NUMBER 13-19-00033-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

RIO GRANDE CITY CONSOLIDATED INDEPENDENT SCHOOL DISTRICT (NEW RIO GRANDE HIGH SCHOOL), **Appellant,**

v.

EDWARD PUENTES, P.E., DAVID CASH, P.E., AND DBR ENGINEERING COUNSULTANTS, INC., **Appellees.**

On appeal from the 381st District Court of Starr County, Texas.

MEMORANDUM OPINION

Before Justices Hinojosa, Perkes, and Tijerina
Memorandum Opinion by Justice Perkes

Appellant Rio Grande City Consolidated Independent School District (RGCCISD) appeals the trial court's granting of appellees Edward Puentes, P.E., David Cash, P.E.,

and DBR Engineering Consultants, Inc. (collectively, DBR) traditional summary judgment motion in a suit brought by RGCCISD concerning allegations of construction and design defects.[1] We affirm.

I. BACKGROUND

On August 3, 2011, RGCCISD entered into "AIA Document B141-1997, Standard Form of Agreement Between Owner and Architect with Standard Form of Architect's Services" with Delfino Garza, Jr. d/b/a Design Group International (DGI), wherein Garza and DGI contracted to provide architectural and engineering services necessary for the design and construction of the Rio Grande City High School (the project).

On October 20, 2011, DGI, the project's architect, entered into "AIA Document C142-1997, Abbreviated Standard Form of Agreement" with DBR, engineering consultants. RGCCISD was not a party to DGI's contract with DBR.

On February 1, 2016, RGCCISD filed an original petition against Skanska USA Building, Inc., R.A.S. Masonry, LLC, and RGV Alliance Construction, LLC, bringing forth claims of negligence, breach of contract, and breach of implied warranty of good and workmanlike manner for their involvement in the construction of the project.

On November 2, 2017, in a seventh amended original petition, RGCCISD added defendants DBR, Garza, and DGI.[2] As to DBR, RGCCISD asserted:

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[1] This case is before this Court on transfer from the Fourth Court of Appeals in San Antonio pursuant to a docket-equalization order issued by the Supreme Court of Texas. *See* TEX. GOV'T CODE ANN. § 73.001. Because this is a transfer case from the San Antonio Court of Appeals, we are bound to apply the precedent of the San Antonio Court of Appeals to the extent it differs from our own. *See* TEX. R. APP. P. 41.3.

[2] In the seventh amendment, RGCCISD also added defendants Cloromiro Hinojosa, Jr., individually and d/b/a CLH Engineering, Inc., and Gilbert J. Guerra individually and d/b/a Rio Delta Engineering. In a previous amendment, RGCCISD added defendants: RZB, Inc., d/b/a Global Electric, JLG Structure, Inc, Port Enterprises, LTD, Rio Grande Steel, LTD, IOC Company, LLC, Faires Plumbing Company, Inc., and Victoria Air Conditioning, LTD. These defendants are not relevant to this appeal.

> [DBR] committed design errors, acts and/or omissions which constitute negligence, breach of contract, breach of warranty and/or a failure to construct and/or design the school in a good workman like manner, these acts, errors and/or omissions are set forth in the attached affidavit (Certificate of Merit, Exhibit "D") authored by Edgar Stacey, which is incorporated herein by reference in its entirety. DB[R]'s acts, errors and/or omissions, negligence, breach of contract, breach of express warranty, and breach of the implied warranty to perform work in a good and workmanlike manner were and are a cause of the plaintiffs damages which are ongoing and continuous to this date.

On April 28, 2018, RGCCISD nonsuited Garza and DGI with prejudice. On August 1, 2018, DBR filed a traditional motion for summary judgment, asserting: (1) RGCCISD is a contractual stranger to DBR; (2) RGCCISD's tort claims are barred by the economic loss rule; and (3) RGCCISD has settled all claims against Garza and DGI, and in the parties' settlement agreement, all claims have been released against DBR, consultants for Garza and DGI.[3]

[3] In a Settlement Agreement executed in April 2018, RGCCISD and Garza and DGI agreed to:

> All Parties fully, finally, and mutually release, acquit, and forever discharge each other and their agents, adjusters, *consultants, subconsultants*, testing laboratories, *subcontractors*, sub-subcontractors. . . and all other persons and entities in privity with any of them as well, of and from any and all disputes, claims, demands, claims for retainage or contract or subcontract balances, obligations, claims of subrogation or indemnity, claims for attorney's fees or defense, claims for defense or indemnity as Additional Insureds, and causes of action of any kind whatsoever, whether known or unknown, whether heretofore or hereafter accruing or arising, whether held by assignment or otherwise, whether for latent or patent defects, and whether sounding in tort, contract, or trespass, or arising by operation of law or statute, that any Party has, had, or may ever have against any other Party or Parties, in any way related to or arising out of the design, construction, testing, maintenance, repairs and/or warranty work of the Project or the labor, material, and equipment furnished in connection therewith, and all of the contracts, subcontracts and sub-subcontracts, purchase orders, consulting agreements, engineering agreements, geotechnical or other testing agreements related to the Projects, and the Lawsuits.

The parties thereafter entered into a signed "Clarified Settlement Agreement," executed on August 21, 2018, in which the parties removed the paragraph allowing for the full, final, and mutual release of consultants, subconsultants, or subcontractors. All other previously listed entities remained entitled to release.

Following a hearing, the trial court granted DBR's summary judgment motion on October 12, 2018. In its summary judgment order, the trial court did not specify the grounds upon which summary judgment was granted. RGCCISD subsequently filed a motion for new trial, arguing DBR did not meet its summary-judgment burden, and the economic-loss rule did not apply because DBR owed RGCCISD an independent duty and its negligence damaged RGCCISD's other property. RGCCISD's motion was denied on December 19, 2018. This appeal followed.

II. SUMMARY JUDGMENT

By single issue, RGCCISD contends that the trial court erred by granting summary judgment in favor of DBR. The parties' appellate briefing focuses primarily on whether DBR's purported negligence is foreclosed under the economic loss rule.

A. Standard of Review

We review the trial court's granting of a summary judgment de novo. *Trial v. Dragon*, 593 S.W.3d 313, 316 (Tex. 2019); *Hardaway v. Nixon*, 544 S.W.3d 402, 412 (Tex. App.—San Antonio 2017, pet. denied). "When a defendant moves for summary judgment, he must expressly state in the motion the specific grounds upon which relief is sought, and summary judgment may only be granted on those grounds." *Hardaway*, 544 S.W.3d at 412; *see* TEX. R. CIV. P. 166(c), (i). "The term 'grounds' means the reasons that entitle the movant to summary judgment, in other words, 'why' the movant should be granted summary judgment." *Hardaway*, 544 S.W.3d at 412. "The scope of a trial court's power to render summary judgment is measured by the scope of the predicate motion for summary judgment and the specific grounds stated therein," and our de novo review is limited accordingly. *Id*. Thus, "a summary judgment cannot be affirmed on grounds not

expressly set out in the motion." *Stiles v. Resolution Tr. Corp.*, 867 S.W.2d 24, 26 (Tex. 1993).

"A party moving for traditional summary judgment has the burden to prove that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law." *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015); TEX. R. CIV. P. 166a. When reviewing a summary judgment, we take as true all evidence favorable to the nonmovant, and we indulge every reasonable inference and resolve any doubts in the nonmovant's favor. *Scripps NP Operating, LLC v. Carter*, 573 S.W.3d 781, 790 (Tex. 2019); *Dall. Morning News, Inc. v. Tatum*, 554 S.W.3d 614, 625 (Tex. 2018). A movant who conclusively negates at least one of the essential elements of a cause of action is entitled to summary judgment. *Helix Energy Sols. Group, Inc. v. Gold*, 522 S.W.3d 427, 431 (Tex. 2017). Once the movant establishes its right to summary judgment as a matter of law, the burden shifts to the nonmovant to present evidence raising a fact issue to defeat the motion for summary judgment. *Briggs v. Toyota Mfg. of Tex.*, 337 S.W.3d 275, 282 (Tex. App.—San Antonio 2010, no pet.). "A trial court is not required to specify the ground on which it grants summary judgment . . . , [b]ut when it does, we generally limit our consideration to that ground." *Kenyon v. Elephant Ins. Co., LLC*, No. 04-18-00131-CV, ___ S.W.3d __, ___, 2020 WL 1540392, at *4 (Tex. App.—San Antonio Apr. 1, 2020, pet. filed).

B. Economic Loss Rule

The "economic loss rule" is a doctrine that consists of several limited rules that govern recovery of economic losses under certain circumstances. *See Sharyland Water Supply Corp. v. City of Alton*, 354 S.W.3d 407, 415 (Tex. 2011) (recognizing that "the" economic loss rule in the singular can be "something of a misnomer" because the term

actually encompasses multiple concepts addressing efforts to recover particular economic losses in particular situations); *Barzoukas v. Found. Design, Ltd*., 363 S.W.3d 829, 834 (Tex. App.—Houston [14th Dist.] 2012, pet. denied) ("Although areas of uncertainty exist under case law addressing the economic loss rule in Texas, at least one thing is clear: Details matter.").

Generally, the rule exists to bar a party from seeking tort damages where damages exist as a breach of a duty created under contract, as opposed to a duty imposed by law. *Chapman Custom Homes, Inc. v. Dall. Plumbing Co.*, 445 S.W.3d 716, 718 (Tex. 2014) ("The economic loss rule generally precludes recovery in tort for economic losses resulting from a party's failure to perform under a contract when the harm consists only of the economic loss of a contractual expectancy."); *see also Sharyland*, 354 S.W.3d at 420; *LAN/STV v. Martin K. Eby Constr. Co.*, 435 S.W.3d 234, 241–42 (Tex. 2014). However, "[e]ven if the matter in dispute is the subject of a contract, a party may elect a recovery in tort if the duty breached stands independent from the contractual undertaking, and the alleged damages are not solely the result of a bargained-for contractual benefit." *Shopoff Advisors, LP v. Atrium Circle, GP*, 596 S.W.3d 894, 909–10 (Tex. App.—San Antonio 2019, no pet.) (quoting *Eagle Oil & Gas Co. v. Shale Exploration, LLC*, 549 S.W.3d 256, 268 (Tex. App.—Houston [1st Dist.] 2018, pet. dism'd)). In such a situation, the determination of whether the economic loss doctrine is applicable requires an examination of (1) the source of the defendant's duty and (2) the nature of the claimed injury. *See id.*; *see also Jim Walter Homes, Inc. v. Reed*, 711 S.W.2d 617, 618 (Tex. 1986) (explaining that "[t]he acts of a party may breach duties in tort or contract alone or simultaneously in both" and courts look to the "nature of the injury" in determining "which duty or duties are breached" and whether the cause of action "sounds in contract alone");

Levco Constr., Inc. v. Whole Foods Mkt. Rocky Mountain/Sw. L.P., 549 S.W.3d 618, 635 (Tex. App.—Houston [1st Dist.] 2017, no pet.) (providing for the same analysis); *see also ALS 88 Design Build LLC v. MOAB Constr. Co.*, No. 04-15-00096-CV, 2016 WL 2753915, at *2–3 (Tex. App.—San Antonio May 11, 2016, pet. denied) (mem. op.) (same).

In other words, provided that the source of DBR's duty is contractual in nature, to support an award of damages under a negligence theory in this case—as an exception to the economic loss doctrine—RGCCISD would have to prove a distinct tortious injury with actual damages. *See Sharyland,* 354 S.W.3d at 417–18; *see also ALS*, 2016 WL 2753915, at *2–3.

C. Discussion

On appeal, RGCCISD challenges the trial court's order granting summary judgment in favor of DBR, principally arguing summary judgment was improper because DBR failed to establish economic loss as a matter of law.

At the outset of our analysis, we note that RGCCISD correctly observes that DBR's assertion before the trial court, that "[t]he Economic Loss Rule precludes tort claims between parties who are not in contractual privity," is an incorrect interpretation of the rule. The Texas Supreme Court concluded as such in *Sharyland.* 354 S.W.3d at 415.

In *Sharyland*, Alton and Sharyland entered into a Water Supply Agreement under which Alton conveyed its water system to Sharyland, and in exchange, Sharyland provided potable water to Alton residents and maintained the system. *Id.* at 410. Alton thereafter contracted with Carter & Burgess, Inc.; Turner, Collie & Braden, Inc.; and Cris Equipment Company, Inc. to build a sanitary sewer system. *Id.* After Sharyland allegedly suffered significant injury because Alton's sanitary sewer residential service connections were negligently installed in violation of state regulations and industry standards,

Sharyland sued Alton for breaching the Water Supply Agreement. *Id.* The court of appeals held that the economic loss rule barred Sharyland's negligence claim, specifically because "there was no evidence that the sewer lines had contaminated the water supply"; thus, Sharyland had not suffered property damage, and the economic loss rule precluded a damage award. *Id*. at 418. The Texas Supreme Court disagreed, and in its analysis, the court noted:

> To say that the economic loss rule "preclude[s] tort claims between parties who are not in contractual privity" and that damages are recoverable only if they are accompanied by "actual physical injury or property damage," . . . overlooks all of the tort claims for which courts have allowed recovery of economic damages even absent physical injury or property damage.
>
> . . . .
>
> The contractors argue that permitting recovery in this case will upend the industry because construction contracts are negotiated based on anticipated risks and liabilities, and allowing parties like Sharyland to recover in tort would skew that analysis. *Construction defect cases, however, usually involve parties in a contractual chain who have had the opportunity to allocate risk, unlike the situation faced by Sharyland*. While it is impossible to analyze all the situations in which an economic loss rule may apply, it does not govern here. *The rule cannot apply to parties without even remote contractual privity, merely because one of those parties had a construction contract with a third party, and when the contracting party causes a loss unrelated to its contract.*

Sharyland, 354 S.W.3d at 418, 420 (emphasis added). Three years later, in *LAN/STV*, the Court reiterated its position of the applicability of the economic loss rule in vertical construction defect cases. *LAN/STV*, 435 S.W.3d at 236.

The issue in *LAN/STV* was whether the economic loss rule "permits a general contractor to recover the increased costs of performing its construction contract with the owner in a tort action against the project architect for negligent misrepresentations—errors—in the plans and specifications," and the court held that it did not. *Id.* Dallas Area

Rapid Transportation Authority (DART) contracted with LAN/STV to prepare specifications for the construction of a light rail transit line. *Id.* LAN/STV agreed to "be responsible for the professional quality, technical accuracy, and . . . coordination of all designs, drawings, specifications" and to be "liable to the Authority . . . for all damages to the Authority caused by [LAN/STV's] negligent performance of any of the services furnished." *Id.* Martin K. Eby Construction Company was awarded the contract to construct DART's project. Although "LAN/STV was contractually responsible to DART for the accuracy of the plans, as was DART to Eby," Eby and LAN/STV had no contract with each other. Prior to construction, Eby discovered "that LAN/STV's plans were full of errors," resulting in a disruption of Eby's construction schedule and requiring additional labor and materials. Eby filed this tort suit against LAN/STV, asserting causes of action for negligence and negligent misrepresentation. *Id.* The Court ultimately held the economic loss rule precluded a general contractor from recovering delay damages from the owner's architect. *Id.* at 250.

> Construction projects operate by agreements among the participants. Typically, those agreements are vertical: the owner contracts with an architect and with a general contractor, the general contractor contracts with subcontractors, a subcontractor may contract with a sub-subcontractor, and so on. The architect does not contract with the general contractor, and the subcontractors do not contract with the architect, the owner, or each other.
>
> We think it beyond argument that one participant on a construction project cannot recover from another—setting aside the architect for the moment—for economic loss caused by negligence. If the roofing subcontractor could recover from the foundation subcontractor damages for extra costs incurred or business lost due to the latter's negligent delay of construction, the risk of liability to everyone on the project would be magnified and indeterminate. . .
>
> There is no liability in tort . . . when the owner of a construction project sues a subcontractor for negligence resulting in economic loss; nor is liability found when one subcontractor is sued by another because the negligence of the first drives up the costs of the second. *A subcontractor's negligence*

> *in either case is viewed just as a failure in the performance of its obligations to its contractual partner, not as the breach of a duty in tort to other subcontractors on the same job, or to the owner of the project.* This way of describing the subcontractor's role is not inevitable in all cases. General rules are favored in this area of the law, however, because their clarity allows parties to do business on a surer footing. In this setting, a rule of no liability is made especially attractive by the number and intricacy of the contracts that define the responsibilities of subcontractors on many construction projects. That web of contracts would be disrupted by tort suits between subcontractors or suits brought against them by a project's owner.

LAN/STV, 435 S.W.3d at 248 (emphasis added).

While RGCCISD urges us to reject DBR's summary judgment economic loss argument on the basis of DBR's incorrect contention regarding privity preclusion, we decline to read DBR's summary judgment argument so narrowly. This is precisely the risk-allocation, vertical contracting situation hypothesized in *Sharyland* and *LAN/STV*: the foreseeable construction defect kind—"involv[ing] parties in a contractual chain who have had the opportunity to allocate risk"—for which the rule *can* apply. *See LAN/STV*, 435 S.W.3d at 248; *Sharyland*, 354 S.W.3d at 418, 420.

We now examine the source of DBR's duty and the nature of the claimed injury to determine whether the rule, in fact, does apply. *See Shopoff Advisors, LP*, 596 S.W.3d at 909–10; *Levco Constr., Inc.*, 549 S.W.3d at 635. Neither party appears to contest that RGCCISD, an owner, sued DBR, a subconsultant engineer, for DBR's negligent acts or omissions in connection with its duties under the DBR-DGI contract. For purposes of our analysis, we observe that pursuant to DBR's contract with DGI, DBR had the following duties:

> 1. Develop M.E.P. Engineering Design on reproducible tracings (AutoCad 2002 generated) ready for the reproduction (including plans, specifications, change orders, & revisions. Provide a copy of all work submitted as well as on electronic format CD or flash drive to the Architect [DGI].

2. Coordinate systems requirements & installations with Architectural, Structural, Civil and Food Service systems as well as with Owner and their requirements.

3. Provide check set drawings at each design interval (Schematic, Design Development, Construction Document, & Bidding/Negotiations) for the Architect.

4. Review Contractor's M.E.P. submittals, shop drawings, RFT's, MEP portion of General Contractor's Pay Request for compliance with contract documents.

5. Project observation trips, M.E.P. inspections and final inspection. Make site visits as necessary with Field Reports, Inspections including Final Inspections, Punch List, & Review of Punch List Progress until completion to insure general contractor's compliance with M.E.P. drawings. (Make site visits at appropriate stages of construction.)

6. Preparation of supporting documents for any change orders required during construction progress.

7. Consultant shall comply with Owners [RGCCISD] Contract with Architect in all respects.

8. Inform the Architect of any problematic conditions after reviewing (Soils Reports, Civil Engineers Drawings/Information, Project/Site Reports, etc.) that can adversely affect the project.

9. Investigate, recommend, and follow-up on Test & Balance Reports to insure proper air distribution throughout project facility.

The contract further provided:

> The Engineer [DBR] shall assume liability for its Professional Services, indemnify, and hold harmless the Owner and Architect arising out of the acts, errors[,] or omissions of the Engineer as follows: (a) The Engineer shall be responsible for the professional qualify, technical accuracy, timely Completion and the coordination of all services furnished by the Engineer under this Agreement . . . .

RGCCISD maintains the nature of the injury and the complained-of damages expand beyond those arising from the contractual subject matter; we disagree. In an attached exhibit to RGCCISD's seventh amendment, RGCCISD's expert Edgar Stacy, a consulting engineer, opined that "[t]he building, as designed and constructed, does not

meet the applicable International Building Code, nor is its design consistent with what a prudent engineer[] practicing in its location have done." Stacy further dictated:

> 1 DBR Engineering Consultants, Inc. and specifically Edward Puentes, P.E. designed and specified air handling units that would not fit into the available space so as to allow adequate access to maintain and service the units. This is most pronounced [is] in the gymnasium building where access doors are located several feet above bleachers (when the bleachers are extended) and more than fifteen feet above the finished floor: [sic] once the door is open, the passageway to the unit(s) is obstructed by ductwork and/or piping. This is a violation of section 306 of the 2009 International Mechanical Code and results in the owner being unable to reasonable [sic] service the equipment located in these rooms.
>
> 2 DBR Engineering Consultants, Inc. and specifically Edward Puentes, P.E designed the ductwork serving the first floors of buildings E & F at a larger aspect ratio (width to height) than is recommended by ASHRAE or SMACNA. This has resulted in duct generated noise that is disturbing to the building occupants.
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> 3 DBR Engineering Consultants, Inc. and specifically Edward Puentes, P.E. designed and specified an Outside Air (ventilation) system control that was not in compliance with ASHRAE Standard 62.1 (the applicable ventilation code). This resulted in school buildings that were, at times, less than adequately ventilated.
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> 4 DBR Engineering Consultants, Inc. and specifically Edward Puen[t]es, P.E. designed a control system that could not and did not maintain building relative humidity within the range recommended by ASHRAE Standard 62.1.
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> 5 DBR Engineering Consultants, Inc. and specifically David Cash, P.E. specified lighting fixtures for the exterior canopies that were not intended for the application[,] and that has resulted in premature failure of the fixtures. Specifically, the fixtures specified by Mr. Cash included mounting brackets intended to allow the fixtures to hang perpendicular to the floor from sloped ceilings; this resulted in the fixtures being moved to and fro in the wind wearing the mounting brackets to the point of failure.
>
> 6 DBR Engineering Consultants, Inc. and specifically Edward Puen[t]es, P.E. designed and specified what was intended to be a Primary/Secondary chilled water piping system but modified the design so as to render the system inoperable as a Primary/Secondary piping system. This resulted in erratic chilled water flows and temperatures to the school buildings making consistent temperature and humidity control erratic and unreliable.

> 7 DBR Engineering Consultants, Inc. and specifically Edward Puen[t]es, P.E. and David Cash, P.E. were contracted to perform periodic site inspections to ensure that the construction work was performed in accordance with the design intent. They failed to notify the owner of the obvious deficiencies in the work thus allowing defective construction to be completed.

RGCCISD has only complained of inadequacies in the building that were the subject of the DBR's contract. None of the asserted inadequacies amount to damages to property independent from the fixtures and systems for which DBR was contractually responsible. In other words, because the source of DBR's duty is contractual in nature and the nature of the injuries sustained sound in contract alone, the claims before the trial court are subsumed by the contractual chain in which the risk of DBR's purported deficient performance may be addressed, and the economic loss doctrine applies. *See Shopoff Advisors, LP*, 596 S.W.3d at 909–10; *see, e.g.*, *Thomson v. Espey Huston & Associates, Inc.*, 899 S.W.2d 415, 421–22 (Tex. App.—Austin 1995, no writ) ("If Thomson were merely complaining that the drainage system was inadequate and that he had been forced to repair or improve it, he would have only a contractual claim. . . . However, to the extent that the alleged inadequacies caused damage to parts of the property beyond Espey's contract, Thomson also has a tort claim."); *see also ALS 88 Design Build LLC*, 2016 WL 2753915, at *2–3 ("So, if a contractual duty is negligently performed, causing only economic loss, only a breach of contract action may be maintained, and an action in tort for negligence is precluded.") (internal quotations omitted); *Dennis Jewelry Co. v. Sonitrol Mgmt. Corp.*, No. 04-01-00279-CV, 2003 WL 179618, at *3 (Tex. App.—San Antonio Jan. 29, 2003, no pet.) (mem. op.) (holding the economic loss rule precluded recovery where Dennis entered into a security contract with Chubb Security Systems, Inc., which subcontracted its monitoring obligations to Sonitrol, and Dennis sued Chub

and Sonitrol on claims of negligence and breach of contract as a third-party beneficiary after Dennis's store was burglarized because the appellate court determined the (1) subject matter of the security contract was to provide security, and (2) the damages claimed were for the recovery of items stolen—which amounted to a claim for economic damages under the contract).

In proving the applicability of the economic loss doctrine, DBR has shown RGCCISD is unable to meet its prima facia case on the element of damages, and thus, RGCCISD's claims are foreclosed as a matter of law. *See Byrd*, 467 S.W.3d at 481; *Sharyland,* 354 S.W.3d at 417–18; *Shopoff Advisors, LP*, 596 S.W.3d at 909–10. We overrule RGCCISD's sole issue.[4]

III. CONCLUSION

We affirm the trial court's judgment.

GREGORY T. PERKES
Justice

Delivered and filed the
24th day of November, 2020.

[4] By a subsidiary issue, RGCCISD argues the trial court erred in granting DBR's summary judgment on the basis of DBR's affirmative defense of release. Having affirmed on other grounds set out in DBR's summary judgment motion, we need not review these secondary grounds. *See Trial v. Dragon*, 593 S.W.3d 313, 316 (Tex. 2019); *Hardaway v. Nixon*, 544 S.W.3d 402, 412 (Tex. App.—San Antonio 2017, pet. denied); *see also* TEX. R. APP. P. 47.1.