Affirm and Opinion Filed February 5, 2026

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-24-00804-CV

EARNHARTBUILT, LLC, Appellant
V.
PREFERRED MATERIALS, LLC, PROCORE TECHNOLOGIES, INC., EXPRESS LIEN, INC. D/B/A LEVELSET, MICHAEL MANN, AND J. EARNHART, INC., Appellees

On Appeal from the 397th Judicial District Court
Grayson County, Texas
Trial Court Cause No. CV-22-1358

MEMORANDUM OPINION

Before Justices Smith, Miskel, and Barbare
Opinion by Justice Barbare

The trial court granted a traditional motion for summary judgment in favor of Preferred Materials, LLC, Procore Technologies, Inc., Express Lien, Inc. d/b/a Levelset, Michael Mann, and J. Earnhart, Inc. (collectively referred to as Preferred). In seven issues, EarnhartBuilt, LLC (EarnhartBuilt) argues that the trial court erred because genuine issues of material fact exist on its causes of action for fraudulent lien, common law negligence, gross negligence, negligence per se, and business disparagement. We affirm the trial court's judgment.

Background

EarnhartBuilt owned property in Denison, Texas (the Property). It hired J. Earnhart, Inc. (J. Earnhart) to build a structure on the Property.[1] In May 2022, Preferred delivered $17,742.18 worth of ready-mix concrete materials to the Property and invoiced J. Earnhart.

Subsequent to Preferred delivering the ready-mix concrete to the Property, J. Earnhart invoiced EarnhartBuilt for the materials. On May 10, 2022, EarnhartBuilt tendered a check to J. Earnhart for $49,800.00. The check cleared, and EarnhartBuilt considered the matter settled. However, Preferred never received payment.

Preferred sent an email on September 15, 2022, to Jason Earnhart (Jason), one of EarnhartBuilt's owners, with an invoice demanding $17,742.18 in payment. Preferred stated that "there will be a lien filed today for this if we do not receive payment."

On October 4, 2022, Preferred notified EarnhartBuilt of its intent to file a lien. Subsequently, on October 13, 2022, EarnhartBuilt emailed Preferred to inform it that it had paid J. Earnhart in full and that any attempt to file a lien on the Property would be considered fraudulent because notice of the lien was untimely. Preferred filed its lien on October 14, 2022.

[1] The record indicates that there is no relationship between the owners of EarnhartBuilt and J. Earnhart.

On October 27, 2022, EarnhartBuilt sued Preferred for violating Texas Civil Practice and Remedies Code section 12.002(a) (liability related to a fraudulent lien), for negligence, gross negligence, negligence per se, and business disparagement.

Preferred released the lien on January 6, 2023. In February, Preferred filed a traditional motion for summary judgment, arguing that EarnhartBuilt's claims failed as a matter of law because Preferred lacked the requisite intent as required under section 12.002(a)(1) of the civil practice and remedies code and EarnhartBuilt did not suffer any damages from the lien. EarnhartBuilt responded that genuine issues of material fact regarding Preferred's intent in filing and delaying the release of the lien precluded summary judgment. It emphasized that a "nearly three-month delay in removing a lien that failed to comply with statutory authority raises a genuine issue of material fact" that should be resolved by a factfinder.

On April 3, 2024, the trial court signed an order granting Preferred's traditional motion for summary judgment and dismissing EarnhartBuilt's claims. The motion for new trial was overruled by operation of law, and this appeal followed.

Standard of Review

We review summary judgments de novo. *Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 215 (Tex. 2003); *Ebby Halliday Real Est., Inc. v. Giambrone*, No. 05-22-00386-CV, 2023 WL 2259172, at *2 (Tex. App.—Dallas Feb. 28, 2023, pet. denied) (mem. op.). A traditional motion for summary judgment

is properly granted only when a movant establishes that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c). A matter is conclusively established as a matter of law if reasonable people could not differ as to the conclusion to be drawn from the evidence. *City of Keller v. Wilson*, 168 S.W.3d 802, 816 (Tex. 2005).

When a defendant moves for summary judgment, it must either (1) disprove at least one element of the plaintiff's cause of action or (2) plead and conclusively establish each essential element of an affirmative defense to rebut the plaintiff's claim. *Giambrone*, 2023 WL 2259172, at *2; *Ward v. Stanford*, 443 S.W.3d 334, 342 (Tex. App.—Dallas 2014, pet. denied). If the movant satisfies its burden, the burden shifts to the nonmovant to raise a genuine issue of material fact precluding summary judgment. *Hollenshead v. Bank of Am., N.A.*, No. 05-24-00462-CV, 2025 WL 2053578, at *3 (Tex. App.—Dallas July 22, 2025, no pet.) (mem. op.). To decide whether issues of material fact preclude summary judgment, the evidence favorable to the non-movant must be taken as true, every reasonable inference indulged in its favor, and any doubts resolved in its favor. *Sandberg v. STMicroelectronics, Inc.*, 600 S.W.3d 511, 521 (Tex. App.—Dallas 2020, pet. denied).

Fraudulent Lien

In its first three issues, EarnhartBuilt asserts that the trial court erred by granting summary judgment on its fraudulent lien claim. To establish a fraudulent lien under section 12.002(a), EarnhartBuilt needed to show that Preferred: (1) made,

presented, or used a document with knowledge that it was a fraudulent lien, (2) intended the document to be given legal effect, and (3) intended to cause physical injury, financial injury, or mental anguish. TEX. CIV. PRAC. & REM. CODE § 12.002(a)(1)-(3); *see Preston Gate, LP v. Bukaty*, 248 S.W.3d 892, 896 (Tex. App.—Dallas 2008, no pet.).

In its motion for summary judgment, Preferred sought to disprove the first and third elements of EarnhartBuilt's fraudulent lien claim. Because this appeal can be resolved under element one, we consider it first.

In the context of section 12.002, "fraudulent" means "a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her own detriment." *MFG Fin., Inc. v. Hamlin*, No. 03-19-00716-CV, 2021 WL 2231256, at *4 (Tex. App.—Austin June 3, 2021, pet. denied) (mem. op.). The filer must possess the knowledge that the lien is fraudulent at the time it files the lien. *See Aland v. Martin*, 271 S.W.3d 424, 431–32 (Tex. App.—Dallas 2008, no pet.).

Preferred presented evidence from its corporate representative, Brandon Smith (Smith), explaining why it filed the lien. Smith testified in his deposition that "[w]e had a receivable that had not been paid, so it's our typical process to file a lien if we hadn't [sic] been paid for services rendered." Jonathan Earnhart (Jonathan), EarnhartBuilt's corporate representative, conceded in his deposition that he believed

Preferred filed the lien because "it's easier to get money from someone when you have a lien on their property."

Further, Preferred's evidence established that it filed the lien in an attempt to get paid for work performed on the Property. It did not file a document with "a knowing misrepresentation of the truth or concealment of a material fact," but instead followed its usual business practice for collecting debts. *See MFG Fin.*, 2021 WL 2231256, at *4. Thus, Preferred's evidence negated the first element—that it made, presented, or used a document with knowledge that it was a fraudulent lien at the time of filing. TEX. CIV. PRAC. & REM. CODE ANN. §12.002(a)(1); s*ee City of Keller*, 168 S.W.3d at 816. Because Preferred satisfied its burden, the burden shifted to EarnhartBuilt to raise a genuine issue of material fact precluding summary judgment. *Hollenshead*, 2025 WL 2053578, at *3.

Broadly interpreting EarnhartBuilt's argument, it contends that a genuine issue of material fact exists because the lien did not comply with the statutory notice requirements. *See* TEX. PROP. CODE ANN. § 53.052 (setting the timeframe for when a contractor must file a lien for construction projects). It relies on the October 13, 2022 email in which EarnhartBuilt informed Preferred that it had paid J. Earnhart in full and that any attempt to file a lien on the Property would be considered untimely and fraudulent.

An important distinction exists between a document that is "factually inaccurate in some respect and one that is attempting to perpetuate a fraud." *MFG*

Fin., 2021 WL 2231256, at *4. A lien may be invalid and unenforceable without being fraudulent. *Id.*

It is undisputed that Preferred received the October 13 email after filing the lien on October 14, 2022.[2] Smith explained that "[t]here's typically a delay when we – from when we initiate the process with Levelset to when it's actually executed."[3] At most, the October 13 email implied that the lien was invalid and unenforceable because notice was untimely, not that Preferred, at the time of filing, had any knowledge that it was fraudulent.[4] *See, e.g.*, *Rodriguez v. U.S. Bank, N.A.*, No. SA-12-CV-345-XR, 2013 WL 3146844, at *11 (W.D. Tex. June 18, 2013) (concluding defendant was entitled to summary judgment because plaintiffs failed to produce evidence demonstrating that the defendant had any knowledge of a fraudulent document). We conclude that the email did not create a genuine issue of material fact as to whether Preferred made, presented, or used a document with knowledge that it was a fraudulent lien. *Id.*; *see, e.g.*, *Salomon v. Lesay*, 369 S.W.3d 540, 550 (Tex. App.—Houston [1st Dist.] 2012, no pet.) (stating that the fact a party may have filed a lien notice reflecting an incorrect statement about the homestead status would

[2] In its summary judgment response, EarnhartBuilt conceded that "Preferred did indeed receive the letter after they had initiated the lien process."

[3] Levelset assisted Preferred with management of the lien notice and claims process.

[4] There is no evidence in the record from Brandon Litten (Litten), the individual who filed the lien. During Smith's deposition, he indicated that Litten had the knowledge to explain the "exact process" for noticing a lien. Smith also testified that he had no personal knowledge of when Litten read the email. The trial court denied Earnhart's motion seeking a continuance to take Litten's deposition. EarnhartBuilt has not agued on appeal that the trial court erred in its ruling.

not alone satisfy the essential element of proof required under section 12.002(a)(1) without contemporaneous knowledge of its falsity or reckless disregard for its truth).

EarnhartBuilt also makes a brief argument that the nearly three-month delay in removing the lien from the Property after Preferred received the October 13, 2022 email created a genuine issue of material fact as to whether Preferred had knowledge that the lien was fraudulent when filed.

EarnhartBuilt relies heavily on authority, emphasizing that "intent is a fact question uniquely within the realm of the trier of fact because it so depends upon the credibility of the witnesses and the weight to be given to their testimony." *See Pools Unlimited, Inc. v. Houchens*, No. 03-21-00046-CV, 2022 WL 16824340, at *4 (Tex. App.—Austin Nov. 9, 2022, no pet.) (op. on reh'g) (quoting *Spoljaric v. Percival Tours, Inc.*, 708 S.W.2d 432, 434 (Tex. 1986)). Although intent may be inferred from a party's subsequent acts, any inferences concerning Preferred's intent from its three-month delay in releasing the lien, at most, relate to element 3 (an *intent* to cause financial injury)[5] and not to element 1 (what Preferred *knew* at the time it filed the lien). *See Spoljaric*, 708 S.W.2d at 434 (stating that a "party's intent is

[5] EarnhartBuilt argued in its summary judgment response that "[a] nearly three-month delay in removing a lien that failed to comply with statutory authorities raises a genuine issue of material fact regarding Preferred's intent to harm EarnhartBuilt." The intent to harm element is part of section 12.002(a)(3). TEX. CIV. PRAC. & REM. CODE ANN. §12.002(a)(3).

determined at the time the party made the representation, [but] it may be inferred from the party's subsequent acts after the representation is made").[6]

Not all factual disputes preclude summary judgment. Summary judgment is proper only when the disputed issue is a "genuine" issue of "material" fact. *Roper v. CitiMortgage, Inc.*, No. 03-11-00887-CV, 2013 WL 6465637, at *4 n.4 (Tex. App.—Austin Nov. 27, 2013, pet. denied) (mem. op.). A material fact is "genuine" only if a reasonable jury could resolve the fact issue in favor of the nonmovant. *Id.* A genuine issue of material fact is not created when the evidence is "so weak as to do no more than create a mere surmise or suspicion that the fact issue exists." *Siller Preferred Servs., LLC v. Bravo*, No. 03-23-00234-CV, 2025 WL 643996, at *5 (Tex. App.—Austin Feb. 28, 2025, no pet.) (mem. op.) (quoting *Kia Motors Corp. v. Ruiz*, 432 S.W.3d 865, 875 (Tex. 2014)). If the evidence simply shows that "some metaphysical doubt as to the fact exists, or if the evidence is not significantly probative, the material fact issue is not genuine." *Roper*, 2013 WL 6465637, at *4

[6] Both parties intertwine case law and their arguments between elements 1 and 3 of section 12.002(a). We focus solely on element 1's *knowledge* requirement of a *fraudulent* lien. To the extent that EarnhartBuilt relies on *Pools Unlimited, Inc.* and *Walker & Associates Surveying, Inc. v. Roberts* as examples of cases in which a trial court reversed summary judgments on fraudulent lien claims, we note that the procedural posture of both cases involved plaintiffs moving for summary judgment on their own section 12.002 cause of action. *Pools Unlimited, Inc.*, 2022 WL 16824340, *1; *Walker & Assocs. Surveying, Inc. v. Roberts*, 306 S.W.3d 839, 847 (Tex. App.—Texarkana, 2010, no pet.). Those parties, as movants, bore the burden to conclusively establish each element of section 12.002 to prevail. *See, e.g.*, *Jones v. Guildford LLC*, No. 05-22-01252-CV, 2023 WL 8540007, at *3 (Tex. App.—Dallas Dec. 11, 2023, no pet.) (mem. op.) ("A plaintiff moving for summary judgment must prove it is entitled to summary judgment as a matter of law on each element of its cause of action."). Here, Preferred moved for summary judgment, and as the defendant, it needed to negate only one element of section 12.002(a) to prevail on summary judgment. *Id.* ("A defendant is entitled to summary judgment if it conclusively disproves at least one essential element of the plaintiff's claim."). Thus, these cases do not dictate the outcome of the appeal before us.

n.4. At best, EarnhartBuilt's evidence does no more than "create a mere surmise or suspicion" and is not "significantly probative" to create a genuine issue of material fact. *Siller Preferred Servs., LLC*, 2025 WL 643996, at *5; *Roper*, 2013 WL 6465637, at *4 n.4.

Considering the evidence favorable to EarnhartBuilt as true and indulging every reasonable inference in its favor, we conclude that EarnhartBuilt failed to satisfy its burden of raising a genuine issue of material fact related to element 1 of section 12.002(a). *See Sandberg*, 600 S.W.3d at 521 (discussing the non-movant's summary judgment burden); TEX. CIV. PRAC. & REM. CODE ANN. § 12.002(a)(1). Accordingly, the trial court properly granted summary judgment because Preferred disproved one element of EarnhartBuilt's fraudulent lien cause of action. *Giambrone*, 2023 WL 2259172, at *2. EarnhartBuilt's first issue is overruled. We need not address EarnhartBuilt's second and third issues, in which it argues that genuine issues of material fact exist as to the remaining two elements of section 12.002. *See* TEX. R. APP. P. 47.1.

Negligence Causes of Action

In issues four, five, six, and seven, EarnhartBuilt argues the trial court erred by granting summary judgment on its causes of action for negligence, gross negligence, negligence per se, and business disparagement. Preferred responds that the lien did not cause EarnhartBuilt any damage; therefore, it disproved one necessary element of these causes of action.

To meet its summary judgment burden, Preferred needed to show that EarnhartBuilt suffered no damages from the lien. *See Jones v. Kirkstall Rd. Enters., Inc.*, No. 05-18-00592-CV, 2020 WL 2059910, at *2 (Tex. App.—Dallas Apr. 29, 2020, no pet.) (to prevail on a negligence claim, a plaintiff must establish damages) (mem. op.) (citing *Nabors Drilling, U.S.A. v. Escoto*, 288 S.W.3d 401, 404 (Tex. 2009)). To do so, it put on Jonathan's deposition testimony. Also relying on Jonathan's testimony, EarnhartBuilt argued that it was damaged because the lien impaired its banking relationships, which caused it to lose business.

Jonathan testified during his deposition that EarnhartBuilt lost business "in the sense that . . . we were unable to do banking." He explained that EarnhartBuilt worked with seven to ten banks, and when the banks discovered the lien on the Property, "they paused all of our lending and made us do updated financials during this period." It took EarnhartBuilt two or three months to provide the updated financial reports to the banks, which Jonathan claimed was a "long process." When the banks asked about the lien, "We explained the situation." The banks did not say, "Hey, you got a lien, we're not doing business with you. . . . They don't talk to us like that." Instead, they asked, "What's the deal?" and he explained to the banks that it was a "legal issue," not that EarnhartBuilt was not paying its bills.

Jonathan also conceded that the Property's value did not decrease because of the lien. Rather, after Preferred released the lien, EarnhartBuilt secured three separate leases with rental income totaling approximately $50,000.00. EarnhartBuilt

subsequently sold the Property to JEJE Holdings, LLC, and the Property was leased, generating an additional $11,800.00 in profit. At the time of Jonathan's deposition, the building had five shop tenants.

The evidence shows that EarnhartBuilt did not lose its banking relationships or any money associated with the Property. We conclude that Preferred met its burden of showing that EarnhartBuilt suffered no damages from the lien. EarnhartBuilt then failed to present any evidence raising a genuine issue of material fact on the damages element of its negligence claim. As such, the trial court correctly granted summary judgment on this cause of action. We overrule EarnhartBuilt's fourth issue.

To prevail on a gross negligence claim, a plaintiff must show ordinary negligence. *See Greb v. Madole*, No. 05-18-00467-CV, 2019 WL 2865269, at *9 (Tex. App.—Dallas July 3, 2019, pet. denied) (mem. op.). Because we have concluded that summary judgment was proper on EarnhartBuilt's negligence claim, its gross negligence claim also fails. *Id.* EarnhartBuilt's fifth issue is overruled.

Negligence per se is not a separate cause of action that exists independently of a common-law negligence cause of action. *Rodriguez v. OGT, LLC*, No. 05-23-00874-CV, 2025 WL 3012802, at *7 (Tex. App.—Dallas Oct. 27, 2025, no pet.) (mem. op.). It may be proven by showing, among other things, that the defendant violated a statute for which tort liability may be imposed and that the statutory violation proximately caused the plaintiff's injury. *See Ward v. ACS State & Loc.*

Sols., Inc., 328 S.W.3d 648, 652 (Tex. App.—Dallas 2010, no pet.); *see also Perry v. S.N.*, 973 S.W.2d 301, 309 (Tex. 1998) (noting that a negligence per se analysis includes whether the injury resulted directly or indirectly from the violation of a statute). Having concluded that EarnhartBuilt failed to meet its burden to create a fact issue as to whether it suffered an injury as a result of the lien, the trial court did not err by granting summary judgment on its negligence per se claim. We overrule EarnhartBuilt's sixth issue.

To prevail on a business disparagement claim, a party must prove (1) publication of false and disparaging information about the plaintiff, (2) with malice, (3) without privilege, and (4) that resulted in special damages. *Perales v. Sunstone Pools & Outdoor Living LLC*, No. 05-24-00010-CV, 2024 WL 3439821, at *4 (Tex. App.—Dallas July 17, 2024, no pet.) (mem. op.) (citing *In re Lipsky*, 460 S.W.3d 579, 592 (Tex. 2015) (orig. proceeding)). "Special damages are synonymous with economic damages." *Id.* (quoting *In re Lipsky*, 460 S.W.3d at 592 n.11). For the reasons previously discussed, Preferred met its burden to show that the lien did not cause any economic damages to EarnhartBuilt, and EarnhartBuilt failed to meet its burden to create a fact issue about damages. The trial court correctly granted summary judgment on EarnhartBuilt's business disparagement claim. We overrule its seventh issue.

Conclusion

The judgment of the trial court is affirmed.

/Cynthia Barbare/
CYNTHIA BARBARE
JUSTICE