In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-21-00029-CV

MR. W FIREWORKS, INC., APPELLANT

V.

731 PROPERTIES, LLC, HD EXCHANGE HOLDINGS, LLC, HD PROJECTS, LLC, J.T. HAYNES, B.A. DONELSON, JAMIE L. HAYNES, AND LERAYNE DONELSON, APPELLEES

On Appeal from the 47th District Court
Randall County, Texas
Trial Court No. 77,685-A, Honorable Dan L. Schaap, Presiding

May 9, 2022

MEMORANDUM OPINION

Before PIRTLE and PARKER and DOSS, JJ.

Appellant, Mr. W Fireworks, Inc., appeals the trial court's grant of summary judgment ordering that it take nothing for its breach of contract claim against appellees, 731 Properties, LLC; HD Exchange Holdings, LLC; HD Projects, LLC; J.T. Haynes; B.A. Donelson; Jamie L. Haynes; and Lerayne Donelson ("the HD defendants"). We reverse the summary judgment of the trial court in part and remand.

Factual and Procedural Background

Mr. W owns firework stands across Texas, New Mexico, and Oklahoma. One of those stands operates on a tract at 9020 Soncy Road in Amarillo, Texas. This stand was established after Mr. W and Billy G. and Joanie K. Ivy entered into a contract for lease on May 17, 2017. The contract also included the statement that, "Lessor(s) will give Lessee first refusal should Lessor(s) decide to sell." The lease expressly provides that the covenants and agreements of the lease would run with the land.

Soon after entering into the lease with Mr. W, the Ivys entered into an agreement to sell 9020 Soncy Road to HD Exchange Holdings, LLC, for $416,000. The purchase contract was executed on May 26, 2017. The sale closed on June 1, 2017. Mr. W was not notified of the sale. As part of this sale, the Ivys executed a "Debts, Liens and Possessions Affidavit" that explicitly stated that no parties occupied, rented, leased, resided on, or possessed any portion of the property other than the Ivys' painting business. HD Exchange did not notify Mr. W of the sale. The day after closing, HD Exchange filed its General Warranty Deed of record.

Approximately three weeks later, Mr. W filed of record a "Memorandum of Lease and Restrictive Covenant," which identifies Mr. W's lease interest in a portion of the property and its right of first refusal.

In November of 2017, HD Exchange conveyed the property to HD Projects. This transaction completed the tax advantaged reverse 1031 exchange that was envisioned at the time HD Exchange purchased the property from the Ivys. While the parties disagree regarding who approached whom, Mr. W made $1,000 payments to HD Projects

in both 2018 and 2019. During this time, Mr. W did not identify that it held a right of first refusal nor try to exercise the same.

In July of 2019, HD Projects conveyed the property in equal shares to its four members: J.T. Hayes, B.A. Donelson, Jaime L. Haynes, and Lerayne Donelson ("the HD members"). In October of 2019, the HD members conveyed the property to 731 Properties, LLC, for $435,000. Mr. W requested information about the sale of the property to 731 Properties. 731 Properties produced the purchase contract for the property on April 6, 2020. On April 22, Mr. W attempted to exercise its right of first refusal. 731 Properties refused to sell the property to Mr. W.

Mr. W filed suit asserting contract claims and seeking damages or specific performance. Subsequently, the HD defendants filed a joint traditional and no-evidence motion for summary judgment contending, inter alia, that they were not bound by Mr. W's right of first refusal because they had no actual or constructive notice of the option when they took title in the property. Mr. W sought additional time to conduct discovery because the deposition of one necessary witness had to be delayed after the witness contracted COVID-19. Mr. W filed its summary judgment response the day after it deposed this witness. On October 30, the trial court heard the summary judgment even though the discovery deadline under the applicable scheduling order was not for another three months. Following the summary judgment hearing, the trial court entered an order granting the HD defendants' summary judgment motion without specifying the grounds upon which it granted the motion. The trial court's summary judgment ordered that Mr. W take nothing by its claims and that all claims asserted by Mr. W were denied.

On October 29, 2020, Mr. W filed its third amended petition, which added a quasi-estoppel theory of recovery and included additional defendants. The HD defendants moved to strike Mr. W's third amended petition. However, no order on the motion to strike appears in the record. Claims against the additional defendants were severed by the trial court based on the agreement of the parties. After filing a motion for new trial that was overruled by operation of law, Mr. W timely filed the instant appeal.

By its appeal, Mr. W presents five issues. Mr. W contends, by its first issue, that the HD defendants failed to conclusively prove their bona fide purchaser, waiver, and termination defenses. Mr. W's second issue contends that, assuming its lease and right of first refusal were not initially binding on the HD defendants, Mr. W raised a genuine issue of material fact that the HD defendants assumed those burdens by ratification. By its third issue, Mr. W contends that it met its burden to overcome the HD defendants' no-evidence motion by presenting more than a scintilla of evidence of the HD defendants' breach of Mr. W's lease rights. Mr. W contends, by its fourth issue, that the trial court erred in granting the HD defendants' no-evidence motion because an adequate time for discovery had not yet passed. Finally, by its fifth issue, Mr. W contends that the trial court erred by ordering that Mr. W take nothing on its claims, including its quasi-estoppel theory of recovery where the motion for summary judgment did not address the theory of quasi-estoppel. We will address those issues of Mr. W that are necessary to our disposition of this appeal in logical rather than sequential order.

Adequacy of Time for Discovery

By its fourth issue, Mr. W contends that the trial court erred by granting appellees' no-evidence grounds for summary judgment because an adequate time for discovery had not passed.

Texas Rule of Civil Procedure 166a(i) requires that an "adequate time for discovery" pass before a no-evidence summary judgment may be granted. TEX. R. CIV. P. 166a(i). A discovery period set by a pretrial order is presumed to be an adequate time for discovery unless there is a showing to the contrary, and a motion for no-evidence summary judgment will ordinarily only be permitted after the discovery period ends. TEX. R. APP. P. 166a cmt. In determining whether an adequate time for discovery has passed before considering a no-evidence summary judgment motion, a trial court should consider (1) the nature of the case, (2) the nature of the evidence necessary to controvert the motion, (3) the length of time the case has been active, (4) the amount of time the no-evidence motion has been on file, (5) whether the movant has requested stricter deadlines for discovery, (6) the amount of discovery that has already taken place, and (7) whether the discovery deadline is specific or vague. *McInnis v. Mallia*, 261 S.W.3d 197, 201 (Tex. App.—Houston [14th Dist.] 2008, no pet.).

But "[w]hen a party contends that it has not had an adequate opportunity for discovery before a summary judgment hearing, it must file either an affidavit explaining the need for further discovery or a verified motion for continuance." *Tenneco Inc. v. Enter. Prods. Co.*, 925 S.W.2d 640, 647 (Tex. 1996). A reviewing court will not consider any reason for continuance that was not expressly presented to the trial court. *See D.R.*

Horton – Tex., Ltd. v. Savannah Props. Assocs., L.P., 416 S.W.3d 217, 223 n.5 (Tex. App.—Fort Worth 2013, no pet.) (citing TEX. R. CIV. P. 251 and 252, and TEX. R. APP. P. 33.1(a)). When the basis for continuance is the need for additional discovery, the movant must show how the evidence sought by discovery is material to its claims. *Perrotta v. Farmers Ins. Exch.*, 47 S.W.3d 569, 576 (Tex. App.—Houston [1st Dist.] 2001, no pet.).

In the present case, Mr. W never filed a motion for continuance or affidavit[1] explaining the need for specific discovery, such as appraisals that the HD defendants obtained in relation to the purchase of the subject property or the procurement of an expert report appraising the property. Mr. W moved for continuance on August 28 and October 6, 2020, but the bases identified to justify the continuance requests were the need to depose unnamed party defendants that had not yet been deposed and because an unnamed defendant's deposition could not be obtained due to that defendant being in quarantine based on a diagnosis of COVID-19. According to Mr. W, it was able to depose the defendant referenced in its motion for continuance on the day before its summary judgment response was due. Further, nothing in Mr. W's motion for continuance identified how the depositions of additional, unnamed party defendants would produce evidence material to its claims. Finally, in its response to the HD defendants' summary judgment motion, Mr. W made no mention of any evidence it needed to discover before it could respond to the motion.

[1] The affidavit of Jeremi K. Young, Mr. W's counsel, is attached to Mr. W's August 28, 2020 motion for continuance. It identifies various discovery that had not been obtained because it was not due until September of 2020. Mr. W never filed a motion for continuance or affidavit identifying that this discovery had not been obtained by the time of the October 30 summary judgment hearing.

For the foregoing reasons, we conclude that Mr. W waived its argument regarding whether it had an adequate time for discovery and overrule its fourth issue.

Summary Judgment Standard of Review

We review a trial court's ruling on a summary judgment motion under a de novo standard of review. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005). In conducting the review, we take as true all evidence favorable to the nonmovant, indulging every reasonable inference and resolving any doubts in favor of the nonmovant. *Id*. When the trial court's order granting summary judgment does not specify the ground or grounds relied on to support the ruling, summary judgment will be affirmed on appeal on any meritorious theory advanced in the motion. *Rogers v. Ricane Enters., Inc*., 772 S.W.2d 76, 79 (Tex. 1989).

The Law of Rights of First Refusal

"A right of first refusal, also known as a preemptive or preferential right, empowers its holder with a preferential right to purchase the subject property on the same terms offered by or to a bona fide purchaser." *Carl M. Archer Trust No. Three v. Tregellas*, 566 S.W.3d 281, 286-87 (Tex. 2018) (quoting *Tenneco Inc.*, 925 S.W.2d at 644). Generally, a right of first refusal requires the grantor to notify the holder of the grantor's intent to sell the property covered by the right and to offer the property to the holder on the same terms and conditions offered by a third party. *Id*. at 287. When the grantor provides this notice to the holder, the right ripens into an enforceable option. *Id*. The holder may then elect to purchase the property according to the terms of the instrument granting the right of first

refusal and the third party's offer or decline to purchase it and allow the owner to sell to the third party. *Id*.

A sale of the property by the grantor without first offering it to the rightholder constitutes a breach of contract. *Id*. If the property has already been conveyed to a third party, the holder can seek money damages against the grantor and specific performance against the third party. *Id*. However, relief against the third-party purchaser requires that the third party purchased the property with actual or constructive notice of the right of first refusal. *Id*. A party that purchases land with notice of the first-refusal right "stands in the shoes of the original seller when specific performance is sought and may be compelled to convey title to the [rightholder]." *Jarvis v. Peltier*, 400 S.W.3d 644, 653 (Tex. App.—Tyler 2013, pet. denied). The essential elements of a breach of contract claim are (1) the existence of a valid contract, (2) performance or tendered performance by the plaintiff, (3) breach by the defendant, and (4) damages sustained by the plaintiff as a result of the breach. *Domingo v. Mitchell*, 257 S.W.3d 34, 39 (Tex. App.—Amarillo 2008, pet. denied).

There is no dispute that Mr. W possesses a valid and enforceable lease with right of first refusal as to the Ivys. What is in dispute is whether that right of first refusal is valid and enforceable against the HD defendants. Mr. W contends that, under common law, its right of first refusal contained within the lease with the Ivys runs with the land. *See Stone v. Tigner*, 165 S.W.2d 124, 127 (Tex. Civ. App.—Galveston 1942, writ ref'd). As such, according to Mr. W, the right of first refusal is valid and enforceable against the HD defendants.

Mr. W contends that it submitted a written offer to purchase the property sixteen days after it learned the terms of 731 Properties' purchase of the property. Mr. W contends that, prior to this time, it was not notified of any earlier conveyances of the land.

The HD Defendants' Bona Fide Purchaser Defense

By its first issue, Mr. W contends that the HD defendants did not conclusively prove their bona fide purchaser, waiver, or termination defenses. Because we conclude that it is dispositive, we will address only the HD defendants' bona fide purchaser defense.

A defendant seeking summary judgment on an affirmative defense must conclusively establish each element of the defense. TEX. R. CIV. P. 166a(b), (c); *Centeq Realty, Inc. v. Siegler*, 899 S.W.2d 195, 197 (Tex. 1995). If the movant produces sufficient summary judgment evidence to establish the right to summary judgment, the burden shifts to the nonmovant to raise a genuine issue of material fact precluding summary judgment. *Siegler*, 899 S.W.2d at 197.

A third-party interest in property is binding on a subsequent purchaser for value if it is duly recorded or if the purchaser has notice of the interest. *See* TEX. PROP. CODE ANN. § 13.001. An unrecorded conveyance of an interest in real property is void as to a subsequent purchaser who purchases the property for valuable consideration and without notice. *Hue Nguyen v. Chapa*, 305 S.W.3d 316, 323 (Tex. App.—Houston [14th Dist.] 2009, pet. denied) (citing TEX. PROP. CODE ANN. § 13.001(a)). This "bona fide purchaser" protection inures to the benefit of one who acquires property in good faith, for value, and without notice of any third-party claim or interest. *Id*. Bona fide purchaser status is an affirmative defense to a title dispute. *Madison v. Gordon*, 39 S.W.3d 604, 606 (Tex.

2001). The required notice may be constructive or actual. *Id*. Actual notice requires personal information or knowledge. *Id*. Constructive notice will be found only if the third party has possession of the property and that possession is visible, open, exclusive, and unequivocal. *Id*. (citing *Strong v. Strong*, 98 S.W.2d 346, 350 (Tex. 1936)). In such circumstances, the purchaser has a duty to ascertain the rights of the third-party possessor. *Id*. A party's bona-fide-purchaser status may be transferred. In other words, a purchaser from a bona fide purchaser takes good title even if that subsequent purchaser had knowledge of the third-party interest at the time of its purchase. *See Popplewell v. City of Mission*, 342 S.W.2d 52, 56 (Tex. Civ. App.—San Antonio 1960, writ ref'd n.r.e.) ("A purchaser from a bona fide purchaser takes good title, though he is not an innocent purchaser."); *see also Ball v. Presidio Cty.*, 29 S.W. 1042, 1043 (Tex. 1895) ("To be a bona fide holder, one must be himself a purchaser for value without notice, or the successor of one who was.").

The Texas Supreme Court has described the type of possession sufficient to establish constructive notice as consisting of "open, visible, and unequivocal acts of occupancy in their nature referable to exclusive dominion over the property, sufficient upon observation to put an intending purchaser on inquiry as to the rights of such possessor . . . ." *Strong*, 98 S.W.2d at 350. When possession is open, visible, exclusive, and unequivocal, it affords notice of title equivalent to the constructive notice a deed registration affords. *Madison*, 39 S.W.3d at 607. However, "ambiguous or equivocal possession which may appear subservient or attributable to the possession of the holder of the legal title is not sufficiently indicative of ownership to impute notice as a matter of law of the unrecorded rights of such possessor." *Id*. (quoting *Strong*, 98 S.W.2d at 350).

It is undisputed that Mr. W did not have its interest in the property recorded at the time that HD Exchange purchased the property from the Ivys.[2] Further, no evidence was presented that HD Exchange had actual notice of Mr. W's right of first refusal over the property. *See City of Houston v. Gantt*, No. 14-20-00229-CV, 2021 Tex. App. LEXIS 9923, at *5 (Tex. App.—Houston [14th Dist.] Dec. 16, 2021, no pet.) (mem. op.) (citing *Univ. of Tex. Sw. Med. Ctr. at Dallas v. Estate of Arancibia*, 324 S.W.3d 544, 549 (Tex. 2010), for proposition that "Actual notice is a fact question when the evidence is disputed but when the facts are undisputed, courts may determine whether actual notice exists as a matter of law."). Therefore, we conclude that HD Exchange conclusively established that it did not have actual notice of Mr. W's right of first refusal at the time it purchased the land from the Ivys.

Mr. W contends that HD Exchange had constructive notice of Mr. W's interest because it presented evidence that its fireworks stand was present on the property at the time of HD Exchange's purchase, and this was sufficient to trigger HD Exchange's duty of inquiry. However, Mr. W's mere presence upon or possession of land does not satisfy the criteria necessary to give HD Exchange constructive notice. *See Madison*, 39 S.W.3d at 607. When an occupant's possession is compatible with another's ownership assertion, such as the property being leased, the possession is not unequivocal and, therefore, does not give rise to constructive notice. *Id.*; *Strong*, 98 S.W.2d at 350. Further, the Ivys executed an affidavit that affirmatively stated that there were no parties renting any portion of the property or claiming title to the property by way of adverse

[2] Mr. W recorded its Memorandum of Lease and Restrictive Covenant on June 21, 2017, three weeks after HD Exchange closed on its purchase of the property.

possession. The HD defendants acknowledge that the survey of the property that they had prepared noted a trailer on the property but, relying on the Ivys' assurance, they believed that the trailer must have belonged to the Ivys. In light of the Ivys' express disclaimer of any leases of the property, we conclude that the mere presence of Mr. W's trailer did not give rise to a duty to inquire on the part of HD Exchange. Based on these facts, it was reasonable for HD Exchange to rely on the Ivys' express statement that no third party has any rental or ownership interest in the property.

Mr. W cites *Startex First Equip., Ltd. v. Aelina Enters.*, 208 S.W.3d 596, 601-02 (Tex. App.—Austin 2006, pet. denied), as establishing that the operation of a business on a property created a duty of inquiry. While the *Startex* court does make this statement, it did so in dicta because the sale of the property at issue was expressly made subject to the terms of a lease agreement, which included the right of first refusal. *Id*. at 601. Here, not only was the sale of the property to HD Exchange not made subject to any lease between the Ivys and Mr. W, the Ivys expressly disclaimed there being any portion of the property under lease. HD Exchange was justified in relying upon this assurance and assuming that the trailer that was on the property belonged to the Ivys. Likewise, other cases relied on by Mr. W are distinguishable. *See Fletcher v. Minton*, 217 S.W.3d 755, 760-61 (Tex. App.—Dallas 2007, no pet.) (in addition to open possession, purchaser's agent had spoken to possessor about his possession); *Farmers Mut. Royalty Syndicate, Inc. v. Isaacks*, 138 S.W.2d 228, 232 (Tex. App.—Amarillo 1940, no writ) (affidavit identifying unrecorded mineral interest given to purchaser); *Uvalde Co. v. Tribble*, 292 S.W. 932, 934 (Tex. Civ. App.—San Antonio 1927, writ dism'd) (observation of paving work by city abutting property gave rise to constructive notice of potential lien).

Texas law requires visible, open, exclusive, and unequivocal possession to put a purchaser on notice of a possessor's claims. Mr. W's possession of a portion of the property did not satisfy these requirements. This is especially true in light of the Ivys' assurances that there were no lease or other interests in the property. Therefore, we conclude that HD Exchange was a bona fide purchaser that is not subject to Mr. W's right of first refusal. As such, the subsequent HD defendant purchasers took good title even though Mr. W had recorded its right of first refusal by the time of those subsequent exchanges. *Ball*, 29 S.W. at 1043; *Poppelwell*, 342 S.W.2d at 56. We conclude that the HD defendants proved, as a matter of law, that they took the property as bona fide purchasers.

We overrule Mr. W's first issue. Our determination that the HD defendants established their bona fide purchaser defense as a matter of law pretermits our analysis of Mr. W's third issue. *See* TEX. R. APP. P. 47.1.

Ratification

By its second issue, Mr. W contends that, even if the right of first refusal was not initially binding on the HD defendants, fact issues remain as to whether they assumed the burden of the right by ratification. The HD defendants respond that Mr. W failed to plead or prove ratification.

"Ratification is the adoption or confirmation by a person, with knowledge of all material facts, of a prior act which did not then legally bind that person and which that person had the right to repudiate." *Vessels v. Anschutz Corp.*, 823 S.W.2d 762, 764 (Tex. App.—Texarkana 1992, writ denied). The ratification of a lease revives the old lease as

a new agreement between the purchaser and the tenant. *Treetop Apartments Gen. P'ship v. Oyster*, 800 S.W.2d 628, 630 (Tex. App.—Austin 1990, no writ). Ratification is a plea in avoidance and, thus, is an affirmative defense which, absent trial by consent, must be affirmatively pleaded or it is waived. *Land Title Co. v. F. M. Stigler, Inc.*, 609 S.W.2d 754, 756 (Tex. 1980); *see* TEX. R. APP. P. 33.1; TEX. R. CIV. P. 94.

In the present case, Mr. W did not plead ratification. Rather, in its response to the HD defendants' motion for summary judgment, Mr. W identified the elements of a ratification and stated "accepting payment from Mr. W ratified the lease as to the HD entities." While this is sufficient to place the issue before the trial court, *see Via Net v. TIG Ins. Co.*, 211 S.W.3d 310, 313 (Tex. 2006) (per curiam),[3] it is not enough for us to conclude that the issue was presented to the trial court in a manner that raised a fact issue that would preclude summary judgment. Other than the statement identified above, Mr. W presented no further analysis of the ratification issue to the trial court. We conclude that simply using the word "ratification" without analyzing how the HD defendants ratified the lease is insufficient to support a claim for affirmative relief. Nothing in Mr. W's summary judgment response even attempts to establish that the HD defendants had knowledge of all material facts related to the lease or that accepting two rental payments was consistent with adopting the lease and its right of first refusal. Such a statement is insufficient to raise a fact issue regarding the HD defendants' knowledge of all material facts or adoption of the lease. Because there was no genuine issue of material fact on

[3] While raising the issue of ratification in a response to a summary judgment motion is sufficient to put the issue before the trial court, we do not conclude that simply raising a ground for affirmative relief in such a manner would necessarily allow for an award of damages on that basis.

the issue of the HD defendants' ratification of the lease, the trial court did not err in granting summary judgment due to the issue.

We overrule Mr. W's second issue.

Quasi-Estoppel

Finally, by its fifth issue, Mr. W contends that the trial court erred by granting the HD defendants a "take nothing" judgment when their summary judgment motion did not address Mr. W's quasi-estoppel theory of recovery. The HD defendants respond by contending that Mr. W's quasi-estoppel theory was not properly before the trial court.

Mr. W filed its third amended petition on October 29, 2020, the day before the hearing on the summary judgment. The following day, the HD defendants filed a motion to strike the amended petition on the basis that the amended petition was untimely filed. *See* TEX. R. CIV. P. 63 (amended pleadings may be filed within seven days of trial only with leave of court); *Goswami v. Metro. Sav. & Loan Ass'n*, 751 S.W.2d 487, 490 (Tex. 1988) ("A summary judgment proceeding is a trial within the meaning of Rule 63."). The trial court did not rule on the HD defendants' motion to strike. Instead, after the hearing, the trial court entered summary judgment in favor of the HD defendants. Its judgment states that it "fully considered the pleadings, motion and response, summary judgment evidence and argument of counsel" in reaching its decision. Pleading amendments sought within seven days of trial are to be granted unless there has been a showing of surprise to the opposing party. *Goswami*, 751 S.W.2d at 490. In their motion to strike, the HD defendants do not identify how the amendment caused them surprise; rather, they indicate that allowing the amendment would cause unnecessary delay. "[I]n the absence

of a sufficient showing of surprise by the opposing party, the failure to obtain leave of court when filing a late pleading may be cured by the trial court's action in considering the amended pleading." *Id*. Here, the trial court stated in its order granting summary judgment that it considered all pleadings without any indication that Mr. W's third amended pleading was excepted. Thus, we conclude that any error by Mr. W in failing to obtain leave to file its third amended petition was cured by the trial court's consideration of the same.

Having determined that Mr. W's third amended petition was properly before the trial court at the time it granted summary judgment in favor of the HD defendants, we are now confronted with Mr. W's contention that the trial court erred in granting summary judgment as to its quasi-estoppel claims. A motion for summary judgment cannot be granted on a ground not expressly presented in the motion. *Timpte Indus., Inc. v. Gish*, 286 S.W.3d 306, 310 (Tex. 2009). It is undisputed that the HD defendants did not challenge Mr. W's quasi-estoppel grounds in their summary judgment motion. Because the HD defendants' motion does not challenge a ground of recovery pled by Mr. W, we must reverse that portion of the judgment and remand for further proceedings. *See McConnell v. Southside Indep. Sch. Dist.*, 858 S.W.2d 337, 342 (Tex. 1993) (". . . if the grounds for summary judgment are not expressly presented in the motion for summary judgment itself, the motion is legally insufficient as a matter of law."); *see also Johnson v. Brewer & Pritchard, P.C.*, 73 S.W.3d 193, 204 (Tex. 2002) ("[a] court cannot grant summary judgment on grounds that were not presented.").

We sustain Mr. W's fifth issue.

Conclusion

Having found that the trial court allowed sufficient time for discovery, the HD defendants took the subject property as bona fide purchasers for value and without knowledge of Mr. W's claim, Mr. W presented no evidence regarding essential elements of its ratification claim, but the trial court erred in granting summary judgment as to Mr. W's quasi-estoppel claims, we reverse and remand the grant of summary judgment as to Mr. W's quasi-estoppel claims and, in all other respects, affirm the summary judgment of the trial court.

Judy C. Parker
Justice