Reverse and Render in part; Affirm in part and Opinion Filed May 4, 2018

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-14-01312-CV

CHAN IL PAK, Appellant
V.
AD VILLARAI, LLC, THE ASHLEY NICOLE WILLIAMS TRUST, VILLAS ON RAIFORD, LLC, AND VILLAS ON RAIFORD CARROLLTON SENIOR HOUSING, LLC, Appellees

On Appeal from the 101st Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-13-06030

MEMORANDUM OPINION ON REMAND

Before Justices Francis, Evans, and Stoddart
Opinion by Justice Francis

Chan Il Pak was the majority member and co-manager of the ownership and management entities, respectively, of a low-income senior housing project until his removal for various acts of misconduct. Following a bench trial, the trial court affirmed Pak's removal as co-manager, enjoined Pak from engaging in management activities, found he breached his fiduciary duties and both company agreements, and awarded damages and attorney's fees. The trial court, however, found that Pak's removal as owner of the ownership entity was improper. Both sides appealed.

On original submission, this Court reversed the case on procedural grounds without addressing the merits of the case. The Texas Supreme Court, however, reversed our decision and remanded with instructions to abate the appeal and request the former trial judge to file findings

of fact and conclusions of law. *AD Villarai, LLC v. Pak*, 519 S.W.3d 132, 134 (Tex. 2017) (per curiam). We have received the former judge's findings of fact, and both sides have filed amended briefs.

Pak, representing himself pro se, generally challenges his removal as co-manager of the management entity, the breadth of the injunction, and the award of damages and attorney's fees. In a cross-appeal, appellees AD Villarai, LLC, the Ashley Nicole Williams Trust, Villas on Raiford Carrollton Senior Housing, LLC, and Villas on Raiford, LLC challenge the trial court's finding that Pak's removal as a member/owner of the ownership entity was improper.

For the reasons outlined below, we overrule Pak's issues and sustain appellees' issue. We reverse the trial court's judgment in part and render judgment that Pak was properly removed as a member of Villas on Raiford Carrollton Senior Housing (Villas CSH). We affirm in all other respects.

The Villas on Raiford is a government-sponsored housing project in Carrollton, Texas. The project was developed using Texas grant money and financing guaranteed by the federal government through HUD. The Villas is owned by Villas CSH and is managed by Villas on Raiford, LLC (Villas-Manager). Pak is the majority member of both Villas entities and, with AD Villarai, is a co-manager of Villas-Manager. Terri Anderson controlled AD Villarai.

Briefly, in 2010, Villas CSH hired RES ISD d/b/a Integrated Construction and Development as the general contractor of the project. The project was required to be completed at the end of 2011, but problems arose. HUD inspectors cited the project for thirty-five deficiencies and failures to complete work by the required date. Although the deficiencies were supposed to be corrected within thirty days, Pak refused to allow the deficiencies to be corrected and either delayed or blocked efforts to obtain engineering plans and bids for the needed repairs. Integrated did not complete the project, leaving behind about $1 million in required repairs and uncompleted

work, and sued Villas CSH for full payment plus additional amounts for extra work. Pak refused to authorize Villas CSH to file any counterclaims against Integrated for the deficient work or permit it to retain experts to assist in the Integrated lawsuit. Instead, Pak secretly negotiated with Integrated's owner to sell his interest, disclosed confidential information regarding the lawsuit, and failed to inform other members about Integrated's offer to pay $500,000 in repair costs to settle. In addition, Anderson (of AD Villarai, the co-manager) discovered Pak had forged members' signatures on corporate documents to secure the final tax credit program financing and moved members' ownership interests around, decreasing them or increasing them, depending on the situation. Pak also tried to take steps to create space for a private Korean Cultural Center on the property. He asked the management company to prefer the interests of Korean American applicants, including leasing to those younger than the required minimum age for a HUD senior housing project, even though making such preferences would have violated federal law and exposed Villas CSH to penalties and damages.

Appellees attacked on two fronts. They sued Pak for breach of contract and sought declaratory and injunctive relief. And, on September 22, 2013, Villas-Manager removed Pak as co-manager and member by member consent. Three months later, Villas CSH expelled him as a member/owner, also by member consent. After a bench trial, the trial court issued an order of permanent injunction. The trial court confirmed Pak's removal as co-manager and enjoined him from participating or interfering with the management of Villas CSH. The court reserved issues regarding Pak's expulsion as a member of Villas CSH, damages, and attorney's fees for further consideration once the HUD loan on the property closed.

Within five weeks of no interference by Pak, AD Villarai was able to settle the lawsuit with Integrated, make repairs, and close on the HUD loan in May 2014. After that, the trial court reopened the case and realigned Villas-Manager as a nominal plaintiff against Pak. Villas CSH

filed an original and supplemental petition, asserting claims for breach of fiduciary duty and breach of contract against Pak.

A second trial was held on the remaining issues. The trial court found (1) Pak breached his fiduciary duties to Villas CSH and Villas-Manager; (2) Pak materially breached the Villas CSH and Villas-Manager company agreement; and (3) Pak's prior material breaches of the Villas CSH agreement excused any obligation of AD Villarai and ANW Trust to respond to any buy-sell offers tendered by Pak.

In its modified final judgment, the court declared Pak "has been and continues to be" removed as manager of Villas-Manager and enjoined him from (1) participating or interfering with the management of either Villas entity, (2) contacting the property manager regarding the housing project, (3) participating or interfering with the leasing of the units, and (4) attempting to sell the real property or assets owned by Villas CSH. Additionally, Pak was enjoined from any attempt to expel or remove AD Villarai as manager or member of Villas-Manager and ANW Trust as a member of Villas CSH.

The trial court, however, found the December 31, 2013 Villas CSH Member Consent expelling Pak as a member did not comply with the terms of the company agreement and was not enforceable. But, the court also determined that should the December 31, 2013 Member Consent later be held to be enforceable, the value of Pak's membership interest as of the date of expulsion was zero.

The trial court awarded damages to Villas CSH in the amount of $480,313.59, offset by the balance of Pak's Member Loan Account, leaving a balance of $164,070.95. Pak was also ordered to pay AD Villarai $275,000 for attorney's fees through trial as well as conditional appellate attorney's fees. Both Pak and appellees appealed the trial court's judgment.

Before turning to the merits of this appeal, we first address the briefing in this case. After the case was remanded, this Court abated the proceedings so that the former trial judge could make findings of fact and conclusions of law. Once we received those findings and conclusions, we reinstated the case and set a schedule to allow the parties to rebrief, if they so chose. Both sides elected to file amended briefs. Pak's amended brief was due on September 21, 2017 and, after three extensions, was ultimately filed on December 1, 2017.

In his brief, citations to the record are sparse. Although there were two multi-day trials in this case, Pak does not cite to any testimony from those proceedings, either in his statement of facts or within the body of his arguments. Rather, when he does provide record citations, he generally relies on the company agreements to support his arguments. In addition, some of his issues fail to provide any legal authority or analysis.

In their responsive brief, appellees complain about the sufficiency of Pak's briefing. Specifically, they complain he fails to (1) provide citations to the appellate record, (2) provide any meaningful citations to legal authority other than standard boilerplate language regarding the standards of review and contract construction, and (3) fails to provide any discussion of testimony that was weighed by the trial court in making its decision. At his request, we gave Pak additional time to file a reply brief. Although he acknowledges appellees' complaint of his "lack of proper briefing," he made no attempt to correct any inadequacies and, as before, makes factual assertions without any citation to the trial testimony.

We must construe the rules of appellate procedure reasonably, yet liberally, so that the right of appeal is not lost by imposing requirements not absolutely necessary to effect the purpose of the rule. *Morton v. Nguyen*, 412 S.W.3d 506, 509 (Tex. 2013). This includes how those rules apply to the pleadings and briefs of a pro se litigant. *In re N.E.B.*, 251 S.W.3d 211, 211–12 (Tex. App.—Dallas 2008, no pet.). At the same time, however, we hold pro se litigants to the same

standards as licensed attorneys and require them to comply with applicable laws and rules of procedure. To do otherwise would give a pro se litigant an unfair advantage over a litigant represented by counsel. *Id*.

Rule 38 requires a party to provide us with such discussion of the facts and authorities relied upon as may be necessary to present the issue. *Isaac v. Villas del Zocalo 3*, No. 05-16-01338-CV, 2018 WL 360166, at *1 (Tex. App.—Dallas Jan. 11, 2018, no pet.) (mem. op.) Bare assertions of error, without argument or authority, waive error. *Fredonia State Bank v. Gen. Am. Life Ins. Co.*, 881 S.W.2d 279, 284 (Tex. 1994) (explaining appellate court has discretion to waive point of error due to inadequate briefing). We have no right or obligation to search through the record to find facts or research relevant law that might support an appellant's position because doing so would "improperly transform this Court from neutral adjudicators to advocates." *Lau v. Reeder*, No. 05-14-01459-CV, 2016 WL 4371813, at *2 (Tex. App.—Dallas Aug. 16, 2016, pet. denied) (mem. op.). With these principles in mind, we turn to the issues in this appeal and, construing the rules reasonably yet liberally, address the merits of those issues that comply with this framework.

PAK'S APPEAL

In his first issue, Pak challenges his removal as co-manager of Villas-Manager. He argues that under the plain wording of the company agreement, he could not be removed as co-manager without his vote as a member of Villas-Manager. Pak argues that because he did not vote as a member to remove himself as manager, he has not been properly removed.

With respect to Pak's removal, the trial court made the following fact finding:

> 12. On September 22, 2013, the remaining members of Villas-Manager, none of whom is a party here, expelled Mr. Pak as a member of Villas-Manager and as co-manager of Villas-Manager [exhibit citation omitted]. The written consent was provided to Mr. Pak with no objection stated and is not a subject matter of this cause.

The trial court made the following conclusion of law:

> 10. In accordance with Section 5.11 of the Villas-Manager Company Agreement and Texas BOC 101.359(2)(A) the September 22, 2013 Villas-Manager Consent removing Chan Pak as a co-manager . . . has the effect of a unanimous written consent.

Section 3.5 of the Villas Manager Company Agreement states that at a meeting called expressly for such purpose, a manager may be removed at any time, with or without cause, by the vote of a majority of the members.[1] The agreement defines "majority" as "with respect to any referenced group of Members, a combination of such Members constituting more than fifty percent (50%) of the number of Members of such referenced group who are then Members[.]" At the time, Villas-Manager had four members: Pak, Huelon A. Harrison, Jang Wook Lee, and Hyo Nam Han.

Rather than act at a meeting, the members utilized section 5.11 and removed Pak by written consent on September 22, 2013. The consent set out in detail the various misdeeds of Pak, including forging member names to company documents. According to the consent, the "members entitled to vote" consented to action without a meeting to prevent further harm and "immediately and simultaneously" voted to remove Pak as manager and member of Villas-Manager and appointed AD Villarai as sole manager of the company. The consent presumed Pak was not a "member entitled to vote." It was signed by members Han and Lee; it was not signed by either Pak or Harrison. Both Pak and Harrison were notified of the vote by written consent, but neither objected.

Although only two members signed the written consent, appellees argue that because the action was taken by consent under section 5.11 of the company agreement, Pak and Harrison's failures to object allowed the action to become final under section 101.359 of the Texas Business Organizations Code. In response, Pak argues section 101.359 applies only in situations not

[1] Section 3.5 was subsequently amended to prohibit the members from removing AD Villarai as manager as long as it was owned, controlled, and operated by Anderson. This amendment does not impact our analysis.

provided for in the governing documents, and the company agreement here provides for actions without a meeting. We begin with section 5.11 of the company agreement.

Section 5.11 governs actions without a meeting. It provides: "Any action required by the BOC [Business Organizations Code] to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting, without prior notice, and without a vote if a written consent or consents in writing, setting forth the action so taken, shall have been signed by the Members entitled to vote with respect to the action which is the subject matter of the consent, and such consent shall have the same force and effect as a unanimous vote of the Members." Additionally, section 5.11 requires that every written consent shall be signed, dated, and delivered in "the manner required by, and shall become effective at the time and remain effective for the period specified by, the BOC." Finally, "prompt notice" of any action taken by members without a meeting by less than unanimous consent shall be given to those members who did not consent in writing to the action.

Thus, section 5.11 contemplates circumstances in which members would take action without a meeting and without unanimous written consent. When members act by less than unanimous consent, as they did here, the agreement states only that "prompt notice" will be given to those who did not consent. The agreement is silent on the legal effect of giving such notice, but the business organizations code relevant to limited liability companies provides for a default effect for the failure to object to such action. *See* TEX. BUS. ORGS. CODE ANN. § 101.359 (West 2012).

Except in circumstances not applicable here, to the extent a company agreement of a limited liability company does not provide otherwise, the relevant statutes govern the affairs of such a company. *See* TEX. BUS. ORGS. CODE ANN. § 101.052(b) (West Supp. 2017). Section 101.359, entitled "Effective Action by Members or Managers With or Without Meeting," provides:

> Members or managers of a limited liability company may take action at a meeting of the members or managers or without a meeting in any manner permitted

> by this title, Title 1, or the governing documents of the company. Unless otherwise provided by the governing documents, an action is effective if it is taken:
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> ***
>
> (2) with the consent of each member of the limited liability company, which may be established by:
>
> (A) the member's failure to object to the action in a timely manner, if the member has full knowledge of the action[.]

TEX. BUS. ORGS. CODE ANN. § 101.359(2)(A) (West 2012).

Thus, under the statute, consent can be established by a member's failure to object if he has full knowledge of the action taken. Nothing in the company agreement provides that consent cannot be established in a manner provided by this statute nor does the plain wording of the agreement conflict with applying the statute to the member actions without a meeting here. Applying this statute to the circumstances before us, once a member is given notice of an action taken with "less than unanimous consent" under section 5.11 of the company agreement, he may object in accordance with the statute. But, if he does not object, he is deemed to have consented to the action and the action becomes the effective action of the company.

The evidence showed written notice was given three days after the action removing Pak as member and co-manager. The notice was given to both Pak and Harrison. Both had full knowledge, yet the testimony at trial showed neither objected. In his reply brief, Pak complains the consent was taken while the two sides were in litigation against each other, so there "was no way the Trial Court should have reasoned Chan Pak would have consented from being removed" from Villas-Manager by appellees. Pak does not provide any legal authority to support his position, nor can we agree that (1) the statute does not apply if the parties are in litigation or (2) the trial court was required to guess at Pak's reasons for failing to object. Nothing on the face of the statute requires either. Under section 101.359(b) of the business organizations code, Pak and Harrison's consent to Pak's removal as co-manager was established by their failure to object. We

therefore conclude Pak was properly removed as co-manager of Villas Manager in September 2013. We overrule the first issue.

In his fifth issue, Pak asserts there are "inconsistencies" between the modified final judgment and the findings of fact, which preclude giving effect to the consent. Pak interprets finding of fact 12, which is quoted above, as stating that his removal "is not a subject matter of this cause." From there, he contends the trial court should not have made a conclusion of law concerning his removal. Pak also argues the March 7, 2014 permanent injunction order did not use the September 22, 2013 action as the basis for removing him as co-manager. In his reply brief, he argues that if the corporate action had been the basis for the trial court's decision, there would have been no need for a permanent injunction. Pak offers no analysis or authority for his contentions; consequently, we conclude this issue is inadequately briefed and is waived. *Ross v. St. Luke's Episcopal Hosp.*, 462 S.W.3d 496, 500 (Tex. 2015) ("Failure to provide citations or argument and analysis to an appellate issue may waive it.").

Regardless, with respect to his first argument, we read the finding to state that Pak's failure to object to the written consent "is not a subject matter of this cause," which does not conflict with the trial court's conclusion that the Villas-Manager Consent removing Pak as co-manager had "the effect of a unanimous written consent." *See Grossnickle v. Grossnickle*, 935 S.W.2d 830, 841 (Tex. App.—Texarkana 1996, writ denied) (when party complains of conflicts between findings of fact and conclusions of law and two possible interpretations exist, court should choose interpretation that will harmonize judgment with findings and conclusions upon which it is based). As for his second argument, nothing on the face of the March 7, 2014 permanent injunction order or the November 24, 2014 modified final judgment conflicts with any of the findings of fact or conclusions of law made by the trial court. We overrule the fifth issue.

In his second issue, Pak suggests the injunction is "over restrictive" and is not needed because the "dangers" that existed at the time it was imposed, no longer exist. Pak states that he "understands" there were grounds to remove him as a participating member/manager "dealing with the construction lawsuit and closing," but those issues have been resolved. He contends that even if he needed to be removed from management, the injunction "could have blocked [him] from management decisions without removing [him] from as co-manager and member of Villas-Manager."

We review the grant of a permanent injunction for abuse of discretion. *Lagos v. Plano Econ. Dev. Bd.*, 378 S.W.3d 647, 650 (Tex. App.—Dallas 2012, no pet.). The permanent injunction enjoins Pak from participating or interfering with the management of either Villas entity; contacting the property manager regarding the housing project, participating or interfering with the leasing of the units, or attempting to sell the real property or assets owned by Villas CSH.

Although the breadth of a permanent injunction is generally a fact-intensive inquiry, Pak has failed to cite us to any of the trial testimony upon which the trial court's decision was based. Moreover, we have rejected Pak's argument that he was improperly removed as co-manager, and each of the actions from which he is enjoined are management actions. For both of these reasons, we conclude he has not shown reversible error. To the extent he requests this Court to determine whether the injunction should stay in place should a third party purchase his member interests, we have no jurisdiction to render an advisory opinion on a matter that is not ripe. *See Public Util. Comm'n v. Houston Lighting & Power Co.*, 748 S.W.2d 439, 442 (Tex. 1987). We overrule the second issue.

In his third issue, Pak argues that if Villas CSH is "allowed to collect on damages," he "disputes the damage amount." Again, Pak has cited no legal authority. Nevertheless, we will treat this issue as a complaint about excessive damages.

The standard of review for an excessive damages complaint is factual sufficiency of the evidence. *Maritime Overseas Corp. v. Ellis*, 971 S.W.2d 402, 406 (Tex. 1998). We employ the same test for determining excessive damages as for any factual sufficiency complaint. *Id*. We consider and weigh all of the evidence, not just that evidence which supports the verdict, and can set aside the verdict only if it is so contrary to the overwhelming weight of the evidence that it is clearly wrong and unjust. *Id*. We are not a fact finder. *Id*. If we conclude the evidence supports the verdict, we are not required to detail all the evidence supporting the judgment when we affirm the judgment for actual damages. *Id*. at 407.

The trial court made a finding that Villas CSH incurred excess costs of $512,524 but ultimately awarded reduced damages of $480,313.49 to Villas CSH. The trial court found these excess costs were incurred while "Pak acted as its manager, engaged in self-dealing with Integrated, and refused to allow Villas CSH to complete the Project or pursue its claims against Integrated." Those costs included loan extension fees paid to the lender, attorney's fees paid to Villas CSH's attorney in the Integrated lawsuit between September 2012 when Pak "adopted Integrated's position" until March 2014 when the permanent injunction issued, attorney's fees paid to indemnify the lender and the individual Villas officer sued in the construction loan case, and additional attorney's fees required to close into final endorsement.

The amount awarded by the trial court is supported by the testimony of Anderson and corresponding exhibits. Anderson testified about each of the costs above that were associated with Pak's misconduct. These costs, she said, would have been avoided if Pak "had stood with the company" and AD Villarai to demand Integrated complete its work or provide a fair settlement "as indicated by how quickly" that issue was resolved once Pak was no longer involved. During Anderson's testimony, various exhibits were offered to prove the amount of damages. Pak generally argues he should be responsible for only a portion of the damages resulting from his

conduct over a more limited period of time than that found by the trial court, but he does not cite us to any evidence to support his position. With respect to Pak's complaint that the amount of damages awarded is less than that in the findings of fact, he does not explain how he is harmed by being ordered to pay a lesser amount than that contained in the findings. We conclude the evidence is factually sufficiency to support the amount of damages awarded.

Pak also complains about the award of $275,000 to AD Villarai for attorney's fees incurred in this suit. Without any citation to the record or legal authority, Pak asserts in one paragraph that (1) the company agreement should be "factored into" the amount awarded since the agreement was the "major cause" of the lawsuit and (2) AD Villarai may have been reimbursed by another party. Because he has not supported his argument with citations to the evidence or legal authority, we conclude it is waived. Regardless, we note AD Villarai presented evidence that it incurred attorney's fees in the amount of $310,000, and the trial court awarded a reduced amount. We overrule the third issue.

Pak's fourth issue is dependent on our determining that the damages were incorrectly calculated. Having concluded otherwise, we overrule the fourth issue.

Finally, in addition to issues presented for review listed in the beginning of his brief, Pak has two sections on fraud and self-dealing. In these sections, he asserts that any fraud or self-dealing on his part should not affect the contractual rights between him and other members. This argument appears to address an alternative argument made by appellees regarding his removal as co-manager. Having concluded Pak was properly removed under the company agreement, we need not address this issue. *See* TEX. R. APP. P. 47.4. To the extent Pak is challenging the sufficiency of the evidence to support the breach of fiduciary duty and breach of contract findings based on his fraud and self-dealing, he has not provided us any record citations to support any of

his factual assertions nor has he provided any legal authority. Consequently, this issue is waived. *See Ross*, 462 S.W.3d at 500.

Even if we assumed the factual statements have support in the record, Pak has not shown reversible error. When conducting a review of the legal and factual sufficiency of the evidence, we are mindful that fact finder is the sole judge of the credibility of the witnesses and the weight to be given their testimony. *City of Keller v. Wilson*, 168 S.W.3d 802, 819 (Tex. 2005); *Lutterodt v. Emily Lane Owners Ass'n,* No. 05-14-01329-CV, 2016 WL 3381919, at *2 (Tex. App.—Dallas June 16, 2016, pet. denied) (mem. op.). The fact finder is free to believe some, all, or none of a witness's testimony. *Lutterodt*, 2016 WL 3381919, at *2. We may not substitute our judgment for that of the fact finder's. *Id.*

Here, over the course of this lawsuit, the trial court conducted two trials on the issues in this matter in addition to holding a hearing on a temporary injunction. As the fact finder, the court determined the credibility of the witnesses and was entitled to disbelieve Pak and to believe the evidence presented by appellees. After hearing the evidence, the trial court made numerous evidentiary findings, including that (1) Pak made false representations to one of the original investors, Jang Wook Lee, which caused Lee to assign his 10% ownership interest in Villas-Manager to Pak; (2) Pak misrepresented the contents of a document to another member, Hyo Nam Han, who could not read English and was a longtime family friend of Pak, telling her she needed to sign it in connection with the tax credit financing of the project when it was actually was an assignment of her 10% interest to Pak; (3) Pak later needed the revocations of the Han and Lee assignments to close the existing government tax credit application; (4) when Lee refused to sign project documents, Pak forged Lee's signature to a revocation of the Lee assignment; (5) Pak obtained Han's signature by misrepresenting the contents of the document revoking her prior assignment of interest to him; (6) Pak falsified the signatures of Han and Lee on an amended

company agreement in July 2010; (7) Pak submitted the company documents with forged signatures to the TDHCA to secure the final tax credit program financing for the project; (8) during the construction of the project, Pak refused to allow HUD-cited deficiencies to be corrected and blocked efforts to obtain engineering plans and bids for the needed repairs, insisting Villas CSH accept a settlement proposal on terms made by the defaulting contractor, Integrated; (9) although Integrated had sued Villas CSH seeking full payment and additional amounts, Pak refused to allow Villas CSH to file any counterclaims against Integrated for deficient work; (10) Pak negotiated with the owner of Integrated, Rick Simmons, to sell his member interest in Villas CSH and later falsely testified at the temporary injunction hearing that no such sales negotiations had taken place; (11) Pak disclosed confidential financial information of Villas CSH to Integrated during the Integrated lawsuit; and (12) Pak did not disclose his conflict of interest and personal dealings with Integrated and did not recuse himself from participating in the settlement negotiations and litigation with Integrated.

Pak does not argue that the evidence is insufficient to support any of these findings; in fact, he admits that he did "fraudulently sign for" Lee and said he "is not proud of the decision he made." As for the self-dealing in the Integrated lawsuit, he asserts he wanted to "settle the dispute," and because the company agreement did not provide for a resolution, he "tried to find a way to resolve the problems" by having a discussion with Integrated. He acknowledges he "should not have had these discussions until Integrated removed the lawsuit."

While Pak may hold regrets for the conduct he engaged in and believe he had justifiable reasons, those regrets and excuses do not negate the evidence before the trial court regarding that conduct. There was ample evidence presented at trial of Pak's actions and inactions that resulted in breaches of his fiduciary duties and his contractual obligations; consequently, the evidence is legally and factually sufficient to support the trial court's findings on the same. We have reviewed

all of the issues raised in Pak's appeal and conclude none of the issues has merit. We now turn to appellees' cross-appeal.

CROSS-APPEAL

In their cross-appeal, appellees contend no evidence supports the fact finding that Pak's removal as owner/member of Villas CSH failed to comply with the terms of the company agreement.

When a party challenges the legal sufficiency of the evidence supporting an adverse finding on an issue on which it had the burden of proof, it must show the evidence establishes all vital facts as a matter of law. *PopCap Games, Inc. v. MumboJumbo, LLC*, 350 S.W.3d 699, 710 (Tex. App.—Dallas 2011, pet. denied). In this instance, we credit evidence favorable to the finding if a reasonable fact finder could and disregard contrary evidence unless reasonable jurors could not. *City of Keller*, 168 S.W.3d at 827. If there is no evidence to support the finding, we review the entire record to determine if the contrary proposition is established as a matter of law. *PopCap Games*, 350 S.W.3d at 710. We sustain the issue only if the contrary proposition is conclusively established—that is, if appellees conclusively established that they took the appropriate action under the terms of the Villas CSH company agreement to expel Pak as member.

Contract terms are given their plain, ordinary, and generally accepted meanings, and contracts are to be construed as a whole in an effort to harmonize and give effect to all provisions of the contract. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 662 (Tex. 2005). Our primary concern when interpreting a contract is to ascertain and give effect to the intent of the parties as expressed in the contract. *Seagull Energy E & P, Inc. v. Eland Energy, Inc.*, 207 S.W.3d 342, 346 (Tex. 2006).

The trial court made the following findings on this issue:

> 62. On December 15, 2013 Chan Pak was provided a 10 day notice to cure defaults under the Villas CSH Agreement.

> 63. On December 31, 2013, AD Villarai, as the then remaining manager of Villas-Manager and AD Villarai, The Ashley Trust and Villas-Manager as the non-defaulting members sent notices expelling Mr. Pak from membership in Villas CSH.
>
> 64. The expulsion of Mr. Pak as a member of Villas CSH was not effective however because the Villas CSH Agreement requires the Manager, which was co-managed by Chan Pak, to take the action expelling Mr. Pak as a member and Mr. Pak has not consented to his expulsion.

The trial court also made the following conclusion of law:

> 12. Plaintiff have not however taken appropriate action to remove Chan Pak as a member under the terms of the Villas CSH Agreement.

The undisputed evidence at trial showed that on December 15, 2013, Pak was given notice by letter that he was in breach of the Villas CSH company agreement by certain specified actions. The notice gave Pak ten days to cure the violations and warned that if he could not cure the violations in that time, the remaining members could expel him as a member in the company.

On December 31, AD Villarai, as the remaining manager of Villas-Manager and Villas-Manager, AD Villarai, and the ANW Trust as the remaining members of Villas CSH signed a written consent expelling Pak as a member of the company under section 8.6(e) of the company agreement. On the same day, the company sent a second notice to Pak. This notice referenced the first notice, stated Pak's response failed to cure all stated violations, and informed Pak that the remaining members voted unanimously to expel him as a member by written consent. The letter also acknowledged that under the terms of the agreement, Pak was entitled to the fair market value of his interest based on "agreed value" or "appraised value." The letter further stated that under either value, the company had a negative value, meaning the remaining members owed him "nothing."

Section 8.6(e) of the Villas CSH company agreement provides:

> If a Member willfully violated any term of provision of this Agreement and fails or cannot cure such violation within ten (10) business days after having been given notice of the violation by the Company, then the Managers shall have the right, but

> not the obligation, to expel such Member as a Member of Company, provided, however, that the remaining Members unanimously vote to expel such Member.

Thus, under the plain language of this provision, it took both the vote of the "Managers" and the unanimous vote of the remaining members to expel Pak as member. From this, Pak argues the trial court's conclusion that he was not properly expelled as member is correct because it required his vote as co-manager, which he did not give. We cannot agree.

The manager of Villas CSH is the corporate entity, Villas-Manager. Until September 22, 2013, Villas-Manager was co-managed by Pak and AD Villarai and required both of their votes to act on most business. But, on that date, as the trial court concluded and we agreed, Pak was removed as a co-manager by what was effectively unanimous written consent, and AD Villarai was named sole manager. Thus, on December 31, 2013, when the vote to expel Pak as a member occurred, Pak did not have a vote as co-manager. Thus, the trial court's conclusion of law that Pak had to consent to his expulsion as a Villas CSH member is incorrect as a matter of law.

Once AD Villarai as sole manager of Villas-Manager voted to expel Pak, the agreement required the "remaining" members to vote unanimously to expel him. It is clear that in this context the "remaining" members were those members other than Pak. The written consent showed the members other than Pak were Villas-Manager, AD Villarai, the ANW Trust. Further, the consent was signed by each of those members as well as Villa-Manager as the corporate manager. We conclude the evidence conclusively shows that Pak, after having been properly removed as co-manager of the corporate management entity months before, was properly removed as member of Villas CSH by written unanimous consent on December 31, 2013. Pak raises no issues with respect to the trial court's findings on the value of company at the time of his expulsion; accordingly, we do not address that issue. We sustain appellees' issue.

We reverse the portion of the trial court's judgment determining that Pak's expulsion as a member of Villas CSH did not comply with the company agreements and was not enforceable and

render judgment that Pak was properly removed as a member of Villas CSH as of December 31, 2013. We affirm the judgment in all other respects.

/Molly Francis
MOLLY FRANCIS
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

CHAN IL PAK, Appellant

No. 05-14-01312-CV V.

AD VILLARAI, LLC, THE ASHLEY NICOLE WILLIAMS TRUST, VILLAS ON RAIFORD, LLC, AND VILLAS ON RAIFORD CARROLLTON SENIOR HOUSING, LLC., Appellees

On Appeal from the 101st Judicial District Court, Dallas County, Texas
Trial Court Cause No. DC-13-06030.
Opinion delivered by Justice Francis;
Justices Evans 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 **REVERSE** that portion of the trial court's judgment determining that Chan Il Pak was not properly removed as a member of Villas on Raiford Carrollton Senior Housing, LLC. We **RENDER** judgment that Chan Pak was properly removed as a member of Villas on Raiford Carrollton Senior Housing, LLC as of December 31, 2013. In all other respects, the trial court's judgment is **AFFIRMED**.

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

Judgment entered May 4, 2018.