

Reverse and Remand and Opinion Filed August 7, 2025



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-24-00314-CV

WEST TARRANT ASSOCIATES, INC. D/B/A STOP OF WESTERN FORT
WORTH D/B/A STOP RESTORATION, Appellant

V.

THELMA LLOYD, Appellee

On Appeal from the County Court at Law No. 1
Dallas County, Texas
Trial Court Cause No. CC-23-02059-A

MEMORANDUM OPINION

Before Justices Breedlove, Barbare¹, and Lee²
Opinion by Justice Lee

Appellant West Tarrant Associates, Inc. appeals the trial court's take-nothing judgment which, despite appellee being in default, found insufficient evidence to support West Tarrant's claims for breach of contract damages and foreclosure of its mechanic's and materialman's lien (M&M lien).

¹ Justice Erin Nowell was originally a member of this panel. When Justice Nowell's term expired on December 31, 2024, Justice Barbare succeeded her on this panel.

² Justice Mike Lee replaced Justice Emily Miskel on this panel after submission.

Because the trial court committed reversible error, we sustain both of West Tarrant's issues and reverse the trial court's judgment. We remand with instructions to enter judgment awarding: (1) a court-ordered foreclosure of West Tarrant's M&M lien on Lloyd's property; (2) an order of sale and writ of possession; (3) \$8,894.42 in actual damages; (4) costs and reasonable attorney's fees, pursuant to Civil Practice and Remedies Code section 38.001 and/or costs and reasonable attorney's fees as are equitable and just pursuant to Property Code section 53.156; (5) court costs; and (6) the correct amount of pre-judgment interest owed at the time judgment is signed.

BACKGROUND

West Tarrant entered into an agreement with appellee Thelma Lloyd to perform mold remediation and duct cleaning services. Upon completion of the work on October 14, 2022, West Tarrant invoiced Lloyd for \$8,894.42. Lloyd failed to pay.

On January 9, 2023, West Tarrant filed a timely affidavit for an M&M lien on Lloyd's property and provided the required statutory notice. Lloyd again failed to remit payment.

West Tarrant sued Lloyd on April 10, 2023 seeking to recover damages for provided services and foreclosure of its M&M lien on Lloyd's property. Lloyd was personally served the citation and petition at an address in Duncanville, at 6:55 p.m. on April 19, 2023. The return of service was filed on April 20, 2023.

Lloyd failed to answer or otherwise appear. West Tarrant moved for default judgment on January 17, 2024. Without a hearing, the court entered a final take-nothing judgment on February 13, 2024, including in the judgment a finding that there was insufficient evidence to support West Tarrant’s claims for damages. West Tarrant filed a motion for reconsideration. The trial court did not hear the motion for reconsideration, which was overruled by operation of law. West Tarrant appeals the judgment.

STANDARD OF REVIEW

West Tarrant brings two issues on appeal: (1) the trial court was without discretion to deny its request to foreclose on its valid M&M lien; and (2) the trial court incorrectly found there was insufficient evidence of damages supporting the breach of contract claim.

We review a trial court's interpretation of a statute de novo. *See City of Houston v. Bates*, 406 S.W.3d 539, 543 (Tex. 2013). Our primary objective is to give effect to the legislature's intent when it enacted the statute. *Id.* We start with the text of the statute and presume that the legislature intended what it enacted. *Id.* (“Legislative intent is best expressed by the plain meaning of the text unless the plain meaning leads to absurd results or a different meaning is supplied by legislative definition or is apparent from the context.”). We strive “to read the statute contextually, giving effect to every word, clause, and sentence.” *In re Office of Att’y Gen.*, 422 S.W.3d 623, 629 (Tex. 2013). In our review, we may consider

factors such as the object to be attained by the legislation, circumstances under which the statute was enacted, legislative history, and consequences of a particular construction. TEX. GOV'T CODE ANN. § 311.023 (West 2013).

In determining the legal sufficiency of the evidence, we consider all the evidence in the light most favorable to the challenged finding, crediting favorable evidence if a reasonable fact-finder could, and disregarding contrary evidence unless a reasonable fact-finder could not. *City of Keller v. Wilson*, 168 S.W.3d 802, 809 (Tex. 2005).

The test for abuse of discretion is whether the court acted without reference to any guiding rules and principles. *See Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241 (Tex. 1985). As long as the evidence falls “within the zone of reasonable disagreement,” we will not substitute our judgment for that of the fact-finder. *Sheetz v. Slaughter*, 503 S.W.3d 495, 502 (Tex. App.—Dallas 2016, no pet.).

ANALYSIS

A. The Trial Court Was Without Discretion to Deny M&M Lien Foreclosure

West Tarrant argues the trial court did not have the discretion to deny foreclosure on its M&M lien because it adhered to all requirements for perfecting a lien under Section 53 of the Property Code.

Section 53.021 of the Property Code provides that a contractor is entitled to an M&M lien if that contractor provides labor “for the construction or repair of an improvement” under a contract with the owner of the property. TEX. PROP. CODE §

53.021(1). To perfect an M&M lien for a residential construction project, the contractor must (1) file an affidavit with the county clerk by the “15th day of the third month after the month in which the original contractor’s work was completed, terminated, or abandoned” and (2) send a copy of the affidavit to the owner within five days of the affidavit’s filing. *Id.* §§ 53.052(a)(2), 53.055(a).

A lien claimant can bring suit to foreclose the lien. *See id.* §§ 53.154, 53.158. Once a lien claimant proves that it performed labor for the owner, that the debt against the owner is valid, and that the claimant “substantially complied” with the requirements in Property Code Chapter 53 for perfecting a lien, a trial court does not have discretion “to deny a judgment of foreclosure and order of sale of the property subject to the lien.” *See Crawford Servs., Inc. v. Skillman Int’l Firm, L.L.C.*, 444 S.W.3d 265, 270 (Tex. App.—Dallas 2014, pet. dism’d). Instead, the court must order foreclosure under the Section 53.154 of the Property Code. *See id.*

West Tarrant filed its M&M lien affidavit with the Dallas County Clerk on January 9, 2023, stating notice of the filing of the affidavit was sent to Lloyd and including an invoice establishing the debt Lloyd owed for West Tarrant’s labor. The affidavit also stated the debt was due and correct. This affidavit was filed eighty-seven days after completion of the project, before the statutory deadline. TEX. PROP. CODE § 53.052(a)(2). West Tarrant completed perfection of its M&M lien by providing notice to Lloyd within five days of the affidavit’s filing. TEX. PROP. CODE § 53.055(a).

West Tarrant filed suit for foreclosure of the valid M&M lien on April 10, 2023, including with its suit allegations and proof it had substantially complied with the procedures necessary for foreclosure under Chapter 53. The affidavit of lien and the service contract were attached to the suit, showing the amount outstanding was \$8,894.42.

Despite the fact that Lloyd was in default, the trial court issued a take-nothing judgment.

As West Tarrant had perfected its M&M lien, the trial court had no discretion to deny a judgment foreclosing the M&M lien. *Crawford Servs.*, 444 S.W.3d at 270 (the trial court “did not have discretion under section 53.154 to deny a judgment of foreclosure and order of sale of the property subject to the lien.”).

West Tarrant’s first issue is sustained.

In addition, West Tarrant plead for and showed entitlement to costs and reasonable attorney's fees as are equitable and just, for the proceeding to foreclose its lien. TEX. PROP. CODE § 53.156 (West 2023). On remand, the trial court must determine the amount of such costs and fees.

B. There Was Sufficient Evidence of Breach of Contract Damages

West Tarrant contends the trial court incorrectly found there was insufficient evidence of damages arising from the breach of contract. West Tarrant claimed liquidated damages owed by Lloyd pursuant to the service contract covering the water restoration and mitigation work in the underlying suit. The parties’ service

contract states that, in the event Lloyd breached the agreement, Lloyd would pay West Tarrant in full plus additional fees.

To bring a successful breach of contract claim, a party must establish: “(a) a valid contract; (b) the party performed or tendered performance; (c) the opposing party breached the contract; and (d) the party was damaged as a result of that breach.” *Brown v. Ogbolu*, 331 S.W.3d 530, 535 (Tex. App.—Dallas 2011, no pet.). For the element of damages, there must be a causal connection between the defendant’s breach and the damages. That is, a plaintiff must present evidence that shows that the damages are a foreseeable consequence of the breach. *See Mead v. Johnson Grp., Inc.*, 615 S.W.2d 685, 687 (Tex. 1981); *Velvet Snout, LLC v. Sharp*, 441 S.W.3d 448, 451 (Tex. App.—El Paso 2014, no pet.).

A no-answer default constitutes an admission by the defendant of all allegations in the plaintiff’s pleadings, except for unliquidated damages. *Paradigm Oil, Inc. v. Retamco Oper., Inc.*, 372 S.W.3d 177, 183 (Tex. 2012); *see also Argyle Mech., Inc. v. Unigus Steel, Inc.*, 156 S.W.3d 685, 687 (Tex. App.—Dallas 2005, no pet.).

The parties’ service contract states that, in the event Lloyd breached the agreement, Lloyd would pay West Tarrant in full plus additional fees. Because Lloyd failed to answer or otherwise appear in the case, she admitted to breaching the contract by failing to pay the \$8,894.42 owed.

In addition, West Tarrant provided the trial court its invoices establishing the amount of its damages, \$8,894.42, as a result of Lloyd's breach of contract.

Both through Lloyd's admission via default and by the evidence West Tarrant provided the trial court, appellant conclusively established all elements of its breach of contract claim, including damages. The trial court erred by finding otherwise.

West Tarrant's second issue is sustained.

In addition, West Tarrant showed its entitlement to reasonable attorney's fees and costs resulting from Lloyd's breach of contract. TEX. CIV. PRAC. & REM. CODE § 38.001 (West 2023). On remand, the trial court must determine the amount of such fees and costs, ensuring against double recovery of such fees and costs.

CONCLUSION

Because West Tarrant conclusively established entitlement to judgment, we reverse the judgment of the trial court and remand this cause to the court for entry of judgment in favor of West Tarrant, awarding: awarding: (1) foreclosure of West Tarrant's M&M lien on Lloyd's property; (2) an order of sale and writ of possession; (3) \$8,894.42 in actual damages; (4) costs and reasonable attorney's fees, pursuant to Civil Practice and Remedies Code section 38.001 and/or costs and reasonable attorney's fees as are equitable and just pursuant to Property Code section 53.156; (5) court costs; and (6) the correct amount of pre-judgment interest owed at the time

the court signs the judgment.

/Mike Lee/

MIKE LEE

JUSTICE



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

JUDGMENT

WEST TARRANT ASSOCIATES,
INC. D/B/A STOP OF WESTERN
FORT WORTH D/B/A STOP
RESTORATION, Appellant

No. 05-24-00314-CV V.

THELMA LLOYD, Appellee

On Appeal from the County Court at
Law No. 1, Dallas County, Texas
Trial Court Cause No. CC-23-02059-
A.

Opinion delivered by Justice Lee.
Justices Breedlove and Barbare
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 with instructions to enter judgment awarding: (1) a court-ordered foreclosure of appellant's M&M lien on appellee's property; (2) an order of sale and writ of possession; (3) \$8,894.42 in actual damages; (4) costs and reasonable attorney's fees, pursuant to Civil Practice and Remedies Code section 38.001 and/or costs and reasonable attorney's fees as are equitable and just pursuant to Property Code section 53.156; (5) court costs; and (6) the correct amount of pre-judgment interest owed at the time judgment is signed.

It is **ORDERED** that appellant WEST TARRANT ASSOCIATES, INC. D/B/A STOP OF WESTERN FORT WORTH D/B/A STOP RESTORATION recover its costs of this appeal from appellee THELMA LLOYD.

Judgment entered this 7th day of August, 2025.