

AFFIRMED; Opinion Filed August 16, 2012.

**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-10-01174-CV

BRENT W. WALKER, D.O., AND J. KEVIN GRAY, Appellants

V.

TOWN NORTH BANK, N.A., Appellee

**On Appeal from the 101st Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-09-14272-E**

MEMORANDUM OPINION

Before Justices Lang, Murphy, and Myers
Opinion By Justice Lang

Brent W. Walker, D.O., and J. Kevin Gray, appeal the trial court's final summary judgment, granting Town North Bank, N.A.'s, motion for traditional summary judgment and ordering that Walker and Gray take nothing on their claims. Walker and Gray raise ten issues on appeal that essentially argue three points: (1) the trial court erred when it granted the Bank's motion for traditional summary judgment because the Bank failed to disprove at least one element of each of Walker and Gray's claims for breach of contract, negligent misrepresentation, promissory estoppel, fraudulent inducement, fraudulent misrepresentation, and common law fraud, and issues of material fact remain to be decided; (2) the trial court erred when it granted the Bank's motion for traditional

summary judgment on the Bank's affirmative defenses of estoppel, ratification, and waiver; and (3) the trial court erred when it sustained the Bank's objections to Walker and Gray's summary judgment evidence. We issue this memorandum opinion because the issues in this appeal are settled. See TEX. R. APP. P. 47.4.

We conclude the trial court did not err when it granted the Bank's motion for traditional summary judgment. The trial court's final summary judgment is affirmed.

I. FACTUAL AND PROCEDURAL BACKGROUND

In October 2009, Walker and Gray filed suit against the Bank, seeking damages for breach of contract, negligent misrepresentation, promissory estoppel, fraudulent inducement, fraudulent misrepresentation, and common law fraud, all with regard to a February 2008 loan. Walker and Gray alleged that the Bank improperly disclosed their financial information to Structures Design and, without their approval, paid Structures Design's draw requests for work that was not completed. The Bank answered, generally denying all of the claims, and asserted affirmative defenses, that included (1) estoppel, (2) quasi-estoppel, (3) waiver, and (4) ratification.

The Bank moved for traditional summary judgment on Walker and Gray's claims and its affirmative defenses of estoppel, quasi-estoppel, ratification, and waiver. Walker and Gray's response to the Bank's motion for traditional summary judgment included Gray's affidavit and addressed the Bank's affirmative defenses of estoppel, ratification, and waiver. They did not address the Bank's affirmative defense of quasi-estoppel. Then, the Bank filed written objections to Gray's affidavit, which were sustained. Finally, the trial court granted the Bank's motion for traditional summary judgment, ordering that Walker and Gray take nothing on their claims.

II. TRADITIONAL SUMMARY JUDGMENT ON AFFIRMATIVE DEFENSES

In issues seven through nine, Walker and Gray argue the trial court erred when it granted the

Bank's motion for traditional summary judgment on the Bank's affirmative defenses of estoppel, ratification, and waiver because it failed to conclusively establish each essential element of its affirmative defenses. In its appellate brief, the Bank addresses its affirmative defense of quasi-estoppel, contending that "[Walker and Gray] do not address this issue in [their] response to summary judgment or on appeal."

1. Standard of Review

When more than one ground is asserted in a motion for summary judgment and the trial court does not specify the grounds on which it rendered summary judgment, an appellant must challenge each ground asserted. *See Malooly Bros., Inc. v. Napier*, 461 S.W.2d 119, 121 (Tex. 1970); *Worldwide Asset Purchasing, LLC v. Rent-A-Center E., Inc.*, 290 S.W.3d 554, 569 (Tex. App.—Dallas 2009, no pet.). If an appellant fails to challenge one of the grounds for summary judgment, an appellate court may affirm the summary judgment on that ground alone. *See Worldwide Asset*, 290 S.W.3d at 569.

2. Application of the Law to the Facts

We review whether Walker and Gray have challenged all grounds that could support the trial court's traditional summary judgment on Walker and Gray's claims. As indicated above, the record reflects that one of the grounds supporting summary judgment asserted by the Bank was that Walker and Gray's claims were barred by quasi-estoppel. On appeal, Walker and Gray do not assert as error the granting of summary judgment on their claims on the Bank's affirmative defense of quasi-estoppel. Applying the appropriate standard of review, we make no determination on the merits of the Bank's affirmative defense of quasi-estoppel. However, we must conclude the trial court did not err when it granted traditional summary judgment in favor of the Bank on Walker and Gray's claims because Walker and Gray do not challenge every possible ground for the trial court's summary

judgment. *See Malooly*, 461 S.W.2d at 121; *Worldwide Asset*, 290 S.W.3d at 569.

III. CONCLUSION

The trial court did not err when it granted Town North Bank's motion for traditional summary judgment.

The trial court's final summary judgment is affirmed.

DOUGLAS S. LANG
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

BRENT W. WALKER, D.O., AND J. KEVIN
GRAY, ESQ., Appellants

No. 05-10-01174-CV V.

TOWN NORTH BANK, N.A., Appellee

Appeal from the 101st Judicial District Court
of Dallas County, Texas. (Tr.Ct.No. DC-09-
14272-E).

Opinion delivered by Justice Lang, Justices
Murphy and Myers participating.

In accordance with this Court's opinion of this date, the final summary judgment of the trial
court is **AFFIRMED**.

It is **ORDERED** that appellee Town North Bank, N.A., recover its costs of this appeal from
appellants Brent W. Walker, D.O., and J. Kevin Gray, Esq.

Judgment entered August 16, 2012.

/Douglas S. Lang/
DOUGLAS S. LANG
JUSTICE