

REVERSED AND REMANDED and Opinion Filed July 30, 2025



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

No. 05-23-01181-CV

CONOSIR, LLC, Appellant

V.

**DUANE SANTOS, RACHEL GREENBERG, LILY FENG, WINTEX
GROUP, LLC D/B/A FIRST LENDING, AND HOME POINT FINANCIAL
CORPORATION, Appellees**

**On Appeal from the 401st Judicial District Court
Collin County, Texas
Trial Court Cause No. 401-01858-2020**

MEMORANDUM OPINION ON REHEARING

Before Justices Breedlove, Clinton, and Rossini
Opinion by Justice Clinton

On May 8, 2025, this Court issued its memorandum opinion reversing and remanding this case to the trial court for further proceedings. On May 20, 2025, appellees Lily Feng, Wintex Group LLC d/b/a First Lending, and Home Point Financial Corporation filed a motion for rehearing. On the Court's own motion, we withdraw our May 8, 2025 memorandum opinion and vacate our judgment issued the same day. This is now the opinion of the Court. We reverse and remand in this memorandum opinion without reaching appellees' cross-points. *See* TEX. R. APP. P.

The factual background is well known to the parties and largely irrelevant to our resolution of Conosir’s dispositive issue on appeal. Rather than recounting every fact in a record that exceeds 3,000 pages—almost half of which is exhibits—we limit our opinion to the facts necessary to the resolution of the issue presented. *See* TEX. R. APP. P. 47.1; *Lawton Candle, LLC v. BG Pers., LP*, 690 S.W.3d 122, 124 (Tex. App.—Dallas 2024, no pet.). Essentially, Conosir sought to buy a house in Collin County from Duane Santos and his wife Rachel Greenberg; it negotiated a contract with them for the sale of the house, signed the contract, procured Santos’ and Greenberg’s signatures on the contract, and filed a lis pendens concerning the property in Collin County.

Santos and Greenberg subsequently sold the house to appellee Lily Feng. Conosir followed with a suit against Santos and Greenberg for specific performance pursuant to the contract and declaratory relief. Santos filed counterclaims against Conosir, including a claim for statutory fraud under Texas Business and Commerce Code section 27.01; the crux of Santos’ claim is that Conosir represented it needed his signature on the contract to sell his home before it would loan him money, Conosir did not intend to loan him money, and Santos relied upon Conosir’s false representation to his detriment when he executed the contract.

The parties proceeded to a jury trial and the jury found (1) Santos and Greenberg signed a contract for the sale of their home; (2) they did not revoke their offer to sell; (3) they agreed to sell their home to Conosir and Conosir agreed to

purchase it; (4) Santos and Greenberg failed to comply with their agreement; (5) Santos' and Greenberg's failure was not excused; (6) Conosir was ready, willing, and able to perform; and—most importantly for the purpose of this appeal— (7) Conosir procured Santos' and Greenberg's signatures via fraud. The trial court then denied Conosir's motion for judgment notwithstanding the verdict, rescinded the contract, and entered a final judgment.

On appeal, Conosir contends it was entitled to judgment notwithstanding the verdict with respect to the jury's finding it procured Santos' and Greenberg's signatures on the contract via fraud because there is no evidence in the record supporting the jury's finding. We review a party's challenge to the trial court's grant or denial of a motion for judgment notwithstanding the verdict under the standard for legal sufficiency. *City of Keller v. Wilson*, 168 SW3d 802, 823 (Tex. 2005). We credit evidence favoring the jury verdict if reasonable jurors could and disregard contrary evidence unless reasonable jurors could not. We will uphold the jury's finding if more than a scintilla of competent evidence supports it. The final test for legal sufficiency must always be whether the evidence at trial would enable reasonable and fair-minded people to reach the verdict under review. *Tanner v. Nationwide Mut. Fire Ins. Co.*, 289 S.W.3d 828, 830 (Tex. 2009).

Question number seven asked the jury whether Conosir procured Santos' and Greenberg's signature on the contract via fraud, and the jury answered in the

affirmative. During trial, the court provided the jury with two alternative definitions for fraud:

- (1) a false representation of past or existing material fact, the representation was made to a person for the purpose of inducing that person to enter into a contract, *and the representation was relied on* by that person entering into that contract; or
- (2) a false promise to do an act, the promise was material, the promise was made with the intention of not fulfilling it, the promise was made to a person for the purpose of inducing that person to enter into a contract, *and that person relied on the promise* in entering into that contract.

(Emphases added). Both definitions reflect the language for a statutory fraud cause of action. *See* TEX. BUS. & COM. CODE § 27.01.

Whether a party's reliance is justifiable is ordinarily a fact question, but it may be negated as a matter of law when circumstances exist under which reliance cannot be justified. *Mercedes-Benz USA, LLC v. Carduco, Inc.*, 583 S.W.3d 553, 558 (Tex. 2019). “[R]eliance upon an oral representation that is directly contradicted by the express, unambiguous terms of a written agreement between the parties is not justified as a matter of law.” *Roxo Energy Co., LLC v. Baxsto, LLC*, 713 S.W.3d 404, 409 (Tex. 2025) (quoting *JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C.*, 546 S.W.3d 648, 658 (Tex. 2018)). Thus, a party to a written contract cannot justifiably rely on oral misrepresentations regarding a contract's unambiguous terms, and a party who enters into a written contract while relying on a contrary oral agreement does so at its peril. *JPMorgan Chase Bank, N.A.*, 546 S.W.3d at 658.

At trial, Santos testified (1) he believed he and Greenberg were signing the contract at issue to secure a loan and (2) he had no intention to sell the house. The trial court, however, admitted the contract between Conosir as buyer and Santos and Greenberg as sellers of the property at issue (“1211 Greenway Drive, Allen, TX 75013”). This contract was signed by both Santos and Conosir’s representative.

The contract unambiguously indicates its purpose is to convey the property to Conosir. This purpose is communicated in multiple ways. First, the title of the document, in bold and all-caps, reads “**ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE)**.” The very first paragraph of the document says that “Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.” Paragraph 3 of the contract includes a sale price of \$230,000. Paragraphs 5 and 6 include details regarding closing procedures, including earnest money and title obligations. Paragraph 9 includes a closing date of April 19, 2020. Paragraph 10 instructs that “Seller shall deliver to Buyer possession of the Property in its present or required condition, ordinary wear and tear excepted: upon closing and funding.”

Perhaps most importantly, Paragraph 22 states that “[t]his contract contains the entire agreement of the parties and cannot be changed except by their written agreement.” Nothing in the contract includes any language providing an alternative purpose for the agreement or marking the contract as a “placeholder” for some other

oral agreement between the parties; in fact, the contract itself explicitly forecloses such a possibility through its merger clause in Paragraph 22.

Therefore, under the circumstances, Santos and Greenberg were not justified in relying upon Conosir's alleged oral representation that they needed to sign the contract solely to secure a loan because it was obviously contradicted by an unambiguous written contract to sell their home. *See Nat'l Prop. Holdings, L.P. v. Westergren*, 453 S.W.3d 419, 424 (Tex. 2015). Thus, we conclude the element of reliance—which is necessary for a statutory fraud claim—is negated as a matter of law and that as a result, no reasonable and fair-minded factfinder could have found Conosir procured Santos' and Greenberg's signatures via fraud. *See Mercedes-Benz USA, LLC*, 583 S.W.3d at 558; *Tanner*, 289 S.W.3d at 830. It is not the courts' role to protect parties from their own agreements. *Nat'l Prop. Holdings, L.P.*, 453 S.W.3d at 425.

We sustain Conosir's first issue on appeal, reverse the trial court's judgment without reaching appellees' cross-points, and remand the case to the trial court for further proceedings consistent with this opinion.

/Tina Clinton/

TINA CLINTON
JUSTICE



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

JUDGMENT

CONOSIR, LLC, Appellant

No. 05-23-01181-CV V.

DUANE SANTOS, RACHEL
GREENBERG, LILY FENG,
WINTEX GROUP, LLC D/B/A
FIRST LENDING AND HOME
POINT FINANCIAL
CORPORATION, Appellees

On Appeal from the 401st Judicial
District Court, Collin County, Texas
Trial Court Cause No. 401-01858-
2020.

Opinion delivered by Justice Clinton.
Justices Breedlove and Rossini
participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **REVERSED** and this cause is **REMANDED** to the trial court for further proceedings consistent with this opinion.

It is **ORDERED** that appellant CONOSIR, LLC recover its costs of this appeal from appellees DUANE SANTOS, RACHEL GREENBERG, LILY FENG, WINTEX GROUP, LLC D/B/A FIRST LENDING AND HOME POINT FINANCIAL CORPORATION.

Judgment entered this 30th day of July 2025.