**REVERSE and REMAND and Opinion Filed April 10, 2025**

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

**No. 05-23-01020-CV**

**CARL DORVIL, Appellant**
**V.**
**CHARLES MASON AND KATHLEEN MASON, Appellees**

**On Appeal from the 162nd Judicial District Court**
**Dallas County, Texas**
**Trial Court Cause No. DC-19-07426**

# MEMORANDUM OPINION

Before Justices Smith, Kennedy, and Lewis
Opinion by Justice Kennedy

Charles Mason and Kathleen Mason filed suit against Agile Connections, LLC ("Agile") and Carl Dorvil after Agile defaulted on loans it obtained from the Masons asserting various causes of action including breach of contract, fraud in the inducement, and theft. Agile answered but did not appear at trial. The trial court entered a default judgment against Agile and, after the jury returned a verdict favorable to the Masons on their claims against Dorvil, rendered judgment against Dorvil.

Dorvil appeals raising sixteen issues urging: the judgment from which he appeals is not final (issue 1); certain comments by the trial judge deprived him of a

fair trial (issue 2); the judgment against him violates the economic-loss and one-satisfaction rules (issues 9 and 15); the judgment impermissibly holds him jointly and severally liable for damages awarded against Agile (issues 3 through 8); and the Masons' individual claims against him lack merit and are not supported by legally or factually sufficient evidence (issues 10 through 14 and 16). We reverse the trial court's judgment against Dorvil and remand the case for further proceedings consistent with this opinion. Because all dispositive issues are settled in law, we issue this memorandum opinion. TEX. R. APP. P. 47.4.

## BACKGROUND

Agile was organized as a Texas limited liability company with an assumed name of Renaissance Global Investment Partners. Agile had its corporate charter forfeited on January 29, 2016, and its corporate privileges forfeited at least 120 days earlier, or by no later than October 1, 2015. Dorvil claims that on December 31, 2015, an acquaintance of his, who was also friends with the Masons, by the name of Christopher Sahliyeh, agreed to buy his membership interest in Agile and became the managing member of the company.

Towards the end of 2015, the Masons agreed to loan $1,500,000 to Renaissance Global Investment Partners, LLC ("Renaissance").[1] The Masons understood the loan proceeds would be used to demonstrate to other investors and

[1] While the debentures indicated that Renaissance was itself a Texas limited liability company, it was in actuality an assumed name for Agile and not a limited liability company. Renaissance will sometimes be referred to herein as Agile.

acquisition targets that Agile had sufficient funds to buy a brokerage company to operate on a minority-owned basis. On January 1, 2016, the Masons and Sahliyeh signed a debenture in the amount of $1,500,000. Sahliyeh signed as a Partner in Renaissance. On May 1, 2016, the Masons loaned an additional $500,000 to Renaissance for the same purpose. The Masons and Sahliyeh signed the second debenture. The loans were to be paid back with interest within a year. The Masons were familiar with Dorvil as they had an existing investment with another business venture of his that had performed well.

Until August 2018, Renaissance paid quarterly interest on the loans. Thereafter, Renaissance defaulted on payment of the loans. The Masons then filed suit against Agile and Dorvil asserting claims of breach of contract, money had and received, conversion and theft, fraudulent inducement and fraud, negligent misrepresentation, and conspiracy. The Masons claimed Dorvil knew that Agile never intended to utilize the money loaned by them to acquire an interest in a brokerage firm, but instructed, induced and/or permitted Sahliyeh to make that representation to induce them to lend money to Agile, and then syphoned off the money they lent for his own or other business purposes. Dorvil filed a third-party action against Sahliyeh seeking certain declarations and contribution and indemnity.[2]

[2] Dorvil's third-party claims against Sahliyeh were severed from the underlying case and made the subject of a separate action.

A jury trial in this case began on April 18, 2023, and continued until April 20, when the case was stayed by Dorvil's filing a suggestion of bankruptcy in the trial court. The trial resumed on June 5, 2023, after the bankruptcy stay was lifted and continued until June 9. Dorvil did not attend the trial until the case resumed on June 5. During closing arguments, the Masons made it clear that, with respect to damages, they wanted to recover the $2 million they loaned and the interest they were supposed to earn on the loans.[3] After the evidence was presented to the jury, and before the charge was submitted to the jury, the trial court entered a default judgment against Agile on all of the Masons' claims against it and awarding the Masons actual damages in the amount of $2 million, prejudgment interest at the rate of 14.5%, totaling $2,816,706.32, $1,000 in statutory damages for theft, and exemplary damages in the amount of $4,810,944.79. The jury returned a verdict in favor of the Masons on all of their claims against Dorvil and found Dorvil acted with malice. The jury found damages of $2 million on the Masons' claims against Dorvil for money had and received, conversion, theft, fraud, and conspiracy and damages of $2,868,346.37 on their negligent misrepresentation claim. The parties agreed that the Mason's request for and evidence of attorney's fees could be submitted to the court for consideration within 10 days of the jury's verdict. On July 28, 2023, the

[3] In the Masons' live pleading at trial, they made it clear they were seeking the $2 million they lent to Agile on their claims against Dorvil for money had and received, conversion, and theft.

trial court held a hearing on the Masons' Motion for Award of Attorney's Fees and Final Judgment. At that hearing, the Masons' attorney stated:

> [M]y clients are electing the causes of action that go to fraud and theft and walking away from the 2.8 million that went to negligent misrepresentation. So just to be clear, . . . we're electing the claim on which fraud is based and that's important for the bankruptcy proceeding and we're electing a claim in which theft is based because that's important for attorney's fees.

On July 28, 2023, the trial judge signed a final judgment indicating that the parties had submitted one special issue to the court for a determination as a matter of law, that being the effect of the forfeiture of Agile's charter, and the court ruled thereon as follows:

> The Court finds that the corporate charter of Agile Connections, L.L.C. was forfeited by the Texas Secretary of State on January 29, 2016. The Court therefore finds that, pursuant to Texas Tax Code Sections 171.302 and 171.309, the corporate privileges of Agile Connections, L.L.C. were forfeited no later than October 1, 2015. The Court finds that neither the corporate charter nor corporate privileges of Agile Connections, L.L.C. were ever revived following forfeiture. The Court concludes as a matter of law that if the corporate privileges of a corporation are forfeited for the failure to file a report or pay a tax or penalty, each director or officer of the corporation is liable for each debt of the corporation that is created or incurred in this state after the date on which the report, tax, or penalty is due and before corporate privileges are revived pursuant to Texas Tax Code Sections 171.252 and 171.255. The Court finds that the actual damages of $2,000,000 for Plaintiffs[']  breach of contract claim and pre-judgment interest awarded against Agile Connections, LLC in favor of Plaintiffs herein are debts of Agile Connections, L.L.C. that were created and incurred in Texas after the date Agile Connections, L.L.C.'s corporate privilege[s] were forfeited and before the corporate privileges were revived while Carl Dorvil was a director or officer of Agile Connections, L.L.C.

The court ordered that the Masons have judgment against Agile on all of the Masons' claims against Agile (breach of contract, money had and received, conversion, theft, fraudulent inducement, fraud by misrepresentation, fraud by omission, negligent misrepresentation and conspiracy) and recover damages from Agile in the following amounts:

1. Actual damages in the amount of $2,000,000;
2. Pre-judgment interest at the rate of 14.5%, totaling $2,816,706.32, plus $1,920.15 in additional pre-judgment interest for each date from June 9, 2023, through the entry of Final Judgment;
3. Statutory damages for theft of $1,000;
4. Exemplary damages in the amount of $4,810,944.79;
5. Attorney's fees in the amount of $273,155;
6. Expenses in the amount of $7,515.48; and
7. Costs of Court.

In addition, the trial court ordered post-judgment interest at the rate of 14.5% and additional attorney's fees if the Masons were successful on post-judgment motions and appeals.

The court further ordered that Dorvil is jointly and severally liable for the actual damages, pre-judgment interest, statutory damages, attorneys' fees, expenses, costs of court, and post-judgment interest award to the Masons against Agile based on the jury's findings Dorvil (1) is vicariously liable for the fraud committed by Agile, (2) assisted and encouraged Agile in its conversion, fraud and theft, and (3)

is responsible for the conduct of Agile because the corporate veil should be pierced based on the finding Dorvil used Agile for the purposes of perpetrating a fraud on the Masons.

In addition, the trial court granted the Masons a "separate and independent" judgment against Dorvil on all of their claims against him (money had and received, conversion, theft, fraudulent inducement, fraud by misrepresentation, fraud by omission, negligent misrepresentation, and conspiracy) in the following amounts:

1. Actual damages in the amount of $2,000,000;
2. Statutory damages for theft of $1,000;
3. Exemplary damages of $1,000,000;
4. Attorneys' fees in the amount of $273,155;
5. Expenses in the amount of $7,515.48; and
6. Costs of court.

The court awarded the Masons pre-judgment and post-judgment interest and additional attorney's fees if they were successful on post-judgment motions or on appeal.

The court further ordered:

> that while the judgments against Agile Connections, L.L.C. and Carl Dorvil contained herein are independent, the Plaintiffs' collection of the amounts awarded for actual damages, attorney's fees, expenses, and costs of court (and interest borne on these amounts) are subject to only one recovery under the one satisfaction rule and, therefore, both Agile Connections, LLC and Carl Dorvil are entitled to receive offset and credit for amounts collected by the Plaintiffs from the other for actual

> damages, attorney's fees, expenses, and costs of court (and interest borne on these amounts). The damages awarded herein for exemplary damages and statutory damages for theft (and interest borne on these amounts) are not subject to credit or offset. IT IS FURTHER ORDERED that any amounts collected by Plaintiffs from either Defendant shall be applied first to the amounts not subject to credit or offset under the judgment against that Defendant herein.

Dorvil filed a motion for judgment notwithstanding the verdict and a sworn motion for new trial. Those motions were overruled by operation of law. This appeal followed.

## JURISDICTION

In his first issue, Dorvil argues this Court should dismiss this appeal for want of jurisdiction because the judgment from which he appeals is too indefinite and uncertain to be a final judgment. More particularly, Dorvil contends the judgment is not final because it includes conditional language that results in a potentially fluctuating judgment amount that a ministerial officer executing on the judgment would not be able to ascertain without knowledge of facts regarding offsets and credits.

Whether an appellate court has jurisdiction to determine the merits of an appeal is a question of law, which we review de novo. *Bonsmara Nat. Beef Co., LLC v. Hart of Tex. Cattle Feeders, LLC*, 603 S.W.3d 385, 390 (Tex. 2020). The general rule, with a few mostly statutory exceptions, is that an appeal may be taken only from a final judgment. *In re Guardianship of Jones*, 629 S.W.3d 921, 924 (Tex. 2021) (per curiam). A final judgment fully disposes of all issues and all parties in

the lawsuit. *Cooke v. Cooke*, 65 S.W.3d 785, 787 (Tex. App.—Dallas 2001, no pet.). Although no "magic language" is required, a trial court may express its intent to render a final judgment by describing its action as (1) final, (2) a disposition of all claims and parties, and (3) appealable. *Bella Palma, LLC v. Young*, 601 S.W.3d 799, 801 (Tex. 2020). Here, the July 28, 2023 judgment concludes by stating:

> [T]his is a final judgment as to all Plaintiffs and Defendants Agile Connections, LLC, and Carl Dorvil, and that it disposes of all disputes in this action between the Plaintiffs and those Defendants; it is appealable; all relief otherwise requested is hereby denied.

Thus, this judgment was intended to be final. *See id.*

A judgment must also be sufficiently definite and certain to define and protect the rights of all litigants, or it must provide a definite means of ascertaining such rights, to the end that ministerial officers can carry the judgment to execution without ascertainment of facts not stated in the judgment itself. *Hinde v. Hinde*, 701 S.W.2d 637, 639 (Tex. 1985). Thus, a judgment cannot condition recovery on uncertain events or base its validity on what the parties might or might not do post-judgment. *Id.* A judgment may be definite and certain even if "the amount eventually to be collected by plaintiff from defendant remains uncertain." *See Kuo v. Regions Bank*, No. 05-22-01325-CV, 2024 WL 3325436, at *3 (Tex. App.—Dallas July 8, 2024, pet. filed) (mem. op.) (quoting *Hargrove v. Ins. Inv. Corp.*, 176 S.W.2d 744, 748 (Tex. 1944) ("All of the provisions last mentioned are for the purpose of carrying the judgment into effect and are incidental to the proper enforcement of the rights of

the parties as determined by the judgment.")); *see also Dallas Cnty. Cmty. Coll. Dist. v. Bolton*, 89 S.W.3d 707, 713 (Tex. App.—Dallas 2002), *rev'd on other grounds*, 185 S.W.3d 868 (Tex. 2005) ("The provision allowing Class counsel to recover their fees incurred in connection with post-judgment collection and distribution efforts does not render the judgment interlocutory."); *Ferguson v. Ferguson*, 338 S.W.2d 945, 948 (Tex. 1960) (judgment awarding wife one-half of husband's business profits and ordering husband to furnish accounting to decide amount of profits was final; rendering of accounting and profits was "ministerial act incident to the final judgment"). "So long as the judgment of the court makes the figure which the clerk is to place in the writ of execution determinable by ministerial act, the judgment cannot be said to lack definiteness." *See Int'l Sec. Life Ins. Co. v. Spray*, 468 S.W.2d 347, 350 (Tex. 1971).

We conclude this case is one where the amount adjudged is certain even if "the amount eventually to be collected by the Masons from Dorvil remains uncertain." *See Hargrove*, 176 S.W.2d at 748. It does not reserve an issue for later adjudication, which would make the judgment interlocutory and not final. *See Grishman v. Sims*, No. 05-17-01057-CV, 2018 WL 3616883, at *2 (Tex. App.—Dallas July 30, 2018, no pet.) (mem. op.) (citing *Wilcox v. St. Mary's Univ. San Antonio*, 501 S.W.2d 875, 876 (Tex. 1973)). Accordingly, we conclude the July 28, 2023 judgment is a final, appealable judgment. We overrule Dorvil's first issue.

## DISCUSSION

## I. Comments by Trial Judge

In his second issue, Dorvil asserts this Court should reverse and remand for a new trial because the trial judge violated his due process rights by informing the jury of his mid-trial bankruptcy filing and casting blame on Dorvil for the suspension of the trial and the extension of the jury's service.

Dorvil's attorney filed a suggestion of bankruptcy on the third day of trial, notifying the trial court that Dorvil had filed a petition for bankruptcy. As a result, the trial judge announced she was not going to release the jurors, but rather she was going to recess the trial until it could be resumed, if permitted by the bankruptcy court, and she was going to inform the jury that they were subject to being recalled in the future to continue jury service in this case. The parties acknowledge that, off the record, counsel for Dorvil asked the judge not to inform the jury of the reason for the interruption of trial as it would be highly prejudicial to Dorvil. As noted *infra*, the trial judge later confirmed that she denied this request.

With respect to Dorvil's bankruptcy filing and its affect on the trial, the trial judge informed the jury:

> So, ladies and gentlemen of the jury, at this time we have a change in the proceedings. So there was a bankruptcy petition that was filed by Mr. Dorvil, which essentially takes - - at this point takes the Court's ability away to do anything more with the trial. So what's going to happen is we are going to be in recess. It's very important that you understand and abide by my next instruction while you are separated.
>
> So, essentially, you are not being released from your duty as jurors in this case at this time. So while you are separated, it is your duty not to

> converse with or permit yourself to be addressed by any other person on any subject connected with the trial. Do not read or watch any accounts of the trial, any news that you may see about the trial, anything else in any way related to this trial. It is your duty to [ensure] that you do not review, read, respond to, or discuss it with anyone else.
>
> Do you-all understand that instruction?
>
> Okay. And like I told you in the beginning, there is a chance that you could be called back into court as a juror for us to continue this trial. If the Court determines in the future that that is no longer a chance, the Court will notify you and all the attorneys have agreed that we're not going to make you come back to the Court for me to tell you you're released from your jury duty.

The trial judge then asked if there were any questions. One of the jurors asked, "Can you give us an approximate, like when we would be called back? Next week? Two weeks? Next month?" The trial judge responded, "I can't give you that" and indicated the jury would be given ample notice. Thereafter, outside the presence of the jury, and on the record, Dorvil's attorney stated:

> Your Honor. I kind of want to get on the record, prior to the jurors coming in I had requested the Court to not be specific as to the reason for them being – they're dismissed at this time because I believe that if they were to come back – and I don't know if that's going to happen. I have no idea about bankruptcy. It would be highly prejudicial for this same panel to have heard that my - - that my client filed bankruptcy, for them to come back and hear the case. The prejudice would be so outweighed by anything else that I suggested the Court not telling them the reason why. Of course, the Court heard my suggestion. I'm assuming you overruled it and that's why you presented the reason to the panel?

The trial judge responded, "yes." Dorvil did not request a curative instruction. After the bankruptcy stay was lifted, Dorvil moved for a mistrial, arguing that he would not get a fair trial before this jury panel. The trial judge denied the motion.

The presiding judge at a trial must conduct it in a fair and impartial manner and refrain from making unnecessary comments or remarks during the course of trial which may tend to cause prejudice to a litigant or is calculated to influence the minds of the jury. *In re Marriage of D.M.B. and R.L.B.*, 798 S.W.2d 399, 401 (Tex. App.—Amarillo 1990, no writ). Nevertheless, a trial judge has great discretion in the manner he or she conducts a trial and possesses the authority to express himself or herself in exercising this broad discretion. *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 240–41 (Tex. 2001). In order to reverse a judgment on the ground of judicial misconduct, the complaining party must show not only that the trial judge's comment was improper but also that the improper comment caused harm, i.e., the rendition of an improper judgment. *See Food Source, Inc. v. Zurich Ins. Co.*, 751 S.W.2d 596, 600 (Tex. App.—Dallas 1988, writ denied) (citing *Tex. Emps. Ins. Ass'n v. Draper*, 658 S.W.2d 202, 209 (Tex. App.—Houston [1st Dist.] 1983, no writ)).

To preserve error regarding a judge's comments during trial, a party must both object to the comment when made and request curative instruction, unless a proper instruction cannot render the comment harmless. *Dow Chem.*, 46 S.W.3d at 241. A comment is incurable only if it is blatantly and obviously prejudicial. *In re*

*Commitment of Stuteville*, 463 S.W.3d 543, 557 (Tex. App.—Houston [1st Dist.] 2015, pet. denied). The party complaining that a court's comments were improper bears the burden to explain how such comments were incurable by an instruction, thus excusing the claimant's failure to preserve error. *Dow Chem.*, 46 S.W.3d at 241.

Dorvil acknowledges that he failed to request a curative instruction. Dorvil contends he was not required to request a curative instruction because it is apparent that the trial judge did not believe there was anything improper about her comments and, thus, was not likely to have given a curative instruction if asked to do so. In addition, Dorvil asserts he was excused from requesting a curative instruction because the trial court's comments advising the jurors he filed for bankruptcy and that his actions required a continuance of the trial and extension of their jury service were so prejudicial they could not be rendered harmless by an instruction.

We note that Dorvil has not cited any authority, and this Court has found none, holding that references to a bankruptcy filing, when it is not relevant to the issues presented in the case, and to the potential need to continue the trial at a later date, if improper, are per se harmful and incurable. While the trial judge could have recessed the jury's service without mentioning the bankruptcy filing, on the record before us, we conclude that Dorvil's complaints about the bankruptcy reference and continuation of the trial could have been cured by a proper instruction. On request, the trial judge could have instructed the jury to disregard her statement about the

bankruptcy filing and could have explained that the law requires the stay of the proceedings. *See, e.g., Luna v. N. Star Dodge Sales, Inc.*, 667 S.W.2d 115, 120 (Tex. 1984) (where trial court condemned questioning as to whether North Star Dodge was about to go down the tubes and was on the verge of bankruptcy and instructed jury to disregard any mention of pending bankruptcy, court of appeals concluded error, if any, was harmless). Such an instruction, in our opinion, would have been sufficient to remedy any alleged prejudice that might relate to the judge's comments at issue.

We further consider the judge's comments in the context of the entire record. *See Standard Fire Ins. Co. v. Reese*, 584 S.W.2d 835, 839–40 (Tex. 1979). According to Dorvil, "[t]here can be no question that the court's remarks prejudiced Mr. Dorvil and improperly influenced the jury." He contends that the prejudice is reflected in the jury's deliberation process and verdict. "The jury took just two and a half hours to unanimously answer 12 liability questions against Dorvil, award millions of dollars in actual and punitive damages against him. . . ." So claims Dorvil, "[t]he jury's lightning-fast verdict reflects its bias toward Dorvil following the trial court's decision to inform them of who was to blame for their extended jury service."

Dorvil has not cited any authority prescribing a set amount of time for jury deliberations or holding that short periods of deliberation necessarily evidence improper bias or decision. *See, e.g., Marez v. State*, No. 13-06-00476-CR, 2007 WL

2333155, at * 8 (Tex. App.—Corpus Christi–Edinburg Aug. 16, 2007, pet. ref'd) (mem. op., not designated for publication). And, in fact, there is some authority indicating the jury verdict here was not lightning fast. *See Wausau v. Horton*, 797 S.W.2d 677, 681 (Tex. App.—Texarkana 1990, no writ) (concluding jury did not rush to judgment when it took two hours and twenty minutes to answer twenty jury questions). Moreover, when we consider the factors set forth in *Reese*, namely the length of the comment, whether it was repeated, and its probable effect on a material finding, we are compelled to conclude the trial court's comments did not result in an improper verdict. *See Reese*, 584 S.W.2d at 839–40. The trial in this case lasted for six days. From voir dire through closing argument the only comments made regarding Dorvil's bankruptcy filing and a recess of the trial were the above referenced comments. No mention was made concerning the bankruptcy and the reason for recess when the trial resumed on June 5, 2023. It appears that in reconvening the jury, the trial court simply advised the jurors of the date and time for them to appear to continue their jury service. The Masons presented evidence to support their contention money was wrongfully withdrawn from Agile's bank account shortly after they made loans to the company. The jury awarded exactly $2 million in actual damages, the amount the Masons lent to Agile. There was no inflation of damages. Dorvil does not challenge the amount of exemplary damages awarded and the award of one half of actual damages, under the circumstances presented here, was not excessive. *See, e.g.*, *Pace v. McEwen*, 574 S.W.2d 792, 801

(Tex. App.—El Paso 1978, writ ref'd n.r.e.) (overruling complaint regarding exemplary damages of $150,000 when actual damages awarded were $242,271.75). Examining the record as a whole, we determine the complained of comments did not unfairly prejudice Dorvil. We overrule Dorvil's second issue.

## II. Economic Loss Rule

In his ninth issue, Dorvil urges the Masons' theft, fraud, negligent misrepresentation, and conversion claims are barred by the economic-loss rule. We address this issue here because it could impact our resolution of Dorvil's issue addressing the one-satisfaction rule.[4] The Masons assert Dorvil failed to preserve this complaint for review and urge, nevertheless, that the economic-loss rule does not bar their independent claims against him. Assuming, without deciding, Dorvil preserved this complaint for review, we limit our discussion here to the Masons' claims of theft and fraud since the Masons indicated they were electing to recover on same and—while, as more fully discussed *infra*, if they elect to recover on a direct claim, rather than the derivative claim for Agile's breach of contract, they must choose one claim—these claims appear to afford the Masons greater relief than their negligent misrepresentation and conversion claims.[5] *See* TEX. R. APP. P. 47.1.

[4] More particularly, if we sustain Dorvil's issue concerning the economic-loss rule and hold the Masons' theft and fraud claims are barred, then Dorvil's complaint regarding the one-satisfaction rule becomes moot.

[5] The Masons' fraudulent inducement claim is a combination of their fraud by misrepresentation and fraud by omission claims. Accordingly, the Masons' fraud by misrepresentation and fraud by omission claims are the grounds for their fraudulent inducement claim and are effectively subsumed in same.

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. *LAN/STV v. Martin K. Eby Constr. Co.*, 435 S.W.3d 234, 243 (Tex. 2014). The economic-loss rule was initially formulated to set perimeters in product liability cases and applied when a loss arose from the failure of a product and the damage or loss was limited to the product itself. *See Sharyland Water Supply Corp. v. City of Alton*, 354 S.W.3d 407, 415 (Tex. 2011) (citing Edward P. Ballinger, Jr. & Samuel A. Thumma, *The History, Evolution and Implications of Arizona's Economic Loss Rule*, 34 ARIZ. ST. L.J. 491, 492 (2002)). The economic-loss rule was subsequently applied in negligence cases when the loss is the subject matter of a contract between the parties. *See Sw. Bell Tele. Co. v. DeLanney*, 809 S.W.2d 493, 494 (Tex. 1991); *Jim Walter Homes, Inc. v. Reed*, 711 S.W.2d 617, 618 (Tex. 1986). While the economic-loss rule may apply in certain product liability and negligence cases, it does not bar all tort claims arising out of a contractual setting. *Chapman Custom Homes, Inc. v. Dallas Plumbing Co.*, 445 S.W.3d 716, 718 (Tex. 2014). As noted by the *Sharyland* court, "[T]he 'economic loss' rule has never been a general rule of *tort* law; it is a rule in *negligence* and *strict product liability*." *Sharyland*, 354 S.W.3d at 418 (quoting William Powers, Jr. & Margaret Niver, *Negligence, Breach of Contract, and the "Economic Loss" Rule*, 23 TEX. TECH L. REV. 477, 487 (1992) (emphases added by the *Sharyland* court)). Applicability of the economic-loss rule depends upon

whether the duty breached is independent from the contractual undertaking. *Chapman*, 445 S.W.3d at 718.

In *Formosa Plastics Corporation USA v. Presidio Engineers and Contractors, Inc.*, the Texas Supreme Court declined to extend the economic-loss rule to a fraudulent inducement claim even when the claimant suffered only economic losses to the subject of the contract. 960 S.W.2d 41, 46 (Tex. 1998). The court reasoned that Texas law has long imposed a duty to refrain from fraudulently inducing a party to enter into a contract and that when one party enters into a contract with no intention of performing, that misrepresentation may give rise to an action in fraud. *Id.* The court further noted its prior decisions made it clear that tort damages were not precluded simply because a fraudulent representation caused only an economic loss.[6] *Id.* at 47. And, in fact, tort damages are recoverable for a fraudulent

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[6] The court went on to state:

> Almost 150 years ago, this Court held in *Graham v. Roder*, 5 Tex. 141, 149 (1849), that tort damages were recoverable based on the plaintiff's claim that he was fraudulently induced to exchange a promissory note for a tract of land. Although the damages sustained by the plaintiff were purely economic, we held that tort damages, including exemplary damages, were recoverable. Since *Graham,* this Court has continued to recognize the propriety of fraud claims sounding in tort despite the fact that the aggrieved party's losses were only economic losses. *See, e.g.*, *Spoljaric* [v. Percival Tours, Inc., 708 S.W.2d 432, 436 (Tex. 1986)]; *International Bankers Life Ins. Co. v. Holloway*, 368 S.W.2d 567, 583 (Tex.1963); *cf.* TEX. CIV. PRAC. & REM. CODE ANN. § 41.003(a)(1) (expressly authorizing exemplary damages for fraud without making any exception based on the type of loss sustained by the injured party). Moreover, we have held in a similar context that tort damages were not precluded for a tortious interference with contract claim, notwithstanding the fact that the damages for the tort claim compensated for the same economic losses that were recoverable under a breach of contract claim. *Am. Nat'l Petroleum Co. v. Transcon. Gas Pipe Line Corp.*, 798 S.W.2d 274, 278 (Tex. 1990).

*Id.* at 47.

inducement claim irrespective of whether the fraudulent representations are later subsumed in a contract or whether the plaintiff only suffers an economic loss related to the subject matter of the contract. *Id.* The court explained that allowing the recovery of fraud damages sounding in tort only when a plaintiff suffers an injury that is distinct from the economic losses recoverable under a breach of contract claim is inconsistent with well-established law. *Id.* Thus, if the plaintiff presents legally sufficient evidence on each element of a fraudulent inducement claim, any damages suffered as a result of the fraud sound in tort. *Id.* As the Texas Supreme Court noted in *Sharyland*, pure economic loss is commonly recoverable in certain torts. *Sharyland*, 354 S.W.3d at 418. "Among these are negligent misrepresentation, legal or accounting malpractice, breach of fiduciary duty, fraud, fraudulent inducement, tortious interference with contract, nuisance, wrongful death claims related to loss of support from the decedent, business disparagement, and some statutory causes of action." *Id.* at 418–19 (citations omitted).

Dorvil's duty not to fraudulently induce the Masons into a contract was independent from Agile's obligation to perform its agreements with the Masons. *See Formosa*, 960 S.W.2d at 47. With respect to the Masons' Theft Liability Act claim, a "theft," under the act, occurs when (1) property is (2) unlawfully appropriated (3) by someone (4) with intent to deprive the owner of that property. *Lloyd Walterscheid & Walterscheid Farms, LLC v. Walterscheid*, 557 S.W.3d 245, 263 (Tex. App.—Fort Worth 2018, no pet.). A violation of the act is likewise

independent of Agile's obligation to perform its agreements with the Masons. *See, e.g.*, *Cass v. Stephens*, 156 S.W.3d 38, 69 (Tex. App.—El Paso 2004, pet. denied) (economic-loss rule did not apply to conversion claim that was incidental to the agreed contract performance and noting that just as the unauthorized removal of equipment by a third party constitutes theft, the unauthorized appropriation of jointly owned equipment constitutes conversion and breaches an obligation which exists outside the contract). And economic losses may be pleaded and proved in connection with a fraudulent inducement and a theft claim and do not arise solely from a contractual duty. *Formosa*, 960 S.W.2d at 46. Thus, if proved, Dorvil's liability for fraud and theft exist independent from a contractual obligation. Accordingly, the economic loss rule does not bar the Masons' fraud and theft claims against Dorvil. We overrule Dorvil's ninth issue.

## III. One Satisfaction Rule

In his fifteenth issue, Dorvil asserts the trial court's judgment violates the one-satisfaction rule because it awards the Masons more than one recovery for a single injury. More particularly, Dorvil asserts the trial court's judgment against him awards the Masons (1) breach of contract damages, prejudgment interest, and attorney's fees based on his vicarious liability for Agile's breach of the loans, and (2) tort damages for the jury's findings against him on multiple tort theories, including money had and received, conversion, theft, fraudulent inducement, fraud,

and conspiracy, all for the Masons' single injury resulting from the loans they made to Agile.

A party is entitled to sue and seek damages on alternative theories but is not entitled to a double recovery. *Waite Hill Servs., Inc. v. World Class Metal Works, Inc.*, 959 S.W.2d 182, 184 (Tex. 1998). When a jury returns favorable findings on two or more theories of recovery, the plaintiff is entitled to the judgment on the single theory of liability that entitles him to the greatest or most favorable relief. *Boyce Iron Works, Inc. v. Sw. Bell Tel. Co.*, 747 S.W.2d 785, 787 (Tex. 1988). Under the one-satisfaction rule, "[t]here can be but one recovery for one injury, and the fact that . . . there may be more than one theory of liability[ ] does not modify this rule." *Tony Gullo Motors I, L.P. v. Chapa*, 212 S.W.3d 299, 303 (Tex. 2006). The rule applies when defendants commit the same acts as well as when defendants commit technically differing acts that result in a single injury. *Emerson Elec. Co. v. Am. Permanent Ware Co.*, 201 S.W.3d 301, 314 (Tex. App.—Dallas 2006, no pet.). Whether the rule applies is determined not by the cause of action, but by the injury. *Id.* Thus, our review focuses on the injury, not "technically differing acts" or the type or variety of causes of action that plaintiff alleges resulted in the complained-of injury. *See id.*

It is apparent from record before us, including the pleadings, the evidence admitted at trial and the closing argument of the Masons' attorney, that the Masons sought to recover as actual damages on each of the causes of action asserted the $2

million dollars they loaned to Agile. The jury awarded the Masons $2 million dollars in actual damages on each of their direct claims against Dorvil, except their negligent misrepresentation claim, for which actual damages were not awarded. In keeping with the trial court's order granting partial default judgment against Agile, the final judgment awarded the Masons breach of contract damages of $2 million against Agile and, additionally, held Dorvil jointly and severally liable for same. In addition, the judgment awarded the Masons damages of $2 million dollars on their direct claims against Dorvil. As a result, the final judgment in effect awarded the Masons actual damages against Dorvil in the amount of $4 million, resulting in an improper double recovery.

Because the actual damages derivatively awarded against Dorvil on the breach of contract theory and actual damages awarded against Dorvil on the tort theories were for the same injury, the Masons were entitled to recover on one of the theories, but not both. In addition, because the actual damages for all of the tort theories, except the negligent misrepresentation theory, for which damages were not awarded, were the same, if the Masons elected to recover from Dorvil on a tort theory, rather than the breach–of-contract theory, they needed to choose one theory. At the hearing on the Masons' motion for judgment they indicated they were electing to recover on both their fraud and theft causes of action.[7] In addition to improperly awarding both

[7] Specifically, the Masons' attorney stated, "my clients are electing the causes of action that go to fraud and theft and walking away from the 2.8 million that went to negligent misrepresentation . . . we're electing

breach-of-contract and tort damages against Dorvil, the judgment improperly awards Dorvil tort damages on multiple theories of tort liability.

In rendering a judgment for the Masons against Dorvil on their breach of contract and tort claims, the trial court violated the one-satisfaction rule. There can be but one recovery for one injury, and the fact that there may be more than one theory of liability does not modify the rule. *Tony Gullo*, 212 S.W3d at 303. The Masons alleged only one injury. While they could plead more than one theory of liability, they could not recover on more than one. *Id.* For breach of contract, the Masons could recover economic damages and attorney's fees, but not exemplary damages. For fraud, they could recover economic damages, and exemplary damages, but not attorney's fees. Under the Theft Liability Act, they could recover economic damages, statutory damages, exemplary damages, and attorney's fees.

We sustain Dorvil's fifteenth issue and hold that, on the facts of this case, the trial court erred in rendering judgment that permitted a duplicative recovery of actual damages from Dorvil. Normally, when the prevailing party fails to make an election on alternative theories of recovery for a single injury, we reform the judgment to affect an election of the remedy that affords the prevailing party the greatest relief. *McCullough v. Scarbrough, Medlin & Assocs., Inc.*, 435 S.W.3d 871, 917 (Tex.

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the claim on which fraud is based and that's important for the bankruptcy proceeding and we're electing a claim in which theft is based because that's important for attorney's fees."

App.—Dallas 2014, pet. denied). However, this case is complicated by the fact that Dorvil filed a petition in bankruptcy, which may impact the Masons' ability to recover on certain claims. Because it is not readily apparent from the appellate record which theory of liability the Masons would elect, we will remand to permit the Masons to make an election.

Our decision to reverse and remand the case for the rendition of a new judgment that reflects the Masons' election of remedy and comports with the one-satisfaction rule will render some, if not all, of Dorvil's remaining issues moot.[8] Resolution of these issues here would be premature, advisory, and not necessary to the disposition of this appeal. *See* TEX. R. APP. P. 47.1; *Tex. Ass'n of Business v. Tex. Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993).

[8] In issues three through eight, Dorvil challenges the imposition of derivative liability for Agile's breach of contract. In issues ten through thirteen, Dorvil challenge the jury's findings on the Masons' money had and received, fraudulent inducement and conspiracy claims. In issue fourteen, Dorvil, relying on the economic-loss rule, challenges the imposition of exemplary damages. In issue sixteen, Dorvil challenges the award of attorney's fees.

## CONCLUSION

We reverse the trial court's judgment as to Dorvil and remand to the trial court to allow the Masons to elect a remedy that does not result in a double recovery and for the entry of a new judgment.

/Nancy Kennedy/
NANCY KENNEDY
JUSTICE

# Court of Appeals
# Fifth District of Texas at Dallas

## JUDGMENT

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| CARL DORVIL, Appellant<br><br>No. 05-23-01020-CV V.<br><br>CHARLES MASON AND KATHLEEN MASON, Appellees | On Appeal from the 162nd Judicial District Court, Dallas County, Texas<br>Trial Court Cause No. DC-19-07426.<br>Opinion delivered by Justice Kennedy. Justices Smith and Lewis participating. |

In accordance with this Court's opinion of this date, the judgment of the trial court against Carl Dorvil is **REVERSED** and this cause is **REMANDED** 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 10th day of April 2025.