language in the Settlement Agreement about the Charging Order because it only applied to Movants or to the Final Judgment because Cole had previously been discharged in bankruptcy from any liability leaving only Movants to be released.

party. *See Atl. Lloyds Ins. Co. v. Butler*, 137 S.W.3d 199, 219 (Tex. App.—Houston [1st Dist.] 2004, pet. denied) (construing released parties—defined as "[HRM], all its affiliated companies, parent companies, subsidiaries, officers, agents, and employees, its insurer [Atlantic Lloyds], and all its affiliated companies, officers, agents, and employees"—as a specific group who had authority to act on behalf of HRM or Atlantic Lloyds in connection with underlying lawsuit); *Winkler v. Kirkwood Atrium Office Park*, 816 S.W.2d 111, 114 (Tex. App.—Houston [14th Dist.] 1991, writ denied) (holding release's reference to "the Club" was clearly "intended to release any claim against all individuals and entities involved in the operation, maintenance, and administration of the [fitness] center"); *see also Thom v. Rebel's Honky Tonk*, No. 03-11-00700-CV, 2013 WL 1748798, at *7 (Tex. App.—Austin Apr. 3, 2013, no pet.) (mem. op.) (holding release's reference to "owners" was sufficient to identify Rainbow Cattle Company because Rainbow Cattle Company's identity and its connection with the activity for which appellant signed the release was not in doubt).

3. The Trial Court Properly Granted Mary Pat and CMP's Summary-Judgment Motion on their Affirmative Defense of Release

Having determined that the Settlement Agreement sufficiently identifies both Mary Pat and CMP as released parties, we hold that Mary Pat and CMP conclusively established their affirmative defense of release, and thus the trial court properly granted Mary Pat and CMP's motion for summary judgment on their affirmative defense of release. *See Schomburg*, 242 S.W.3d at 913–16

(holding trial court properly granted summary judgment on the ground that appellants had released supplier of seatbelt restraint system through appellants' settlement with General Motors); *Kalyanaram*, 225 S.W.3d at 301 n.1 (holding trial court properly granted summary judgment based on the doctrine of release); *Butler*, 137 S.W.3d at 219 (holding trial court properly granted summary judgment for defendants); *Winkler*, 816 S.W.2d at 114 (holding that membership-agreement release supported summary judgment for each appellee).

4. The Release Nullifies Fritts's Judgment Lien

Fritts further argues in his first issue that even if we hold that the Settlement Agreement sufficiently identified Mary Pat and CMP as released parties, our holding would not affect his ability to maintain this action and to enforce his judgment lien against 3600 Scenic and the Smaller Tract. We disagree.

"Generally speaking, a specific debt (an obligation to pay money) is necessary to support a lien; the lien is affixed to land as security for some obligation to pay money." *Calvert v. Hull*, 475 S.W.2d 907, 911 (Tex. 1972). "A lien is part and parcel of the underlying claim, the former existing only because of the latter." *Daughters of Charity Health Servs. of Waco v. Linnstaedter*, 226 S.W.3d 409, 411 (Tex. 2007). Liens are incidents of and inseparable from the debt. *Univ. Sav. & Loan Ass'n v. Sec. Lumber Co.*, 423 S.W.2d 287, 292 (Tex. 1967). Thus, "it is fundamental that without a debt there can be no lien." *Shipley*

v. Biscamp, 580 S.W.2d 52, 54 (Tex. Civ. App.—Houston [14th Dist.] 1979, no writ).

Fritts argues that "the release does not purport to constitute a release of the judgment lien(s) filed in 2011 or mention the release of the judgment lien in any way." Contrary to Fritts's narrow reading of the Settlement Agreement, the plain language of the Settlement Agreement states that Fritts released "any claim asserted in the 2008 Lawsuit, . . . or by way of the Final Judgment or Charging Order," and the Settlement Agreement sets forth the history of Fritts's Judgment Lien, showing that it resulted from the Final Judgment entered in the 2008 Lawsuit. Because the Settlement Agreement released the debt underlying the Judgment Lien, the Judgment Lien is unenforceable. *See Shipley*, 580 S.W.2d at 54 (stating that "it is fundamental that without a debt there can be no lien"). Consequently, the release provision in the Settlement Agreement conclusively estops Fritts's attempt to enforce the Judgment Lien that was based on the claims—"any claim asserted in the 2008 Lawsuit, . . . or by way of the Final Judgment or Charging Order"—he released. *See id.* (holding that jury's finding of no debt owed by Biscamp to Shipley precluded Shipley from foreclosing on Biscamp's interest); *Brice v. Medina River W. J. Venture*, No. 07-97-00261-CV, 1997 WL 752570, at *4 (Tex. App.—Amarillo Dec. 4, 1997, no pet.) (not designated for publication) ("Obviously, the Brices' claim for commissions under the contract for the sale of lots in the joint venture's subdivision grew out of the

matter discharged by the agreement; consequently, the release conclusively estops the attempt to enforce the claim released.").

5. The Trial Court Did Not Err by Denying Fritts's Motion for Summary Judgment

Because the trial court properly determined that as a result of the release, "to the extent the Abstract of Judgment recorded as Instrument No. 2011-32195 and Instrument No. 2011-44042 in the Real Property Records of Denton County, Texas[,] attached a lien to [3600 Scenic Drive and the Smaller Tract] previously owned by Mary Pat McDowell and CMP Family Limited Partnership, such lien is null and void," any lien Fritts previously had against the properties Mary Pat and CMP sold to Haley was released as a matter of law. *Cf. Norriss v. Patterson*, 261 S.W.2d 758, 762 (Tex. Civ. App.—Fort Worth 1953, writ ref'd n.r.e.) ("If the debt is paid off then [mortgagee] is entitled to have the mortgage released, for without continuance of existence of a debt any security given for the payment of the debt may not be retained."). Accordingly, we hold that the trial court did not err by denying all relief sought by Fritts in his motion for summary judgment because "[a]s a result of the release," Fritts had no cause of action against Appellees relating to the 2008 Lawsuit, the Final Judgment, or the Charging Order as a matter of law.

6. Disposition

Having held that the trial court did not err by granting Mary Pat and CMP's summary-judgment motion and by denying Fritts's summary-judgment motion,

we overrule Fritts's first issue challenging the trial court's disposition of the parties' competing summary-judgment motions based on the release.[12]

IV. No Abuse of Discretion Shown in Awarding Attorney's Fees to Mary Pat and CMP

In his fifth issue, Fritts argues that there is no basis for the trial court's award of attorney's fees to Mary Pat and CMP. Fritts contends that the award of attorney's fees at the trial level and the award of conditional attorney's fees payable in the event of an unsuccessful appeal by Fritts is not allowed by law based on the affirmative defense and counterclaims asserted by Mary Pat and CMP. Fritts's argument, however, ignores that the trial court had discretion to award Mary Pat and CMP attorney's fees in defending against *his* declaratory-judgment claims. *See* Tex. Civ. Prac. & Rem. Code Ann. § 37.009 (West 2015) (allowing attorney's fees to be awarded to either party in all cases under the UDJA); *Bocquet v. Herring*, 972 S.W.2d 19, 20–21 (Tex. 1998) (setting forth discretionary standard for awarding attorney's fees under UDJA).

In the remainder of his fifth issue, Fritts argues that Mary Pat and CMP failed to segregate their request for attorney's fees among the various claims that

[12]Having disposed of Fritts's first issue, which is the sole ground upon which the trial court based the grant of summary judgment in favor of Mary Pat and CMP and the denial of Fritts's motion for summary judgment, we need not address Fritts's second, third, and fourth issues that raise arguments related to Haley's contingent motion for summary judgment. *See* Tex. R. App. P. 47.1 (requiring appellate court to address only issues necessary for disposition of appeal).

they made.[13] Because Fritts asserts his segregation complaint for the first time on appeal, he has waived this complaint. *See* Tex. R. App. P. 33.1; *Hruska v. First State Bank of Deanville*, 747 S.W.2d 783, 785 (Tex. 1988) (holding that party opposing award of attorney's fees must object to failure to segregate fees in order to preserve issue for appellate review); *Eastin v. Dial*, 288 S.W.3d 491, 502 (Tex. App.—San Antonio 2009, pet. denied) (same).[14] We overrule Fritts's fifth issue in its entirety.

[13]To the extent Fritts includes a one-sentence challenge to the legal and factual sufficiency of the evidence to support the amount of the attorney's fees awarded to Mary Pat and CMP, he waived this challenge. *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).

[14]Because we hold that Fritts did not preserve his segregation complaint, we need not analyze whether Mary Pat and CMP were required to segregate their attorney's fees between claims for which attorney's fees are recoverable and claims for which they are not. *See* Tex. R. App. P. 47.1 (requiring appellate court to address only issues necessary to disposition of appeal).

V. CONCLUSION

Having overruled Fritts's first and fifth issues, which are dispositive of this appeal, we affirm the trial court's judgment. *See* Tex. R. App. P. 47.1.

/s/ Sue Walker
SUE WALKER
JUSTICE

PANEL: WALKER, MEIER, and KERR, JJ.

DELIVERED: August 31, 2017