



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-23-00260-CV

GUTIERREZ, CDS, LLC AND ANDY GUTIERREZ, APPELLANTS

V.

JORGE RODRIGUEZ AND DIANE REYNOLDS, APPELLEES

On Appeal from the 237th District Court
Lubbock County, Texas
Trial Court No. DC-2023-CV-0802, Honorable Les Hatch, Presiding

November 17, 2023

MEMORANDUM OPINION

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

Appellants, Andy Gutierrez and Gutierrez, CDS, LLC, (collectively, "Gutierrez") brought this appeal after the trial court entered an order containing judicial findings of fact and conclusions of law determining that no valid lien or claim was created by the "Texas Mechanic's Lien" they filed with the Lubbock County Clerk. We reverse.

BACKGROUND

On May 11, 2023, Gutierrez filed an instrument titled “Texas Mechanic’s Lien” purporting to create a construction lien for \$105,182 against real property in Slaton, Texas, owned by Appellees, Jorge Rodriguez and Diane Reynolds. The instrument reflected that the original contractor on the project was Gutierrez, CDS, LLC.

On June 30, 2023, Rodriguez and Reynolds filed their verified motion for judicial review in the 237th District Court asserting that the instrument is fraudulent and should not be accorded lien status. See TEX. GOV’T CODE ANN. § 51.903. After reviewing the motion, the trial court determined that no valid lien was created by the instrument. It entered findings of fact and conclusions of law. In this appeal, Gutierrez challenges the trial court’s finding and the sufficiency of the evidence.

ANALYSIS

Section 51.903 of the Texas Government Code is part of a statutory scheme to quickly identify and remove liens and encumbrances that are patently without basis in recognized law. *David Powers Homes, Inc. v. M.L. Rendleman Co.*, 355 S.W.3d 327, 338 (Tex. App.—Houston [1st Dist.] 2011, no pet.). Under the statute, a purported debtor may seek a judicial determination as to the legitimacy of a document purporting to create a lien or interest in real or personal property. *In re La*, 415 S.W.3d 561, 564 (Tex. App.—Fort Worth 2013, pet. denied). A trial court may only determine whether the challenged instrument is fraudulent as defined by section 51.901(c)(2); it may not rule on underlying claims or substantive evidentiary claims. *Id.* at 565. We review the trial court’s ruling de novo. *David Powers Homes*, 355 S.W.3d at 335.

A recorded document or instrument purporting to create a lien is presumed to be fraudulent if it:

- (A) is not a document or instrument provided for by the constitution or laws of this state or of the United States;
- (B) is not created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property . . . ; or
- (C) is not an equitable, constructive, or other lien imposed by a court with jurisdiction

TEX. GOV'T CODE ANN. § 51.901(c)(2). Here, the trial court's findings of fact and conclusions of law follow the form suggested by statute, reading:

The documentation or instrument attached to the Motion herein:

- IS NOT provided for by specific state or federal statutes or constitutional provisions;
- IS NOT created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property or an interest in the real or personal property . . . ;
- IS NOT an equitable, constructive, or other lien imposed by a court of competent jurisdiction created or established under the constitution or laws of this state or the United States; or
- IS NOT asserted against real or personal property or an interest in real or personal property. There is no valid lien or claim created by this documentation or instrument.

This Court makes no finding as to any underlying claims of the parties involved, and expressly limits its finding of fact and conclusion of law to the review of a ministerial act. The county clerk shall file this finding of fact and conclusion of law in the same class of records as the subject documentation or instrument was originally filed, and the Court directs the county clerk to index it using the same names that were used in indexing the subject documentation or instrument.

See TEX. GOV'T CODE ANN. § 51.903(g).

In his first issue, Gutierrez contends that, because Texas law recognizes mechanic's liens, the trial court erred by finding the challenged instrument is not a document or instrument provided for by the statutes or constitution of the State of Texas. Although Rodriguez and Reynolds acknowledge that a mechanic's lien is, generally, an allowable recordable instrument under Texas law, they contend that Gutierrez's attempt to establish such a lien falls short of the requirements of the Texas Property Code because the document does not provide information about the work completed or explain the basis for the claimed \$105,182 debt. See TEX. PROP. CODE ANN. §§ 53.051–.055.

A document filed in the form of a mechanic's lien is provided for by Texas law and thus cannot be presumed to be fraudulent. *Cardenas v. Wilson*, 428 S.W.3d 130, 132 (Tex. App.—Houston [1st Dist.] 2014, no pet.). Moreover, in a proceeding under section 51.903 of the Government Code, a trial court is limited to determining whether a particular instrument is fraudulent on its face; it may not rule on the validity of the underlying lien itself or other claims between the parties. See TEX. GOV'T CODE ANN. § 51.903(a), (g); *In re Hart*, No. 07-98-00292-CV, 1999 Tex. App. LEXIS 2848, at *5 (Tex. App.—Amarillo Apr. 15, 1999, no pet.). Rodriguez and Reynolds's claims about the instrument's deficiencies go beyond the scope of section 51.903. See, e.g., *In re Purported Liens or Claims Against Samshi Homes, L.L.C.*, 321 S.W.3d 665, 667–68 (Tex. App.—Houston [14th Dist.] 2010, no pet.) (explaining scope of fraudulent lien statute does not include substantive evidentiary claims). Thus, they did not establish that the instrument filed by Gutierrez is not an instrument provided for by the statutes or constitution of the State of Texas. We sustain Gutierrez's first issue.

Rodriguez and Reynolds assert that the instrument may nonetheless be considered fraudulent because a plaintiff need only prove one of the subsections in section 51.901(c)(2). They contend that the instrument is “not created by implied or express consent or agreement” of the parties and therefore presumed fraudulent.

However, Texas courts have held that a court may presume a document is fraudulent under section 51.901(c)(2):

if the court makes one positive and three negative findings about the subject instrument. The court must affirmatively find that the document purports to create a lien or claim against real or personal property. Additionally, in order to find the subject document fraudulent, the court must determine that the document is not one of the following three types of legitimate liens or claims: (1) a document or instrument provided for by state or federal law or constitutional provision; (2) created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property; or (3) imposed by a court as an equitable, constructive, or other lien.

In re La, 415 S.W.3d at 565; *see also Cardenas*, 428 S.W.3d at 132. The document at issue is provided for by Texas law. Thus, it cannot be considered presumptively fraudulent under section 51.901(c)(2). *See David Powers Homes*, 355 S.W.3d at 333 (“[I]f a trial court finds that a document or instrument is provided for by state or federal law or constitutional provision, the court has determined that the document or instrument is not fraudulent.”); *see also In re a Purported Lien or Claim Milissa Kay Bishop*, No. 07-12-00455-CV, 2013 Tex. App. LEXIS 14649, at *6–7 (Tex. App.—Amarillo Dec. 4, 2013, no pet.) (mem. op.).

Having sustained Gutierrez’s first issue, and finding it dispositive, we need not address his remaining issue. *See* TEX. R. APP. P. 47.1. The order of the trial court is reversed.

CONCLUSION

Because Rodriguez and Reynolds failed to establish that the instrument filed by Gutierrez was presumptively fraudulent, the trial court erred in concluding that the instrument should not be accorded lien status. Accordingly, we reverse the trial court's order.

Judy C. Parker
Justice