REVERSED and REMANDED in part; AFFIRMED in part and Opinion Filed September 8, 2025

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-23-01315-CV

DARREN MELTON, Appellant
V.
RANDALL MANAGEMENT, LLC, RANDALL HAEFLI, AND JIM BAILEY, Appellees

On Appeal from the 95th District Court
Dallas County, Texas
Trial Court Cause No. DC-22-13063

MEMORANDUM OPINION

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

Darren Melton appeals from a summary judgment dismissing his claims against all three appellees for conversion of personal property and unjust enrichment. He complains on appeal that the trial court erred in entering judgment for the following reasons: (1) there are fact issues as to his conversion and unjust enrichment causes of action; (2) his causes of action are not precluded by the statute of limitations; and (3) the trial court should have granted his motion for a continuance and motion to reopen discovery. We conclude that the trial court erred in granting

summary judgment in favor of appellee Randall Management, LLC on Melton's conversion claim and otherwise did not err. Accordingly, we reverse the trial court's judgment as to Melton's conversion claim against Randall Management, LLC only, affirm the remainder of the trial court's judgment, and remand the case for proceedings consistent with this opinion.

I. Background

Melton was a tenant under a commercial lease of Unit #3 in a warehouse facility located at 601 Jealouse Way in Cedar Hill. Randall Management, LLC (Randall Management) was the company that managed the facility on behalf of the owner, 601 Jealouse, LLC. 601, which is not a party to this case. Randall Haefli is the sole member of Randall Management, and Jim Bailey is the property manager for Randall Management.

In 2018, a justice of the peace granted judgment to the owner in a forcible detainer proceeding against Melton, awarding the owner possession of the premises. Melton appealed to the county court at law, which, at trial, awarded possession to the owner. Melton appealed to this court, which dismissed the appeal on Melton's motion. The Dallas County Clerk then issued a writ of possession.

On August 6, 2020, a constable executed the writ of possession, delivering possession of the premises to the owner. Pursuant to the writ, Melton's possessions were removed from Unit #3 and placed in the warehouse facility's parking lot.

Over the next few months, Melton returned to the parking lot several times to retrieve some, but not all, of his possessions. Sometime after November 23, 2020, without notice to Melton, Randall Management removed the remainder of Melton's property from the parking lot and disposed of it.

On September 16, 2022, Melton sued Randall Management, Haefli, and Bailey for conversion of his personal property and unjust enrichment, alleging that appellees removed the property from the parking lot and sold it, keeping the proceeds of the sale. Randall Management, Haefli, and Bailey answered and, on August 18, 2023, filed a motion for summary judgment.

The motion for summary judgment included both traditional and no-evidence grounds. Randall Management, Haefli, and Bailey's traditional grounds for summary judgment included the following:

1. *Disproof of unlawful or wrongful dominion and control:* Regarding the conversion claim, the summary-judgment evidence conclusively establishes that Melton's property was removed pursuant to a valid writ of possession; as a matter of law, there is no unlawful or wrongful dominion and control in those circumstances.

2. *Disproof of benefit:* Regarding the unjust enrichment claim, the summary-judgment evidence conclusively establishes that appellees did not obtain a benefit from Melton by fraud, duress, or the taking of an undue advantage.

3. *Proof of running of the statute of limitations:* The summary-judgment evidence conclusively establishes that Melton's causes of action accrued more than two years before he filed suit and thus are barred by the two-year statute of limitations. *See* Tex. Civ. Prac. & Rem. Code Ann. § 16.003.

Randall Management, Haefli, and Bailey's no-evidence grounds for summary judgment included the following:

1. *No evidence of wrongful exclusive dominion and control:* Regarding the conversion claim, Melton has no evidence that appellees exercised wrongful dominion and control to the exclusion of his rights.

2. *No evidence of benefit:* Regarding the unjust enrichment claim, Melton has no evidence that appellees obtained a benefit by fraud, duress, or the taking of an undue advantage.

Melton filed a response to the motion for summary judgment.

The trial court heard and granted the motion for summary judgment, signing a final judgment dismissing Melton's petition in its entirety.

II. Standard of Review

We review both traditional and no-evidence summary judgments de novo. *See First United Pentecostal Church of Beaumont v. Parker*, 514 S.W.3d 214, 219 (Tex. 2017). In our review, we take as true all evidence favorable to the nonmovant, indulge every reasonable inference in favor of the nonmovant, and resolve any doubts in the nonmovant's favor. *Id.*

When, as here, a trial court does not specify the ground on which it granted the motion for summary judgment, we must affirm if any ground asserted in the motion is meritorious. *Cmty. Health Sys. Prof'l Servs. Corp. v. Hansen*, 525 S.W.3d 671, 680 (Tex. 2017). Similarly, when the summary judgment order does not specify the ground on which it is based, the appellant must negate each ground upon which the judgment could have been based. *Rosetta Res. Operating, LP v. Martin*, 645 S.W.3d 212, 226 (Tex. 2022) (citing *Malooly Bros. v. Napier*, 461 S.W.2d 119, 120–

21 (Tex. 1970); *Jarvis v. Rocanville Corp.*, 298 S.W.3d 305, 313 (Tex. App.—Dallas 2009, pet. denied)).

When the motion for summary judgment asserts both no-evidence and traditional grounds, we first review the no-evidence grounds. *Hansen*, 525 S.W.3d at 680. If the nonmovant fails to meet its burden under the no-evidence motion, there is no need to address the challenge to the traditional motion as it necessarily fails. *Parker*, 514 S.W.3d at 219. Any claims that survive the no-evidence review will then be reviewed under the traditional standard. *Id.* at 219–20.

In a no-evidence motion, the movant contends that, after adequate time for discovery, no evidence supports one or more essential elements of a claim for which the nonmovant would bear the burden of proof at trial. *See* Tex. R. Civ. P. 166a(i). The motion must state the elements as to which there is no evidence. *Id.* The motion must be specific in challenging the evidentiary support for an element of a claim or defense; the rule does not authorize conclusory motions or general no-evidence challenges to an opponent's case. *Timpte Indus., Inc. v. Gish*, 286 S.W.3d 306, 311 (Tex. 2009). The purpose of this requirement is to provide the opposing party with fair notice of the issues and adequate information for opposing the motion. *See id.* The trial court must grant the motion unless the nonmovant produces summary-judgment evidence raising a genuine issue of material fact on each challenged element. Tex. R. Civ. P. 166a(i).

When a defendant moves for traditional summary judgment on a plaintiff's claim, the movant must demonstrate that "there is no genuine issue as to any material fact" and that the movant is "entitled to judgment as a matter of law." *Wal-Mart Stores, Inc. v. Xerox State & Local Sols., Inc.*, 663 S.W.3d 569, 583 (Tex. 2023) (citing Tex. R. Civ. P. 166a(c); *Amedisys, Inc. v. Kingwood Home Health Care, LLC*, 437 S.W.3d 507, 511 (Tex. 2014)). If the movant meets that burden, the burden shifts to the nonmovant to present evidence raising a fact issue, but the burden does not shift if the movant does not satisfy its initial burden. *Id.* (citing *Amedisys*, 437 S.W.3d at 511). Summary-judgment motions must stand or fall on their own merits, and the nonmovant has no burden unless the movant conclusively establishes its cause of action or defense. *Id.* (citing *Amedisys*, 437 S.W.3d at 511–12).

III. Applicable Law

Conversion is the unauthorized and wrongful assumption and exercise of dominion and control over the personal property of another, to the exclusion of, or inconsistent with, the owner's rights. *Waisath v. Lack's Stores, Inc.*, 474 S.W.2d 444, 447 (Tex. 1971); *Sky Group, LLC v. Vega St. 1, LLC*, No. 05-17-00161-CV, 2018 WL 1149787, at *5 (Tex. App.—Dallas Mar. 5, 2018, no pet.) (mem. op.). To establish a claim for conversion, a plaintiff must prove the following: (1) the plaintiff owned or had possession of the property or entitlement to possession; (2) the defendant unlawfully and without authorization assumed and exercised control over the property to the exclusion of, or inconsistent with, the plaintiff's rights as an

owner; (3) the plaintiff demanded return of the property; and (4) the defendant refused to return the property. *Lawyers Title Co. v. J.G. Cooper Dev., Inc.*, 424 S.W.3d 713, 718 (Tex. App.—Dallas 2014, pet. denied) (citing *Grand Champion Film Prod., L.L.C. v. Cinemark USA, Inc.*, 257 S.W.3d 478, 485 (Tex. App.—Dallas 2008, no pet.)). The plaintiff also must establish that (5) the plaintiff was injured by the conversion. *Id.* (citing *United Mobile Networks, LP. v. Deaton*, 939 S.W.2d 146, 147 (Tex. 1997) (per curiam); *Wells Fargo Bank Nw., N.A. v. RPK Capital XVI, LLC*, 360 S.W.3d 691, 699 (Tex. App.—Dallas 2012, no pet.)).

"Conversion is complete when a person unlawfully and wrongfully exercises dominion and control over the property of another to the exclusion of the possessory rights of the owner or of another person entitled to possession." *Campos v. Inv. Mgmt. Props., Inc.*, 917 S.W.2d 351, 354 (Tex. App.—San Antonio 1996, writ denied). A demand and refusal are not necessary where the possession was acquired wrongfully, after the conversion has become complete (which is Melton's allegation in this case), or where it is shown that a demand would have been useless. *McVea v. Verkins*, 587 S.W.2d 526, 531 (Tex. App.—Corpus Christi 1979, no writ).[1]

[1] Abandonment can serve as an affirmative defense to a conversion claim by negating the plaintiff's ownership or entitlement to possession at the time of the alleged conversion. *See Clifford v. McCall-Gruesen*, No. 02-13-00105-CV, 2014 WL 5409085, at *4 (Tex. App.—Fort Worth Oct. 23, 2014, no pet.) (mem. op. on reh'g). In *Clifford*, the court found that the abandonment issue was tried by consent despite not being pled. *Id.* Appellees did not assert abandonment as an affirmative defense.

Unjust enrichment is an equitable principle holding that one who receives benefits unjustly should make restitution for those benefits. *Tex. Integrated Conveyor Sys., Inc. v. Innovative Conveyor Concepts, Inc.*, 300 S.W.3d 348, 367 (Tex. App.—Dallas 2009, pet. denied) (citing *Villarreal v. Grant Geophysical, Inc.*, 136 S.W.3d 265, 270 (Tex. App.—San Antonio 2004, pet. denied)). Unjust enrichment occurs when the person sought to be charged has wrongfully secured a benefit or has passively received one which it would be unconscionable to retain. *Id.* (citing *Villarreal*, 136 S.W.3d at 270). A person is unjustly enriched when he obtains a benefit from another by fraud, duress, or the taking of an undue advantage. *Id.* (citing *Heldenfels Bros., Inc. v. City of Corpus Christi*, 832 S.W.2d 39, 41 (Tex. 1992)). Unjust enrichment is the failure to make restitution of benefits received under circumstances giving rise to an implied or quasi-contract to repay. *Id.* (citing *Villarreal*, 136 S.W.3d at 270).[2]

IV. Analysis

In his first issue on appeal, Melton asserts that the trial court erred in granting summary judgment. In his second issue on appeal, Melton asserts that no-evidence summary judgment was inappropriate because there is more than a scintilla of probative evidence. We will consider these general assignments of error in connection with Melton's specific issues below.

[2] Applicable law related to appellees' statute of limitations defense is discussed in section IV.C, below.

A. Summary Judgment on Melton's Conversion Claim

1. Positions of the Parties

In his third issue on appeal, Melton asserts that his property was not disposed of lawfully. In his fourth issue, Melton asserts that there is a genuine issue of material fact as to whether appellees wrongfully exercised dominion and control over his property. Randall Management admits that it took the affirmative step of disposing of Melton's personal property post-eviction. However, Appellees argue that Melton has no evidence that they—including Randall Management—exercised *wrongful* dominion and control to the exclusion of his rights. Appellees also argue that the summary-judgment evidence conclusively establishes that Melton's property was removed pursuant to a valid writ of possession and that, as a matter of law, there is no *unlawful* or *wrongful* dominion and control in those circumstances. In addition, appellees argue, they did not act to the exclusion of Melton's rights because Melton was present and even participated in removing his property from Unit #3 and had months thereafter to retrieve his property from the parking lot before Randall Management disposed of it.

We first conduct a no-evidence review of Melton's summary-judgment evidence regarding unlawful or wrongful dominion and control. *See Hansen*, 525 S.W.3d at 680.

2. No-evidence Summary Judgment

Regarding Melton's conversion claim, our analysis of no-evidence summary judgment as to Randall Management hinges on whether Melton presented evidence establishing a genuine issue of material fact whether Randall Management's affirmative conduct in disposing of Melton's personal-property post-eviction was unlawful or wrongful. On this record, we conclude that Melton did. Accordingly, we reverse no-evidence summary judgment on Melton's conversion claim as to Randall Management. Our analysis as to Haefli and Bailey focuses on whether Melton presented a genuine issue of material fact regarding whether they exercised dominion and control over Melton's personal property post- eviction. On this record, we conclude that Melton did not, and affirm no-evidence summary judgment on Melton's conversion claim as to Haefli and Bailey.

Melton attached to his summary-judgment response his own affidavit and a copy of Bailey's affidavit, which had also been attached to appellees' motion for summary judgment. In his own affidavit, Melton testifies that his property consisted of electronics, pallet racks, and valuable collectable items. He also testifies that from August 6, 2020, until November 23, 2020, he returned to the parking lot several times to retrieve some of his property.

Melton specifically testifies about four visits to the parking lot, on August 6, August 14, September 14, and October 12. On August 6, Melton encountered Bailey's son, who told Melton that Bailey had authorized him to take the property

from the premises, but no property was removed that day. On August 14, Melton encountered another man, who told Melton that Bailey had sent him to remove equipment, but the man did not remove any property. Bailey, who was present that day, spoke with Melton and allowed Melton to remove some of his equipment. On September 14, Melton encountered two other individuals who were trying to take his property. He called the police. When the police arrived, Bailey confirmed that he had sent these men to remove the property. Bailey agreed to allow the property to stay if Melton paid the men $120, and Melton did so. Finally, on October 12, Melton and a friend encountered yet another man who was trying to remove Melton's pallet racks from the parking lot. The man told Melton that Haefli had authorized him to take the racks.

Melton's affidavit also shows that he had exchanged text messages with Bailey on November 19 and 23, 2020. In the text messages, Bailey asked Melton when the electronics recyclers were coming and told Melton, "My boss [Haefli] is about to run out of patience." Melton replied to Bailey that he was coming that day to retrieve some of his property from the parking lot.

Melton further testifies that he returned to the premises on December 29, 2020, and discovered that the personal property of his that he had not yet removed from the facility's parking lot was gone.

Melton claims that appellees admit in their motion and in Bailey's affidavit that Randall Management removed and disposed of Melton's property over thirty

days after the execution of the writ of possession. We agree. Both the motion for summary judgment and Bailey's affidavit contain the statement, "Eventually, Melton stopped coming and Randall Management removed the remaining debris from its place of business and disposed of it."[3]

Taking as true all evidence favorable to the nonmovant, indulging every reasonable inference in favor of the nonmovant, and resolving any doubts in the nonmovant's favor, *see Parker*, 514 S.W.3d at 219, we conclude that Melton's response, in which he references admissions in appellees' motion and Bailey's affidavit, raises a genuine issue as to whether Randall Management wrongfully and unlawfully exercised dominion and control over Melton's property to the exclusion of his rights when it ultimately removed and disposed of the property.

Melton's response does not, however, raise a genuine issue as to whether Haefli or Bailey wrongfully and unlawfully exercised dominion and control over Melton's property to the exclusion of his rights. Melton presented no evidence that Haefli or Bailey exercised dominion and control: Melton presented no evidence that they directed or participated in the removal and disposal of Melton's property (whether such disposal was lawful or unlawful). Melton argued in the response that

[3] Appellees argue, and we agree, that they had no duty of care toward Melton's property while it lay on the parking lot. *See Conroy v. Manos*, 679 S.W.2d 124, 127 (Tex. App.—Dallas 1984, writ ref'd n.r.e.) (holding that the landlord had no duty to protect or to store the renter's property after it was removed pursuant to a writ of restitution); *Campos*, 917 S.W.2d at 354–55 (holding that Property Code section 24.0061 does not impose upon the landlord a duty to care for the property removed pursuant to a writ of possession until the owner of the property retrieves it). That rule does not, however, apply to Randall Management's ultimate affirmative action to dispose of Melton's personal property.

Haefli and Bailey should be held personally liable because of their involvement with *previous* attempts or threats to take some of the property in August, September, and October 2020; but Melton admitted that no property was actually taken in those incidents.

Insofar as this evidence could give rise to a surmise or suspicion that Haefli of Bailey or both directed or participated in the subsequent removal and disposal of the property by Randall Management, that showing is insufficient to meet Melton's nonmovant's burden. "When the evidence offered to prove a vital fact is so weak as to do no more than create a mere surmise or suspicion of its existence, the evidence is no more than a scintilla and, in legal effect, is no evidence." *Kindred v. Con/Chem, Inc.*, 650 S.W.2d 61, 63 (Tex. 1983). In short, while Randall Management stated that it "removed" and "disposed of" Melton's property (the "debris"), Haefli and Bailey made no such statement and Melton presents no evidence that they removed and disposed of Melton's property.

2. Traditional Summary Judgment

Having affirmed no-evidence summary judgment on Melton's conversion claim as to Haefli and Bailey, we do not address traditional summary judgment in their favor. As to Randall Management, our analysis hinges on whether Randall Management established, as a matter of law, that its affirmative conduct in disposing of Melton's personal-property post-eviction was lawful or authorized. On this record, we conclude that Randall Management did not. Accordingly, we reverse

traditional summary judgment on Melton's conversion claim against Randall Management.

Germaine to our analysis is our conclusion that, presuming the writ of possession was properly obtained and executed, Randall Management nonetheless failed to present evidence showing that its affirmative conduct in ultimately removing and disposing of Melton's property was authorized by the writ. Rather, those actions were subsequent and independent and not intertwined with the execution of the writ. *See, e.g.*, *Merritt v. Harris County*, 775 S.W.2d 17, 24 (Tex. App.—Houston [14th Dist.] 1989, writ denied).

We assume without deciding that the writ of possession here was lawfully obtained and executed. As discussed below, a lawfully obtained and executed writ of possession provides a landlord statutory options regarding the disposition of an evicted tenant's personal property. But Randall Management has not shown, and we have not found, that affirmatively removing and disposing of the evicted tenant's personal property is one of them. Accordingly, on this record Randall Management's affirmative disposal of Melton's personal property post-eviction was not lawful, even conceding that the eviction itself was lawful.

Appellees attached a copy of the writ of possession to their motion, and it shows that Randall Management was presented with two separate lawful avenues regarding disposition of Melton's personal property: placement nearby, as authorized; and removal and storage by a warehouseman, as authorized. The writ of

possession, pursuant to statutory authority, commanded the constable to "place, or have an authorized person place, the removed personal property outside the rental unit at a nearby location, but not blocking a public sidewalk, passageway, or street and not while it is raining, sleeting, or snowing." *See* Tex. Prop. Code Ann. § 24.0061(d)(2)(D) ("The writ of possession shall order the officer executing the writ to: . . . when the writ is executed: . . . place, or have an authorized person place, the removed personal property outside the rental unit at a nearby location, but not blocking a public sidewalk, passageway, or street and not while it is raining, sleeting, or snowing, except as provided by Subsection (d-1)."). The writ and the statute do not require placement of the tenant's property on the landlord's premises.

Further, the writ provided:

> YOU ARE HEREBY AUTHORIZED AT YOUR DISCRETION TO ENGAGE THE SERVICES OF A BONDED OR INSURED WAREHOUSEMAN TO REMOVE AND STORE, SUBJECT TO APPLICABLE LAW, PART OR ALL OF THE PROPERTY AT NO COST TO THE LANDLORD OR THE OFFICER EXECUTING THE WRIT. YOU MAY NOT REQUIRE THE LANDLORD TO STORE THE PROPERTY.

See Tex. Prop. Code Ann. § 24.0061(e) ("The writ of possession shall authorize the officer, at the officer's discretion, to engage the services of a bonded or insured warehouseman to remove and store, subject to applicable law, part or all of the property at no cost to the landlord or the officer executing the writ."); *see also id.* § 24.0062 (creating a warehouseman's lien); *Guyer v. Guyer*, 141 S.W.2d 963, 968–69 (Tex. Civ. App.—Amarillo 1940, writ ref'd) (finding no conversion where the

sheriff removed property from the premises under a valid writ of possession and stored it in a warehouse subject to disposal of the owner, no other party asserted a claim to or ownership of the property or exercised dominion or control over it, and the owner made no demand for its return). Thus, pursuant to statutory authority, the writ allowed the sheriff or constable, in that officer's discretion, to engage a warehouseman to remove and store the property.

The writ did not, however, authorize Randall Management to remove Melton's property from the parking lot and take affirmative steps to dispose of it after the writ was fully executed.

Additionally, abandonment may serve as an affirmative defense to a conversion claim. *See Estate of Douglas v. Castillian Condominiums, Inc.*, No. 02-21-00321-CV, 2022 WL 4373603, at *9 (Tex. App.—Fort Worth Sept. 22, 2022, no pet.) (affirming summary judgment on a claim of conversion based on the affirmative defense of abandonment); *see also Clifford*, 2014 WL 5409085, at *4 (affirming judgment on the unpleaded affirmative defense of abandonment because it was tried by consent). However, Randall Management has not asserted abandonment as an affirmative defense in the trial court below, nor has it argued on appeal that Melton had abandoned his personal property before Randall Management disposed of it. Accordingly, at this summary-judgment stage of litigation the issue of whether Melton abandoned his personal property or not is unavailing to support summary judgment. For these reasons, we conclude that

Randall Management failed to establish as a matter of law (1) that its exercise of dominion and control over (that is, disposal of) Melton's personal property was lawful or authorized, or (2) any affirmative defense to Melton's conversion claim. Because Randall Management did not meet its movant's burden, at this stage the burden did not shift to Melton to present evidence raising a genuine issue of material fact on these elements of Melton's claim and Randall Management's (unasserted) affirmative defense. *See Wal-Mart Stores*, 663 S.W.3d at 583.

Accordingly, we sustain Melton's third and fourth issues on appeal as to Randall Management and overrule those issues as to Haefli and Bailey.[4]

B. Summary Judgment on Melton's Unjust Enrichment Claim

In his fifth issue on appeal, Melton asserts that there is a genuine issue of material fact as to whether appellees obtained a benefit from Melton by fraud, duress, or the taking of an undue advantage. Regarding the unjust enrichment claim, Randall Management, Haefli, and Bailey assert and argue in their no-evidence motion that

[4] Melton asserts in his sixth issue on appeal that there is a fact issue as to whether appellees stored Melton's property and entered into an oral rental agreement that created a legal duty to Melton. Regarding both of Melton's causes of action, appellees assert in their no-evidence motion that Melton has no evidence that Haefli and Bailey, in their individual capacities, owed or breached a duty to Melton, so they are not liable. In their traditional motion, they assert that the summary-judgment evidence conclusively establishes that all actions by Haefli and Bailey were in their capacities as representatives of Randall Management and not in their capacities as individuals, so they are not individually liable for either cause of action. Melton's sixth issue fairly includes the subsidiary issue of whether the trial court erred in granting summary judgment to Haefli and Bailey because they were not individually liable for conversion or unjust enrichment. *See* Tex. R. App. P. 38.1(f) ("The statement of an issue or point will be treated as covering every subsidiary question that is fairly included."). Because our decision on Melton's third and fourth issues is dispositive of the appeal regarding Haefli and Bailey, we need not address the sixth issue. *See* Tex. R. App. P. 47.1.

Melton has no evidence that appellees obtained a benefit by fraud, duress, or undue advantage. In their traditional motion, they assert and argue that the summary-judgment evidence conclusively establishes that appellees did not obtain a benefit from Melton by fraud, duress, or the taking of an undue advantage.

As we did with the conversion claim, we first conduct a no-evidence review of Melton's summary-judgment evidence on his unjust enrichment claim. *See Hansen*, 525 S.W.3d at 680. Melton's attached affidavit contains no facts based on personal knowledge showing that appellees obtained a benefit, and the attached copy of Bailey's affidavit states that appellees "did not obtain any benefit from Melton by fraud, duress or the taking of an undue advantage." Melton states in his response: "The Plaintiff has not been afforded the opportunity to conduct discovery as to obtain the true benefit the Defendant[]s gained from disposing of his property." Melton's response also includes a statement of mere belief that appellees obtained a benefit: "[I]t is believed that the Defendants did not merely throw the Plaintiff's property in the trash but instead sold the property and pocketed the proceeds from the sale of the Plaintiff's property." Melton does not point to any admissible summary-judgment showing how appellees disposed of his property or that appellees obtained a benefit from doing so.

Taking as true all evidence favorable to the nonmovant, indulging every reasonable inference in favor of the nonmovant, and resolving any doubts in the nonmovant's favor, *see Parker*, 514 S.W.3d at 219, we conclude that Melton's

response to the no-evidence motion does not raise a genuine issue as to whether Randall Management, Haefli, or Bailey obtained a benefit from disposing of Melton's property. Because Melton fails to meet his burden under the no-evidence ground, there is no need to address his challenge to the traditional ground for summary judgment on the unjust enrichment claim as it necessarily fails. *See id.*

For these reasons, we conclude that the trial court did not err in granting summary judgment on Melton's unjust enrichment claim. We overrule Melton's fifth issue on appeal.

C. Appellees' Limitations Defense

Having sustained Melton's issues related to his conversion claim against Randall Management, we turn to appellees' limitations defense. In his seventh issue on appeal, Melton asserts that his claims are not barred by the statute of limitations. A two-year statute of limitations applies to conversion and unjust enrichment claims. *Pollard v. Hanschen*, 315 S.W.3d 636, 641 (Tex. App.—Dallas 2010, no pet.) (citing Tex. Civ. Prac. & Rem. Code Ann. § 16.003(a); *Elledge v. Friberg–Cooper Water Supply Corp.*, 240 S.W.3d 869, 870 (Tex. 2007)).

Appellees presented summary-judgment evidence that Melton's property was removed from Unit #3 pursuant to the writ of possession on August 6, 2020, and they rely on the date of the filing of the lawsuit, September 10, 2022. They argue that Melton's claims accrued no later than August 6, 2020, to contend that the two-year statute bars Melton's claims. Melton, on the other hand, presented summary-

judgment evidence that his property was removed from the parking lot and disposed of no earlier than November 23, 2020. He argues that his causes of action did not accrue until his property was removed from the facility's parking lot and disposed of, which was less than two years before he filed suit.

We conclude that appellees did not establish that there is no genuine issue of material fact and that they are entitled to judgment as a matter of law on their affirmative defense of limitations. *See Wal-Mart Stores*, 663 S.W.3d at 583. The summary-judgment evidence shows that the writ of possession was executed in compliance with the Property Code, so on these facts there was no wrongful assumption of dominion and control over Melton's property and no conversion on August 6, 2020. *See Campos*, 917 S.W.2d at 354. Appellees did not meet their movants' burden of presenting summary-judgment evidence of the date when Randall Management removed Melton's property from the parking lot and disposed of it. Furthermore, assuming that appellees had met their burden, Melton met his nonmovant's burden of creating a genuine issue of material fact: Melton presented summary-judgment evidence that Randall Management's removal and disposal of his property occurred no earlier than November 23, 2020, which would result in Melton's suit being filed within the two-year limitation period.

In summary, we conclude that the trial court erred insofar as its grant of summary judgment was based on appellees' limitations defense. We sustain Melton's seventh issue on appeal.

D. Denial of Melton's Motion for Continuance and for Leave to Conduct Discovery

In his eighth issue on appeal, Melton asserts the trial court erred in denying his motion for continuance and for leave to conduct discovery because there was not adequate time for discovery. Melton's response to the motion for summary judgment included a request for a continuance of the hearing and for leave to conduct discovery. At the summary-judgment hearing, however, Melton's attorney stated that Melton was not asking for a continuance of that hearing but only a continuance of the upcoming trial setting:

> And lastly, Your Honor, as it relates to our motion for continuance, it is our—we're not asking for a continuance necessarily of the hearing, Judge. We're asking for a continuance of the trial date for the purpose of being able to conduct discovery.
>
> . . . .
>
> THE COURT: And that current trial date that you all have right now is January 8th. You're seeking a continuance of the January 8th date?
>
> MR. MUSGROVE: Yes, Your Honor. That's it. Nothing further.

Therefore, Melton waived his request for a continuance of the summary-judgment hearing and failed to preserve error as to the trial court's grant of summary judgment without a continuance. *See* Tex. R. App. P. 33.1.

Even if Melton had preserved error, he has not shown an abuse of discretion. The granting or denial of a motion for continuance is within the trial court's sound discretion. *Villegas v. Carter*, 711 S.W.2d 624, 626 (Tex. 1986). Likewise, we

review a trial court's decision whether to grant a party additional time for discovery before a summary judgment hearing for an abuse of discretion. *Tenneco, Inc. v. Enter. Prods. Co.*, 925 S.W.2d 640, 647 (Tex. 1996).

A party contending that he has not had an adequate opportunity for discovery before a summary judgment hearing must file either an affidavit explaining his need for additional discovery or a verified motion for continuance. *Cooper v. Circle Ten Council Boy Scouts of Am.*, 254 S.W.3d 689, 696 (Tex. App.—Dallas 2008, no pet.) (citing *Tenneco, Inc. v. Enter. Prods. Co.*, 925 S.W.2d 640, 647 (Tex.1996); Tex. R. Civ. P. 166a(g), 251, 252). The affidavit must describe the evidence sought, explain its materiality, and set forth facts showing the due diligence used to obtain the evidence prior to the hearing. *Id.*

Melton did not comply with the rules requiring that he file either an affidavit explaining the need for further discovery or a verified motion for continuance. *See* Tex. R. Civ. P. 166a(g), 251, 252; *Tenneco, Inc.*, 925 S.W.2d at 647. Melton included his motion for continuance and discovery within his response to appellees' motion for summary judgment, arguing that he should have more time for discovery because he had had only had a little over five months for discovery since the trial court vacated a previous order dismissing the case under Texas Rule of Civil Procedure 91a. The response and motion for continuance and discovery included an attached declaration by Melton's attorney and affidavits by Melton himself and Bailey. Yet none of the attachments even reference the motion for continuance or

for leave to conduct discovery, much less explain the evidence sought, explain its materiality, and set forth facts showing the due diligence used to obtain the evidence prior to the hearing. *See Cooper*, 254 S.W.3d at 696. "Generally, when movants fail to comply with Tex. R. Civ. P. 251's requirement that the motion for continuance be 'supported by affidavit,' we presume that the trial court did not abuse its discretion in denying the motion." *Villegas v. Carter*, 711 S.W.2d 624, 626 (Tex. 1986); *accord Garner v. Fid. Bank, N. A.*, 244 S.W.3d 855, 858 (Tex. App.—Dallas 2008, no pet.).

In considering whether the trial court abused its discretion, we consider such factors as the length of time the case had been on file before the hearing, the materiality of the discovery sought, whether the party seeking the continuance exercised due diligence in obtaining the discovery, and what the party expects to prove. *Cooper*, 254 S.W.3d at 696. The record in this case shows that the case was on file over four months before the summary-judgment motion was filed and that the hearing on the motion was held forty days after the motion was filed. Generally, it is not an abuse of discretion to deny a motion for continuance when the party has received the twenty-one days' notice required by rule 166a(c). *Id.*

We conclude that the trial court did not abuse its discretion by denying Melton's request for a continuance and for leave to conduct discovery. Accordingly, we overrule Melton's eighth issue on appeal.

V. Conclusion

Having considered Melton's specific issues relating to the trial court's grant of summary judgment, we conclude that the trial court erred in granting summary judgment in favor of Randall Management on Melton's cause of action for conversion, did not err in granting summary judgment on Melton's cause of action for unjust enrichment, and did not err in granting summary judgment in favor of Haefli and Bailey on both causes of action. Accordingly, we sustain Melton's first and second issues on appeal as to his cause of action for conversion as to Randall Management and otherwise overrule them.

We reverse the trial court's judgment in part, only insofar as it grants summary judgment in favor of appellee Randall Management on Melton's conversion claim; affirm the remainder of the trial court's judgment; and remand the case for proceedings consistent with this opinion.

/Gino J. Rossini/
GINO J. ROSSINI
JUSTICE

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

DARREN MELTON, Appellant No. 05-23-01315-CV V. RANDALL MANAGEMENT, LLC, RANDALL HAEFLI AND JIM BAILEY, Appellees	On Appeal from the 95th District Court, Dallas County, Texas Trial Court Cause No. DC-22-13063. Opinion delivered by Justice Rossini. Justices Breedlove and Clinton 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 that grants summary judgment in favor of appellee RANDALL MANAGEMENT, LLC on DARREN MELTON's conversion claim. In all other respects, the trial court's judgment is **AFFIRMED**. We **REMAND** this cause to the trial court for proceedings consistent with this opinion.

It is **ORDERED** that appellant DARREN MELTON recover costs of this appeal from appellee RANDALL MANAGEMENT, LLC.

Judgment entered this 8th day of September 2025.