In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-22-00130-CV

L.T. RUNELS, JR., APPELLANT

V.

TAX LOANS USA, LTD. AND LUBBOCK CENTRAL APPRAISAL DISTRICT, APPELLEES

On Appeal from the 99th District Court
Lubbock County, Texas
Trial Court No. 2019-534,715, Honorable Ed Self, Presiding by Assignment

August 24, 2023

MEMORANDUM OPINION

Before QUINN, C.J., and DOSS and YARBROUGH, JJ.

L.T. Runels, Jr., appeals (pro se) from the trial court's order granting summary judgment in favor of appellees, Tax Loans USA, Ltd., (USA) and Lubbock Central Appraisal District (LCAD). He challenges the order through four issues. The first concerns the interpretation of § 32.06(a-1) of the Texas Tax Code and fraud. Through the second, he questions the "factual sufficiency" of the evidence warranting summary

judgment. The third involves his right to a jury trial, while the fourth implicates the denial of further discovery. We reverse in part and affirm in part.

Background

Runels is one of several heirs to real property located in Lubbock, Texas. When his father died intestate, the property passed to him and his siblings. The realty itself was encumbered by a tax lien, which attached upon the failure to pay the requisite taxes for various years preceding 2014. That resulted in one sibling, Tony, utilizing § 32.06(a-1) of the Texas Tax Code as a means of satisfying the tax debt. That is, he obtained a loan from USA to pay the delinquent debt and executed the requisite documents to permit it to acquire the tax lien from LCAD. The deal was consummated, the debt paid, and the lien assigned to USA. Tony made several payments to USA on the loan but died before satisfying the obligation. Thereafter, USA sued to adjudicate the debt owed and foreclose upon its tax lien.

Before trial, LCAD intervened. Apparently, taxes upon the realty also went unpaid for the years 2015 through 2018, and another lien arose. LCAD intervened into the USA litigation to foreclose upon the tax lien attributable to non-payment of the 2015 through 2018 ad valorem taxes.

Of all the siblings who may have inherited an interest in the realty, only Runels filed an answer. Thereafter, both USA and LCAD filed motions for summary judgment and attached supporting evidence. Runels did not respond to them but instead moved for his own summary judgment. The trial court denied his as moot after granting those of USA and LCAD.

Issue One—§ 32.06 and Fraud

Runels initially contends that the trial court erred in granting summary judgment because it misinterpreted § 32.06 of the Tax Code. Allegedly, the statute does not permit fewer than all owners of the property in question to comply with its terms. Because he did not join his brother in contracting with USA to pay the earlier tax liability via § 32.06, USA, allegedly, could not acquire the tax lien upon which it endeavored to foreclose. We overrule the issue.

Section 32.06(a-1) states:

> A property owner may authorize another person to pay the taxes imposed by a taxing unit on the owner's real property by executing and filing with the collector for the taxing unit:
>
> (1) a sworn document stating:
>
> (A) the authorization for payment of the taxes;
>
> (B) the name and street address of the transferee authorized to pay the taxes of the property owner;
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> (C) a description of the property by street address, if applicable, and legal description; and
>
> (D) notice has been given to the property owner that if the property owner is disabled, the property owner may be eligible for a tax deferral under Section 33.06; and
>
> (2) the information required by Section 351.054, Finance Code.

TEX. TAX CODE ANN. § 32.06(a-1). According to Runels, the statute does not permit fewer than all owners of a particular parcel from completing the steps necessary to afford a lender the opportunity to acquire the tax lien. In assessing the accuracy of his contention, we turn to pertinent rules of statutory construction. They require us to look to the plain meaning of its text unless 1) a different meaning is apparent from the context or 2) the

plain meaning leads to absurd or nonsensical results. *PHI, Inc. v. Tex. Juvenile Justice Dep't*, 593 S.W.3d 296, 303 (Tex. 2019) (quoting *Molinet v. Kimbrell*, 356 S.W.3d 407 (Tex. 2011)). So too do they obligate us to assign its words their common meaning. *Id.* (quoting *In re Estate of Nash*, 220 S.W.3d 914, 917 (Tex. 2007)).

With those rules in mind, we see that the provision begins with the phrase "a property owner may authorize . . . ". It does not say "the property owners," "all property owners," "the property owner or owners," "the class or group of property owners," "every property owner," or the like. Instead, it says, "a property owner." The common meaning of "a" followed by a noun denotes singularity, that is, one. We see no ambiguity in the language. Nor do we find it unclear or our interpretation absurd. Indeed, the entire process likens to a statutory equivalent of equitable subrogation where one paying the debt of another stands in the shoes of the creditor. *See Frymire Eng. Co. v. Jomar Int. Ltd.*, 259 S.W.3d 140, 142 (Tex. 2008) (stating that equitable subrogation allows a party who has paid a debt for another to step into the shoes and pursue the claims of the payment's recipient). That is, in effect, what the statute permits. Moreover, the individual property owner is not creating some new encumbrance or lien on the entire property. Rather, the lien already exists in favor of the taxing unit due to the non-payment of taxes, not because of the owner's invocation of § 32.06.

Thus, we interpret the statute as saying that if more than one person owns the property, fewer than all are free to pursue the § 32.06(a-1) avenue. And, the taxing unit remains free to transfer any existing tax lien to the creditor who provided the needed funds. *See* § 32.06(a-2) (stating that "[e]xcept as provided by Subsection (a-8), a tax lien may be transferred to the person who pays the taxes on behalf of the property owner . . .

for: (1) taxes that are delinquent at the time of payment; or (2) taxes that are due but not delinquent at the time of payment . . . "). That means the trial court did not err in concluding similarly.

Runels next contends that the trial court erred in granting summary judgment due to fraud allegedly practiced by USA and LCAD. Yet, in so alleging, he failed to explain the elements of his purported fraud claim and apply the evidentiary record to them. This omission is of import. One asserting an affirmative defense (like fraud) to defeat an opponent's summary judgment motion must present evidence sufficient to create an issue of material fact on each element of the defense. *Mad-Mag Dev., LLC v. Cargle*, No. 07-16-00132-CV, 2017 Tex. App. LEXIS 5891, at *4-5 (Tex. App.—Amarillo June 26, 2017, no pet.) (mem. op.). Runels having failed to show how he did that here means his contention is inadequately briefed and waived. *See Approximately $23,606.00 United States Currency v. State*, No. 07-19-00297-CV, 2020 Tex. App. LEXIS 2602, at *8 (Tex. App.—Amarillo March 27, 2020, no pet.) (mem. op.) (stating that an appellant's failure to cite to authority and the record and provide substantive analysis waives the issue).

Issue Two—Sufficiency of the Evidence

Runels next asserts that the evidence was factually insufficient to support summary judgment. We interpret this pro se argument as questioning whether the summary judgment movants presented evidence establishing their entitlement to summary judgment as a matter of law. We sustain the issue in part.

Regarding recovery by LCAD, Runels believes that it received overpayment when USA extinguished the tax debt attributable to the years 2013 and earlier. Allegedly, that overpayment should have been used to satisfy the outstanding taxes which LCAD sought,

namely those arising for the years 2015 through 2018. Yet, the data underlying his argument consist of unauthenticated records purportedly of the appraisal district. Unauthenticated records are not competent summary judgment evidence. *Walker v. Hansford*, No. 07-20-00229-CV, 2021 Tex. App. LEXIS 8562, at *9 (Tex. App.—Amarillo Oct. 21, 2021, no pet.) (mem. op.). So, we overrule this aspect of his issue.

However, we do find a material issue of fact relating to USA's motion. Through it, the entity sought judgment awarding it both sums allegedly due from Tony and foreclosure on the tax lien it acquired from LCAD. Its summary judgment evidence included a demand letter dated March 31, 2017. Therein, the creditor calculated the outstanding debt, exclusive of attorney's fees, at $16,699.39. Elsewhere, a USA representative attested that the outstanding amount approximated $51,955. Of the $51,955, at least $10,042.70 was for some unexplained "estimated expense." These contradictory sums create a material issue of fact regarding the amount due and for which USA may recover through the foreclosure of the lien. Consequently, we sustain Runels's contention that the evidence was "factually insufficient" to establish USA's entitlement to summary judgment as a matter of law.

Issue Three—Right to a Jury Trial

Via his third issue, Runels seems to argue that the summary judgment process denied him a due process right to a jury trial. We rejected such an argument in *Alvarado v. Boyles*, No. 07-11-00483-CV, 2013 Tex. App. LEXIS 6172, at *2-3 (Tex. App.—Amarillo May 17, 2013, no pet.) (mem. op.) and abide by that ruling. One is not entitled to a trial by jury when no material issues of fact exist for a jury to resolve. *Id.* The same cannot be said when material issues of fact exist. To the extent that he failed to illustrate the

presence of material issues of fact regarding the claim of LCAD, Runels likewise failed to establish an entitlement to a jury trial. As for the claim of USA, it remains to be seen whether his right to a jury trial will be denied him. Thus, we overrule the issue.

Issue Four—Request to Reopen Discovery

Lastly, Runels argues that the trial court abused its discretion when it denied his request to reopen discovery. We overrule the issue.

A trial court has broad discretion regarding discovery. *Flores v. Fourth Ct. of Appeals*, 777 S.W.2d 38, 41 (Tex. 1989); *Brown v. McClure*, No. 01-19-00504-CV, 2021 Tex. App. LEXIS 10145, at *11 (Tex. App.—Houston [1st Dist.] Dec. 28, 2021, no pet.) (mem. op.). We will not interfere with the exercise of that discretion absent a showing of clear abuse. *Brown*, 2021 Tex. App. LEXIS 10145, at *11. The same applies to decision regarding requests for additional discovery. *Id.*

The record indicates that suit commenced in March 2019. The first party to request summary judgment did so in November 2021. Moreover, Runels sought additional time to conduct discovery in November 2021, or over two years after suit began. The sum and substance of his request consisted of asserting that "[t]here are other documents and parties that need to be subpoenaed which without would prevent the defendant from presenting his defense to its full and fair potential." What those documents and who those parties were remained unmentioned. Nor did he explain why or how their discovery or testimony was material to any issue in dispute. Similarly missing was any explanation about his effort to obtain the unmentioned documents or witnesses. Given these circumstances, coupled with his lack of explanation, he failed to provide adequate basis for us to conclude that the trial court abused its discretion in denying him further discovery.

See Joe v. Two Thirty Nine J.V., 145 S.W.3d 150, 161 (Tex. 2004) (stating that the following nonexclusive factors are considered when deciding whether a trial court abused its discretion in denying a motion for continuance seeking additional time to conduct discovery: the length of time the case has pended, the materiality and purpose of the discovery sought, and whether the party seeking the continuance exercised due diligence to obtain the discovery sought).

Conclusion

We reverse the summary judgment to the extent it awards USA recovery of the indebtedness allegedly outstanding, attorney's fees, and foreclosure upon its tax lien. Those matters are remanded to the trial court for further proceedings. We affirm the remainder of the summary judgment.

Brian Quinn
Chief Justice