

**AFFIRM; Opinion Filed March 24, 2020**



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

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**No. 05-18-01240-CV**

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**ASIF ALI, Appellant**

**V.**

**DSA PARTNERS I, LTD., Appellee**

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**On Appeal from the County Court at Law No. 2  
Dallas County, Texas  
Trial Court Cause No. CC-17-04735-B**

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**MEMORANDUM OPINION**

Before Justices Partida-Kipness, Nowell, and Evans  
Opinion by Justice Nowell

Asif Ali appeals an adverse summary judgment in favor of DSA Partners I, Ltd. and the trial court's order granting DSA Partners' motion to sever. In three issues, Ali argues the trial court's consideration of DSA Partners' motion for summary judgment was premature, the relief sought in the motion was inconsistent with the pleadings, and the trial court erred by granting DSA Partners' motion to sever. We affirm the trial court's order granting the severance and its judgment.

Weekley Homes, LLC conveyed real property located in Irving, Texas (the Property) to Ali by warranty deed with vendor's lien. To finance the purchase, Ali obtained a loan from DSA Partners and executed a real estate lien note; Ali executed and delivered a deed of trust to DSA Partners to secure the loan. The first and superior vendor's lien was transferred to and retained by DSA Partners. After a couple of years, Ali failed to make the required monthly payments and DSA Partners gave Ali notice of his default and an opportunity to cure. When Ali did not tender the delinquent funds to DSA Partners, DSA Partners accelerated the maturity of the note. Ali filed bankruptcy, but the automatic stay was lifted as to DSA Partners' right to foreclose on the Property.

Ali filed his original petition alleging the deed of trust was not valid because his wife, Anju Thapa, did not sign the document. Additionally, he asserted DSA Partners was unlicensed to make the loan and DSA Partners' actions in threatening or effecting a substitute trustee's sale of the Property were violations of the Texas Debt Collection Act. Ali sought monetary damages for alleged violations of the Texas Finance Code and injunctive relief.

DSA Partners filed a counterclaim against Ali and a third-party petition against Thapa and the United States of America, Department of Treasury, Internal Revenue Service (IRS) to foreclose its vendor's lien. DSA Partners asserted it believed Ali was married to Thapa at the time he acquired title to the Property and executed the note even though Ali represented to DSA Partners that he was

unmarried in his sworn loan application. DSA Partners' pleading states: "DSA is entitled to judicial foreclosure of the Vendor's Lien securing the Ali Note against Ali and Thapa *in rem* only to the extent of their interests in the Property and an order of sale providing for the sale of the Property to satisfy the *in rem* judgment rendered against Ali herein, plus costs of such sale." DSA Partners' pleading states its belief that the IRS could claim an interest in the Property by virtue of a federal tax lien filed in the property records; DSA Partners pleaded its entitlement to a declaratory judgment that the IRS's claims were subordinate and inferior to its vendor's lien and foreclosure of the vendor's lien would extinguish the IRS's claims upon the Property.

#### **A. Motion for Partial Summary Judgment**

On March 8, 2018, DSA Partners filed a motion for partial summary judgment *in rem* only to foreclose its vendor's lien. The motion states it "only addresses DSA Partners' *in rem* only claim under the note against Ali, claim for judicial foreclosure against Ali and Thapa, Ali's claim that DSA Partners has no valid lien interest, and Ali's request to enjoin DSA Partners from ever attempting to foreclose." DSA Partners asserted three bases for its summary judgment: (1) it was entitled to partial summary judgment against Ali and Thapa *in rem* to judicially foreclose its vendor's lien because Ali defaulted on the purchase-money loan that the vendor's lien secures; (2) Thapa's non-joinder in the deed of trust had no impact on enforcement of the vendor's lien because Thapa's interest in the Property arose from the instrument that

created the vendor's lien; and (3) Ali's request to enjoin any attempts by DSA Partners to foreclose was improper. Eight days later, on March 16, 2018, the IRS filed its response stating it did not oppose DSA Partners' motion because the United States Supreme Court decreed a federal tax lien is subordinate to a purchase-money interest, and the IRS issued a revenue ruling formally pronouncing federal tax liens are inferior to valid purchase money mortgages. The IRS requested the trial court recognize its right of redemption of the Property and requested the trial court order proceeds of the foreclosure sale be applied as payment to the amount due to the IRS as holder of the federal tax lien after the amount due to DSA Partners was paid in full. On March 23, 2018, DSA Partners and the IRS filed a motion for entry of agreed interlocutory judgment.

Ali responded to DSA Partners' motion for partial summary judgment and raised the two arguments he asserts on appeal: (1) DSA Partners and the IRS's request for entry of agreed interlocutory judgment amended the motion and, therefore, Ali was entitled to twenty-one days from March 23, 2018, the date of the filing, and (2) the prayer for relief in the motion was not supported by the pleadings. Following a hearing on March 30, 2018, the trial court granted the motion.

In his first issue on appeal, Ali asserts the trial court erred by granting DSA Partners' motion because it was premature; the joint motion for entry of agreed interlocutory judgment between DSA Partners and the IRS amended DSA Partners' motion for partial summary judgment, thus entitling him to twenty-one days from

the date of the filing to the hearing. A defending party such as DSA Partners may move at any time for summary judgment in its favor. TEX. R. CIV. P. 166a(b). The motion and any supporting affidavits shall be filed and served at least twenty-one days before the hearing. TEX. R. CIV. P. 166a(c). Ali does not argue the motion and supporting affidavits were not served at least twenty-one days before the hearing; he only argues the joint motion for entry of agreed interlocutory judgment should have been considered an amendment entitling him to additional time.

If the purchase money is not paid, a seller holding a vendor's lien may elect to judicially foreclose that lien. *See XTO Energy, Inc. v. EOG Res., Inc.*, 554 S.W.3d 127, 139 (Tex. App.—San Antonio 2018, pet. abated); *see also Goidl v. N. Am. Mortg. Inv'rs*, 564 S.W.2d 493, 495 (Tex. App.—Dallas 1978, no writ). In this case, DSA Partners could have chosen not to file a third-party petition against the IRS and proceeded to foreclose against Ali's interest in the property. *See Miller v. Royal ISD*, No. 14-14-00753-CV, 2015 WL 9311429, at \*2 (Tex. App.—Houston [14th Dist.] Dec. 22, 2015, pet. denied). Instead, DSA Partners filed a third-party petition against the IRS. The IRS conceded its tax lien was subordinate to DSA Partners' vendor's lien. The IRS's tax lien, the subject of the joint motion for agreed interlocutory judgment, was not relevant to DSA Partners' right to foreclose against Ali's interest in the Property, the subject of its motion for partial summary judgment. Because DSA Partners could have proceeded in this lawsuit without the IRS and obtained the full measure of relief it sought, and because the IRS's tax lien was

subordinate to DSA Partners' vendor's lien, we conclude DSA Partners' motion for partial summary judgment was not modified by filing the joint motion for agreed interlocutory judgment. Therefore, the trial court did not err by concluding Ali was not entitled to additional time to file his response to the motion for partial summary judgment. We overrule Ali's first issue.

In his second issue, Ali asserts the trial court erred by granting the motion for partial summary judgment because the relief sought in the motion was not sufficiently specific. Ali argues:

In DSA's prayer for relief at the end of its MSJ, DSA asked that the trial court enter a take-nothing judgment against Ali on Ali's claim in regard to DSA's lien, without specifying whether DSA referred to the claimed lien of the Deed of Trust or to the claimed vendor's lien discussed in the MSJ. Thus, the matter addressed in the first sentence of the prayer was not addressed in the body of the MSJ itself, and the relief sought in the first sentence of the prayer should not have been granted.

The first sentence of DSA Partners' prayer for relief requests the trial court enter a take-nothing judgment against Ali on his claim to invalidate DSA Partners' lien and to enjoin DSA Partners from attempting to foreclose. DSA Partners sought partial summary judgment *in rem* to foreclose its vendor's lien; the motion is titled "DSA Partners I, LTD.'s Motion for Partial Summary Judgment *In Rem* Only to Foreclose Its Vendor's Lien" and the body of the motion addresses its vendor's lien. The trial court's order states it is based on the motion, briefs, and exhibits and it orders Ali take nothing on his request to enjoin DSA Partners from attempting to foreclose on

the Property. Reviewing the record, we conclude there is no confusion about the basis for DSA Partners' motion or the trial court's order. DSA Partners sought to foreclose its vendor's lien, and the trial court granted its motion for partial summary judgment made on this basis. We overrule Ali's second issue.

### **B. Severance**

In his third issue, Ali argues the trial court erred by granting DSA Partners' motion to sever. On May 15, 2018, DSA Partners filed a motion to sever pursuant to rules 41 and 174(b). The trial court's order granting DSA Partners' motion for partial summary judgment, discussed above, was interlocutory. DSA Partners requested the trial court sever that portion of the case, thus causing the order to become a final judgment, from Ali's claims for money damages. The trial court granted the motion.

"Any claim against a party may be severed and proceeded with separately." TEX. R. CIV. P. 41. Trial courts have broad discretion to sever claims, and a severance is improper only if the trial court abused its discretion in ordering the severance. *State v. Morello*, 547 S.W.3d 881, 889 (Tex. 2018). "Severance is proper when (1) the controversy involves more than one cause of action, (2) the severed claim is one that would be the proper subject of an independently asserted lawsuit, and (3) the severed claim is not so interwoven with the remaining action that the actions involve the same facts and issues." *Id.* Ali argues the third element in his brief: the claims are so intertwined and involve the same essential facts and issues

that the order of severance should be vacated and the cases reconsolidated. Ali, however, fails to explain how DSA Partners' claim for foreclosure of its vendor's lien is so intertwined with his own claims against DSA Partners seeking monetary damages that severance was an abuse of the trial court's discretion. Additionally, as a general rule, severance after an interlocutory summary-judgment order to expedite appellate review is proper and not an abuse of discretion. *See Cherokee Water Co. v. Forderhause*, 641 S.W.2d 522, 525–26 (Tex. 1982); *Nicholson v. Stockman*, 02-19-00103-CV, 2020 WL 241420, at \*2 (Tex. App.—Fort Worth Jan. 16, 2020, no pet. h.). Based on this record, Ali has not shown the trial court abused its discretion by ordering the severance after granting DSA Partners' interlocutory motion for partial summary judgment. We overrule Ali's third issue.

We affirm the trial court's judgment.

/Erin A. Nowell/  
ERIN A. NOWELL  
JUSTICE

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

**JUDGMENT**

ASIF ALI, Appellant

No. 05-18-01240-CV      V.

DSA PARTNERS I, LTD., Appellee

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B.

Opinion delivered by Justice Nowell.  
Justices Partida-Kipness and Evans  
participating.

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

It is **ORDERED** that appellee DSA Partners I, LTD. recover its costs of this appeal from appellant Asif Ali.

Judgment entered this 24<sup>th</sup> day of March, 2020