AFFIRM in Part, REVERSE in Part, and REMAND; Opinion Filed March 5, 2018.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-00161-CV

SKY GROUP, LLC, WILLIE JAMES HAYNES, II, AND BRITA MICHELLE HAYNES, Appellants
V.
VEGA STREET 1, LLC, VEGA STREET 2, LLC, AND VEGA STREET 3, LLC, Appellees

On Appeal from the 298th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-15-06391

MEMORANDUM OPINION

Before Justices Lang-Miers, Fillmore, and Stoddart
Opinion by Justice Fillmore

Appellees Vega Street 1, LLC (VS1), Vega Street 2, LLC (VS2), and Vega Street 3, LLC (VS3) each entered into a written contract with Sky Group, LLC, pursuant to which Sky Group provided property management services for appellees. Appellees terminated the contracts, and sued Sky Group, LLC; Willie James Haynes, II (Willie), who appellees alleged was the designated sales person acting on behalf of Sky Group; and Brita Michelle Haynes (Brita), who appellees alleged was Sky Group's designated real estate broker. In this appeal, appellants challenge the trial court's grant of summary judgment in favor of appellees. We affirm the trial court's judgment to the extent it determined Sky Group breached its contracts with appellees and awarded each appellee actual damages for the breach. We reverse the trial court's judgment in all other respects.

Background

After terminating their contracts with Sky Group, appellees filed this lawsuit asserting claims for breach of contract against Sky Group, and claims for conversion, common law fraud, statutory fraud,[1] violation of the Texas Theft Liability Act (TTLA),[2] and violation of the Texas Deceptive Trade Practices Act (DTPA)[3] against all three appellants. Appellees filed a motion for traditional summary judgment on all their claims. As summary judgment evidence, appellees relied on the affidavit of James Massey, attachments to Massey's affidavit, and an affidavit from appellees' attorney regarding the attorney's fees incurred by appellees.

In his affidavit, Massey stated he owned VS1 and VS3, and his wife, Jennifer Massey, owned VS2. VS1, VS2, and VS3 owned multi-unit, multi-family residential properties in Tarrant County. In 2011, Massey met Willie, who was a real estate agent "working for and representing Sky Group, LLC." It was explained to Massey that Willie was a licensed real estate agent working under the license of Sky Group, and Sky Group's license was "held" by Willie's wife, Brita.

According to Massey, Willie represented "they" were experienced property managers and were familiar with the processes and procedures of managing and operating multi-family residential apartments. Willie also represented "they" were familiar with both the "residential apartment market in the geographic and economic areas" in which the Masseys were interested in investing and the "processes and procedures of dealing with tenants and governmental housing authorities," and could help appellees maximize the pool of potential tenants and the return on their investments. Massey stated the representations made by Willie, on behalf of Sky Group and Brita, included:

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[1] *See* TEX. BUS. & COM. CODE ANN. §§ 27.001–.002 (West 2015 & Supp. 2017).

[2] *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 134.001–.005 (West 2011 & Supp. 2017).

[3] *See* TEX. BUS. & COM. CODE ANN. §§ 17.41–.63 (West 2011 & Supp. 2017).

a. representations that their services had characteristics, uses or benefits which, in fact, they did not have;

b. representing that their services were of a particular standard, quality or grade, and representing that the agreement between the parties conferred or involved rights, or remedies or obligations which, in fact, it did not have or involve.

Due to the Masseys' "relative inexperience in this area," they "relied on the representations made" to them, and agreed to hire Sky Group, through Willie and Brita, to manage appellees' investment properties.

In late 2013, appellees determined there were "irregularities with the monetary and other transactions being managed by Sky Group, [Willie], and [Brita]." These irregularities included:

> [F]ailure by Sky Group to timely remit funds, failure to rent one of the apartment units for a period of almost 1 year, failure to promptly re-lease apartments as they became available on a timely basis, failure to timely evict tenants after default on their leases, and failure to obtain security deposits in the appropriate monetary amount.

As a result, appellees terminated the contracts. However, according to Massey, appellants "failed to complete their obligations under the contract[s] to wind up their business relationship" with appellees. On March 11, 2014, appellees' counsel sent a letter to Willie at Sky Group, demanding the delivery of all monies collected for the rental months of January and February 2014; an accounting of all funds received and expended, expenses incurred and paid, and other financial transactions; all security deposits; all keys to the rental properties and the HVAC cages; all original documents and records; all 1099s, vendor contracts and related correspondence; a summary of, and all related information or correspondence regarding, any known tenant issues; and a summary of, and all related correspondence and documents regarding, any interactions with any housing authority, including any payments received or pending. Appellants, however, "failed and refused to carry out any of their obligations under the contracts" as required by this demand.

Massey stated that as a "result of the breach of contract by Sky Group" and the "wrongful conduct" of appellants, appellees were "economically damaged." The damages, consisting of

"rents not surrendered," "deposits not returned," and "building materials not returned, replacement keys," totaled $7,400 for VS1, $5,579 for VS2, and $5,397 for VS3. Attached to Massey's affidavit are the property management agreements between Sky Group and appellees; a January 24, 2014 email from the Masseys to appellants terminating the contracts effective February 23, 2014, and requesting "all funds, deposits, keys (all doors and A/C cages), records or other pertinent details or items"; the March 11th demand letter from appellees' attorney; and a spreadsheet of the damages incurred by appellees.

Appellants did not file a response to the motion for summary judgment. The trial court granted summary judgment for appellees and ordered that appellants were jointly and severally liable for breach of contract, conversion, statutory fraud, and violations of the TTLA and the DTPA. The trial court awarded actual damages in the amount of $7,375 to VS1, $5,329 to VS2, and $5,397 to VS3, additional damages under the DTPA and the TTLA to each appellee, actual damages for conversion in the amount of $500, $10,000 for attorney's fees, and contingent appellate attorney's fees.

After reviewing the record, we notified the parties that we questioned whether the judgment had disposed of all claims and was final. At appellees' request, we abated the case to allow the trial court to either clarify "the Final Summary Judgment was indeed a final order," or enter an "order of nonsuit as to Appellees' claims for common law fraud and exemplary damages under common law conversion of property." The trial court subsequently signed a Final Summary Judgment Nunc Pro Tunc in which it granted appellees' nonsuit of their claims for common law fraud and for exemplary damages for conversion of property, causing the judgment to become final.

Analysis

In their first and third through eighth issues,[4] appellants contend the trial court erred by (1) granting appellees' motion for summary judgment on their claims for breach of contract against Willie and Brit, and on their claims for conversion, statutory fraud, and violations of the TTLA and the DTPA against all appellants; (2) awarding additional damages under the DTPA; and (3) awarding attorney's fees against Sky Group on the breach of contract claim.

Standard of Review

We review a trial court's grant of summary judgment de novo. *Starwood Mgmt., LLC v. Swaim*, 530 S.W.3d 673, 678 (Tex. 2017) (per curiam). To prevail on a motion for traditional summary judgment, the movant has the burden of demonstrating that no genuine issue of material fact exists and it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *B.C. v. Steak N Shake Operations, Inc.*, 512 S.W.3d 276, 279 (Tex. 2017). In reviewing a summary judgment, we consider the evidence in the light most favorable to the nonmovant, indulging every reasonable inference and resolving any doubts against the motion. *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015). We credit evidence favorable to the nonmovant if a reasonable factfinder could, and disregard contrary evidence and inferences unless a reasonable factfinder could not. *B.C.*, 512 S.W.3d at 279.

Although a nonmovant generally must expressly present to the trial court any reasons that defeat the movant's entitlement to summary judgment, *City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 678 (Tex. 1979); *see also* TEX. R. CIV. P. 166a(c) ("Issues not expressly presented to the trial court by written motion, answer or other response shall not be considered on appeal as grounds for reversal."), the nonmovant has no duty to respond to a motion for traditional

[4] In their second issue, appellants, "out of an abundance of caution," challenged the trial court's grant of summary judgment on appellees' common law fraud claim. Because appellees have nonsuited their claim for common law fraud, we need not address this issue. *See* TEX. R. APP. P. 47.1.

summary judgment "unless the movant conclusively establishes its cause of action or defense." *M.D. Anderson Hosp. & Tumor Inst. v. Willrich*, 28 S.W.3d 22, 23 (Tex. 2000) (per curiam); *see also Clear Creek,* 589 S.W.2d at 678. The supreme court has concluded, however, that a nonmovant who fails to respond to a motion for traditional summary judgment is limited on appeal to arguing the legal sufficiency of the movant's grounds:

> [S]ummary judgments must stand or fall on their own merits, and the non-movant's failure to answer or respond cannot supply by default the summary judgment proof necessary to establish the movant's right. *Clear Creek*, 589 S.W.2d at 678. If a non-movant fails to present any issues in its response or answer, the movant's right is not established and the movant must still establish its entitlement to summary judgment. The effect of such a failure is that the non-movant is limited on appeal to arguing the legal sufficiency of the grounds presented by the movant. *Id.* at 678

McConnell v. Southside Indep. Sch. Dist., 858 S.W.2d 337, 343 (Tex. 1993); *see also Amedisys, Inc. v. Kingwood Home Health Care, LLC*, 437 S.W.3d 507, 511 (Tex. 2014) ("Thus a non-movant who fails to raise any issues in response to a summary judgment motion may still challenge, on appeal, 'the legal sufficiency of the grounds presented by the movant.'" (quoting *McConnell*, 858 S.W.2d at 343)). "Accordingly, the nonmovant need not respond to the motion to contend on appeal that the movant's [traditional] summary judgment proof is insufficient as a matter of law." *Willrich*, 28 S.W.3d at 23; *see also Rhone-Poulenc, Inc. v. Steel*, 997 S.W.2d 217, 223 (Tex. 1999).

Breach of Contract

In their first issue, appellants assert the trial court erred by granting judgment against Willie and Brita for breach of contract because appellees failed to conclusively establish the existence of a contract with either Willie or Brita. Appellees did not assert a breach of contract claim against Willie and Brita in their original petition, and moved for summary judgment on the breach of contract claim only on the ground Sky Group materially breached its contracts with appellees. The trial court's judgment, however, awards appellees damages against Sky Group, Willie and Brita, jointly and severally, for breach of contract, conversion, statutory fraud, and violations of the

TTLA and the DTPA. The trial court's judgment, therefore, awards damages to appellees based on Willie's and Brita's breach of contract.

Summary judgments may be granted only on grounds expressly asserted in the summary judgment motion. TEX. R. CIV. P. 166a(c); *G&H Towing Co. v. Magee*, 347 S.W.3d 293, 297 (Tex. 2011) (per curiam). Appellees did not move for summary judgment on any claim for breach of contract against Willie and Brita, and produced no summary judgment evidence of a contract between any appellee and Willie or Brita. Accordingly, the trial court erred by granting summary judgment against Willie and Brita based on a breach of contract claim. *See G&H Towing Co.*, 347 S.W.3d at 297 ("Granting a summary judgment on a claim not addressed in the summary judgment motion therefore is, as a general rule, reversible error."). We resolve appellants' first issue in their favor, and reverse the trial court's judgment to the extent it awarded appellees summary judgment based on any claim for breach of contract against Willie or Brita.

Statutory Fraud

In their third issue, appellants assert the trial court erred by granting summary judgment on appellees' claims based on statutory fraud because appellees produced no summary judgment evidence (1) of a "transaction" under the statute; (2) appellants made a false statement or promise; or (3) appellants benefitted by not disclosing another's false statement or promise.

To establish a claim for statutory fraud, a plaintiff must prove: (1) a transaction involving real estate or stock in a corporation or joint stock company; (2) during the transaction, the other party made a false representation of material fact, made a false material promise with the intention of not fulfilling it, or benefitted by not disclosing that a third party's representation was false; (3) the false representation or promise was made for the purpose of inducing the plaintiff to enter into a contract; (4) the plaintiff relied on the false representation or promise by entering into the contract; and (5) the reliance caused the plaintiff injury. TEX. BUS. & COM. CODE ANN. § 27.01(a),

(d) (West 2015); *Ginn v. NCI Bldg. Sys., Inc.*, 472 S.W.3d 802, 823 (Tex. App.—Houston [1st Dist.] 2015, no pet.). "Section 27.01 applies to false [representations] or promises made to induce another to enter into a contract for the sale of real property or stock." *Tukua Invests., LLC v. Spenst*, 413 S.W.3d 786, 796 (Tex. App.—El Paso 2013, pet. denied) (citing *Marketic v. U.S. Bank Nat'l Ass'n*, 436 F.Supp.2d 842, 856 (N.D. Tex. 2006)). "Thus, a viable claim for statutory fraud must relate to 'a transaction involving real estate or stock in a corporation.'" *Ginn*, 472 S.W.3d at 823.

"A transaction occurs when there is a sale or a contract to sell real estate or stock between the parties." *Tukua Invests., LLC*, 413 S.W.3d at 796; *see also Burleson State Bank v. Plunkett*, 27 S.W.3d 605, 611 (Tex. App.—Waco 2000, pet. denied); *Nolan v. Bettis*, 577 S.W.2d 551, 556 (Tex. Civ. App.—Austin 1979, writ ref'd n.r.e.) (concluding that because there was neither a contract for the sale of land nor a sale of land, section 27.01 was inapplicable). The requirement there be a transaction involving real estate or stock has been strictly interpreted. *Ginn*, 472 S.W.3d at 823. Accordingly, "the contract must 'actually effect the conveyance' of real estate or stock between the parties, and it 'cannot merely be tangentially related or a means for facilitating a conveyance' of real estate or stock." *Id.*

The only contracts contained in the summary judgment evidence relate to property management services by Sky Group, and do not effect a conveyance of real estate or stock. Accordingly, appellees failed to conclusively establish there was a "transaction involving real estate or stock" as required by section 27.01, and the trial court erred by granting summary judgment in favor of appellees on their claim for statutory fraud. We resolve appellants' third issue in their favor, and reverse the trial court's grant of summary judgment on appellees' claim for statutory fraud.

TTLA and Conversion

In their fourth issue, appellants contend the trial court erred by granting summary judgment on appellees' claims for conversion and violation of the TTLA because appellees produced no summary judgment evidence establishing appellants intended to deprive appellees of property or wrongfully exercised dominion or control over appellees' property.

The TTLA permits a civil claim for damages against a party who commits theft. TEX. CIV. PRAC. & REM. CODE ANN. § 134.003(a) (West 2011). The statute defines "theft" as "unlawfully appropriating property or unlawfully obtaining services as described by Section 31.03, 31.04, 31.06, 31.07, 31.11, 31.12, 31.13, or 31.14, Penal Code." *Id.* § 134.002(2). Appellees did not specify in either their petition or their motion for summary judgment which section of the penal code they alleged appellants violated. However, each of the sections of the penal code referenced by the TTLA requires intent on the part of the defendant. *Odela Grp., LLC v. Double-R Walnut Mgmt., LLC*, No. 05-16-00206-CV, 2017 WL 1360209, at *8 (Tex. App.—Dallas Apr. 12, 2017, no pet.) (mem. op.). This intent must be established at the time of the appropriation of the property. *Id.*; *McCullough v. Scarbrough, Medlin & Assocs., Inc.*, 435 S.W.3d 871, 906 (Tex. App.—Dallas 2014, pet. denied) ("The relevant 'intent to deprive' [under the TTLA] is the person's intent at the time of the taking.").

As to appellees' conversion claim, conversion is the unauthorized and wrongful assumption and exercise of dominion and control over the personal property of another, to the exclusion of, or inconsistent with, the owner's rights. *Waisath v. Lack's Stores, Inc.*, 474 S.W.2d 444, 447 (Tex. 1971); *MSMTBR, Inc. v. Mid-Atlantic Fin. Co., Inc.*, No. 01-12-00501-CV, 2014 WL 3697736, at *9 (Tex. App.—Houston [1st Dist.] July 24, 2014, no pet.) (mem. op.). To establish a claim for conversion, the plaintiff must prove: (1) the plaintiff owned or had possession of the property or entitlement to possession; (2) the defendant unlawfully and without authorization

assumed and exercised control over the property to the exclusion of, or inconsistent with, the plaintiff's rights as an owner; (3) the plaintiff demanded return of the property; and (4) the defendant refused to return the property. *Tex. Integrated Conveyor Sys., Inc. v. Innovative Conveyor Concepts, Inc.*, 300 S.W.3d 348, 365–66 (Tex. App.—Dallas 2009, pet. denied).

When the initial possession of the property by the defendant was lawful, there must be an actual demand for the property and an actual refusal to deliver. *Ramon v. Dow*, No. 14-07-01024-CV, 2009 WL 508427, at *2 (Tex. App.—Houston [14th Dist.] Mar. 3, 2009, no pet.) (mem. op.); *see also Buffet Partners, L.P. v. Sheffield Square, L.L.C.*, 256 S.W.3d 920, 924 (Tex. App.—Dallas 2008, no pet.). The mere failure by the defendant to deliver the property after a demand is generally not sufficient to prove an affirmative refusal. *Ramon*, 2009 WL 508427, at *2; *see also Buffet Partners LP*, 256 S.W.3d at 924 (when party accused of converting property originally had lawful possession, conversion does not occur until return of property has been demanded and refused or party in possession has unequivocally exercised acts of dominion over property inconsistent with claim of owner or person entitled to possession). To be liable for conversion, a person must intend to assert some right in the property. *Robinson v. Nat'l Autotech, Inc.*, 117 S.W.3d 37, 40 (Tex. App.—Dallas 2003, pet. denied); *MSMTBR, Inc.*, 2014 WL 3697736, at *9.

"In both civil and criminal law, absent a direct admission, intent is usually inferred from circumstantial evidence." *Odela Grp., LLC*, 2017 WL 1360209, at *8. Intent is generally an issue of fact because it depends on the credibility of the witnesses and the weight to be given their testimony. *See Spoljaric v. Percival Tours, Inc.*, 708 S.W.2d 432, 434 (Tex. 1986); *Residences at Riverdale, LP v. Dixie Carpet Installations, Inc.*, No. 05-15-01030-CV, 2017 WL 2889276, at *5 (Tex. App.—Dallas July 7, 2017, no pet.) (mem. op.).

The summary judgment evidence established appellees contracted with Sky Group for property management services and, in the course of those services, Sky Group acquired possession

of funds, documents, and keys belonging to appellees. After appellees terminated the contracts, they demanded the return of the property, but the property was not returned. There is no summary judgment evidence, however, establishing appellants affirmatively refused to return the property, intended to exercise dominion over the property, or claimed an interest in the property. Accordingly, appellants failed to conclusively establish appellants converted appellees' property or violated the TTLA. We resolve appellants' fourth issue in their favor, and reverse the trial court's grant of summary judgment on appellees' claims for conversion and violation of the TTLA.

DTPA

In their sixth issue, appellants contend the trial court erred by granting summary judgment on appellees' claim for violation of the DTPA because the DTPA generally prohibits a party from suing a real estate broker or sales person for an act or omission committed by the person while acting as a real estate broker or sales person, and a breach of contract claim is not actionable as a DTPA claim.

Appellees alleged in their original petition that appellants violated the DTPA by representing (1) goods or services had sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they did not have or that a person had a sponsorship, approval, status, affiliation, or connection which the person did not (section 17.46(b)(5)); (2) goods were original or new when they were deteriorated, reconditioned, reclaimed, used, or secondhand (section 17.46(b)(6));[5] and (3) an agreement conferred or involved rights, remedies, or obligations which it did not have or involve or which are prohibited by law (section 17.46(b)(12)). *See* TEX. BUS. & COM. CODE ANN. § 17.46(b)(5), (6), (12) (West Supp. 2017).

[5] The allegation that appellants violated section 17.46(b)(6) of the DTPA appears to be a typographical error by appellees. Based on Massey's affidavit, appellees apparently intended to allege appellants violated section 17.46(b)(7), rather than section 17.46(b)(6). Based on our disposition of appellants' sixth issue, we need not address this typographical error or its impact on appellees' motion for summary judgment.

Without specifying any particular section of the DTPA or deceptive act, appellees moved for summary judgment on the ground that appellants violated the DTPA. The only "representations" referenced in appellees' motion for summary judgment were that appellants "would each faithfully conduct their business obligations under their contracts, and act in a professional and lawful manner." As summary judgment evidence, appellees relied on Massey's affidavit, which set out representations made by Willie concerning appellants' experience and knowledge, and Massey's belief Willie made representations that (1) appellants' services had characteristics, uses, or benefits which they did not have; or (2) were of a particular standard, quality, or grade, and the agreement between the parties conferred or involved rights, or remedies and obligations, which it did not have or involve. Massey stated these representations induced appellees to enter into the contracts with Sky Group.

"An allegation of a mere breach of contract, without more, does not constitute a 'false, misleading or deceptive act' in violation of the DTPA." *Crawford v. Ace Sign, Inc.*, 917 S.W.2d 12, 14 (Tex. 1996) (per curiam) (quoting *Ashford Dev., Inc. v. USLife Real Estate Servs. Corp.*, 661 S.W.2d 933, 935 (Tex. 1983)); *ADT Sec. Servs., Inc. v. Van Peterson Fine Jewelers*, No. 05-15-01224-CV, 2016 WL 5945002, at *3 (Tex. App.—Dallas Oct. 13, 2016, no pet.) (mem. op.). To determine whether a DTPA claim is actually a claim for breach of contract, a court considers "both the source of the defendant's duty to act (whether it arose solely out of the contract or from some common-law duty) and the nature of the remedy sought by the plaintiff." *Crawford*, 917 S.W.2d at 13. If a claim is "really that the service [the plaintiff] was promised and paid for was not the service he received," then it can "only be characterized as a breach of contract claim." *ADT Sec. Servs., Inc.*, 2016 WL 5945002, at *3.

Appellees offered no summary judgment evidence that Willie's statements about appellants' qualifications were false or deceptive. Further, the summary judgment evidence

established appellees' complaints are premised on Sky Group's failure to comply with its contractual duties to appellees, and that the damages appellees seek to recover are based on Sky Group's breach of its duties under the contracts. We conclude appellees failed to conclusively establish any conduct by appellants violated the DTPA. Accordingly, the trial court erred by granting summary judgment for appellees on their DTPA claim. We resolve appellants' sixth issue in their favor, and reverse the trial court's grant of summary judgment on appellees' claim for violation of the DTPA.[6]

Attorney's Fees for Breach of Contract

In their eighth issue, appellants contend the trial court erred by awarding appellees attorney's fees based on section 38.001 of the civil practice and remedies code because Sky Group is a limited liability company

Appellees moved for summary judgment on their request for attorney's fees based on section 38.001 of the civil practice and remedies code, section 27.01(c) of the business and commerce code, section 134.005(b) of the TTLA, and section 17.50(d) of the DTPA. The trial court awarded appellees' attorney's fees without specifying its basis for the award. Because we have concluded the trial court erred by granting summary judgment in favor of appellees on their claims for statutory fraud, and violations of the TTLA and the DTPA, the award of attorney's fees may not be sustained based on these claims. We have further concluded the trial court erred by awarding summary judgment in favor of appellees on any claim for breach of contract against Willie and Brita. Therefore, the only remaining basis on which the trial court's award of attorney's fees could be sustained is on appellees' claim Sky Group breached it contracts with appellees.

[6] Because we have concluded the trial court erred by granting summary judgment in favor of appellees on their DTPA claim, we need not consider appellants' seventh issue, in which they assert that appellees failed to establish a knowing violation of the DTPA to support the trial court's award of additional damages. *See* TEX. R. APP. P. 47.1. Further, because we have concluded the trial court erred by granting summary judgment in favor of appellees on their claims for conversion and violations of the TTLA and the DTPA, we need not consider appellants' argument in their fifth issue that these claims are barred by the economic loss doctrine. *Id.*

"The availability of attorney's fees under a particular statute is a question of law for the court." *Mor-Pak Specialties, Inc. v. Andra Grp., LP*, No. 05-16-00864-CV, 2017 WL 3405185, at *2 (Tex. App.—Dallas Aug. 9, 2017, no pet.) (mem. op.) (quoting *Brinson Benefits, Inc. v. Hooper*, 501 S.W.3d 637, 641 (Tex. App.—Dallas 2016, no pet.)). Section 38.001 of the civil practice and remedies code provides that a party may recover reasonable attorney's fees from an individual or corporation if the claim is based on the breach of a written contract. TEX. CIV. PRAC. & REM. CODE ANN. § 38.001(8) (West 2015). "Under the plain language of section 38.001, a trial court cannot order limited liability partnerships (L.L.P.), limited liability companies (L.L.C.), or limited partnerships (L.P.) to pay attorney's fees." *Varel Int'l Indus., L.P. v. PetroDrillbits Int'l, Inc.*, No. 05-14-01556-CV, 2016 WL 4535779, at *7 (Tex. App.—Dallas Aug. 30, 2016, pet. denied) (mem. op.); *see also CBIF Ltd. P'ship v. TGI Friday's Inc.*, No. 05-15-00157-CV, 2017 WL 1455407, at *25 (Tex. App.—Dallas Apr. 21, 2017, pet. filed) (mem. op.).

In their original petition, appellees identified Sky Group as a limited liability company, and, in his affidavit, Massey identified Sky Group as an "LLC." Accordingly, appellants failed to conclusively establish they were entitled to recover attorney's fees from Sky Group under section 38.001 of the civil practice and remedies code. We resolve appellants' eighth issue in their favor, and reverse the trial court's summary judgment awarding attorney's fees to appellees under section 38.001 of the civil practice and remedies code.

Conclusion

We affirm the trial court's grant of summary judgment awarding VS1 actual damages in the amount of $7,375 on its claim breach of contract against Sky Group, VS2 actual damages in the amount of $5,329 on its claim for breach of contract against Sky Group, and VS3 actual damages in the amount of $5,397 on its claim for breach of contract against Sky Group. We reverse the trial court's summary judgment on appellees' claims against Willie and Brita Haynes

for breach of contract; on appellees' claims against appellants for conversion, statutory fraud, and violations of the DTPA and the TTLA; and on appellants' request for attorney's fees, and remand those claims to the trial court for further proceedings.

/Robert M. Fillmore/
ROBERT M. FILLMORE
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

SKY GROUP, LLC, WILLIE JAMES HAYNES, II, AND BRITA MICHELLE HAYNES, Appellants

No. 05-17-00161-CV V.

VEGA STREET 1, LLC, VEGA STREET 2, LLC, AND VEGA STREET 3, LLC, Appellees

On Appeal from the 298th Judicial District Court, Dallas County, Texas,
Trial Court Cause No. DC-15-06391.
Opinion delivered by Justice Fillmore, Justices Lang-Miers and Stoddart participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED** in part and **REVERSED** in part. We **AFFIRM** that portion of the trial court's judgment finding Sky Group, LLC liable for breach of contract to Vega Street1, LLC; Vega Street 2, LLC; and Vega Street 3, LLC, and awarding damages in the amount of $7,375.00 to Vega Street 1, LLC; $5,329.00 to Vega Street 2, LLC; and $5,397.00 to Vega Street 3, LLC. In all other respects, the trial court's judgment is **REVERSED**. We **REMAND** this cause to the trial court for further proceedings consistent with this opinion.

It is **ORDERED** that each party bear its own costs of this appeal.

Judgment entered this 5th day of March, 2018.