Affirm and Opinion Filed August 3, 2026

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-24-00473-CV

TCP PARK 10 LP, FUND, L.P., Appellant
V.
PARK TEN COMMONS PARTNERS, L.P. AND PARK TEN COMMONS, G.P., L.L.C., Appellees

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On Appeal from the 162nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-18-10344

MEMORANDUM OPINION

Before Justices Garcia, Jackson, and Lee
Opinion by Justice Lee

After appellant TCP Park 10 L.P., Fund, L.P.'s (TCP) interest in appellee Park Ten Commons Partners, L.P. (the Limited Partnership) was diluted, TCP sued the Limited Partnership and the general partner, appellee Park Ten Commons G.P., L.L.C. (the GP), asserting various theories of recovery. Following a jury trial on TCP's breach of contract claim, the jury found the GP breached the partnership agreement and that the Limited Partnership did not, and TCP recovered part of the relief it sought. TCP appeals the portion of the judgment adverse to it, contending in four issues that the trial court erred in denying its post-verdict motions seeking recovery on additional theories of liability. Finding no merit in TCP's issues, we affirm the trial court's judgment.

Background

The facts of this dispute are well known to the parties and were presented to the jury over a week-long trial. We include only those facts necessary for resolution of the appeal.

A. The Limited Partnership and the genesis of the dispute

In order to facilitate the purchase of a shopping center sitting on 14.5233 acres of land (the Property) in Houston, a limited partnership was formed: Park Ten Commons Partners, L.P. This limited partnership consisted of a general partner, Park Ten Commons, G.P., L.L.C., and seven limited partners. TCP was one of those limited partners with a 6.95650% interest due to its capital contribution of $321,565. The GP was the sole entity authorized to act on the Limited Partnership's behalf.

The Limited Partnership acquired the Property on September 5, 2012 for approximately $16.525 million, financed by a $12.525 million interest-only loan and $4 million in equity contributions from the limited partners. The interest-only loan had a term of three years, at which time refinancing would be required.

When the loan was due to be refinanced in 2015, Independent Bank – which offered the best terms – required approximately $2.5 million of the $13 million loan to be personally guaranteed. TCP declined to fund the personal guaranty. In exchange for a 10% annual fee payable in pre-payout ownership interests of the

Limited Partnership, two of the other limited partners agreed to provide the required personal guaranty. Subsequently, their interests were increased while TCP's interest was reduced from 6.95650% to either 6.21% or 6.068%.[1]

B. The acquisition of the neighboring two acres

In 2015, an adjacent 2.1 acre strip of land containing two driveways running from a major road to the shopping center became available for purchase, and a potential buyer considered purchasing the strip for construction of a water well. As the Limited Partnership did not have easements to use the driveways for access from the main thoroughfare to the Property, the use of the land for a water well provided a major risk which could devalue the shopping center.

The Limited Partnership was offered the opportunity to purchase the adjacent strip for $2.3 million. By its letter dated July 20, 2018, the GP issued a cash-call and required that each limited partner's pro-rata share be funded by August 10, 2018 in anticipation of closing on the 2.1 acres on August 14, 2018. On July 25, 2018, all limited partners agreed to fund their respective pro-rata portions except TCP. On May 10, 2019, a letter was sent by the general partner to the limited partners explaining the ownership adjustments following the cash-call. TCP's ownership in the Limited Partnership was diluted to zero.

[1] There was conflicting evidence presented at trial as to TCP's diluted share following the guaranty fees.

C. Trial court proceedings

TCP sued both the GP and the Limited Partnership for breach of contract, breach of fiduciary duty, and declaratory relief, seeking among other things a declaration that TCP owned its full, original interest in the partnership. The case proceeded to a jury trial, at the close of which the trial court granted a directed verdict against TCP on the fiduciary duty claim. At the charge conference, TCP asked for broad form liability questions on the breach of contract claim; whereas appellees sought questions on the specific nature of the alleged breach, given that TCP had articulated various bases for breach. The trial court overruled appellees' requests. The jury found that the GP breached the LPA but found that the Limited Partnership did not. The jury found damages for the GP's breach, totalling $334,630.54.

TCP filed a motion for judgment notwithstanding the verdict, arguing that the Limited Partnership was jointly and severally liable, that the partnership breached the agreement as a matter of law because the GP was the exclusive and sole agent of the Limited Partnership, and that the evidence conclusively established a breach by the partnership. In response, appellees argued that joint and several liability had no application where the jury rendered a verdict against just the GP. As to agency, appellees argued that agency must have been pleaded, proved, and found by the jury, arguing that agency does not necessarily "make them -- the other party liable. There has to have been some tie to the wrongdoing. Were they even acting in that capacity?" The trial court denied TCP's motion for judgment notwithstanding the verdict and entered judgment for TCP consistent with the jury's findings. TCP filed a motion to modify the judgment in which it reiterated the arguments previously presented in the motion for judgment notwithstanding the verdict. It also argued the declaratory judgment action should be granted, arguing that the jury's breach finding meant the "dilution of Plaintiff's ownership interest was wrongful and Plaintiff is therefore entitled to declaratory relief, which would return the parties' ownership interests to the status quo ante." The trial court denied the motion to modify. This appeal ensued.

Discussion

TCP raises four issues on appeal claiming the trial court erred when it failed to (1) find that the GP acted as the exclusive agent for the Limited Partnership, (2) hold the Limited Partnership jointly and severally liable for the acts of the GP, (3) enter judgment against the Limited Partnership for its breach of the LPA, and (4) grant TCP declaratory relief reinstating its ownership interest in the partnership.

A. Joint and several liability and agency

In its first two issues, TCP contends that the trial court erred in denying its motion to modify the judgment when it failed to hold the Limited Partnership jointly and severally liable for the acts of the GP or to find that the GP acted as the exclusive agent for the Limited Partnership. We review the denial of a motion to modify a judgment for an abuse of discretion. *Hunter v. PriceKubecka, PLLC*, 339 S.W.3d 795, 804 (Tex. App.—Dallas 2011, no pet.). A trial court abuses its discretion when it acts in an arbitrary or unreasonable manner, or if it acts without reference to any guiding rules or principles. *Id.*

General partners of a limited partnership are jointly and severally liable with each other and with the partnership for partnership debts. *Forney 921 Lot Dev. Partners I, L.P. v. Paul Taylor Homes, Ltd.*, 349 S.W.3d 258, 272 (Tex. App.—Dallas 2011, pet. denied); *see* also TEX. BUS. ORGS. CODE § 153.152(b) ("Except as provided by this chapter or the other limited partnership provisions, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to a person other than the partnership and the other partners.").

TCP argues, relying on *Forney*, that the GP's liability is necessarily imputed to the Limited partnership. But TCP misreads *Forney*, which stands for the proposition that the general partner of a limited partnership is jointly and severally liable with the partnership *for partnership debts*. In *Forney*, the Court applied this rule and explained that, to the extent the limited partnership was liable to the plaintiff, the general partner was also liable to the plaintiff. *See Forney 921 Lot Dev. Partners I*, 349 S.W.3d at 273. That principle does not help TCP in this case, where the jury found that the Limited Partnership did not breach the partnership agreement, and TCP directs us to no authority stating that a limited partnership is jointly and severally liable with the general partner for the general partner's debts.

TCP also contends that the trial court erred in denying his motion to modify the judgment because the GP was the Limited Partnership's agent as a matter of law and thus the jury's finding that the GP breached the agreement established the Limited Partnership's liability. We cannot agree. Under the Texas Business Organizations Code, a partnership is liable for loss or injury to a person, including a partner, or for a penalty caused by or incurred as a result of a wrongful act or omission or other actionable conduct of a partner acting (1) in the ordinary course of business of the partnership; or (2) with the authority of the partnership. TEX. BUS. ORGS. CODE §§ 152.303(a), 153.003(a) (although Chapter 152 deals with general partnerships, "in a case not provided for by [Chapter 153, dealing with limited partnerships,] and the other limited partnership provisions, the provisions of Chapter 152 governing partnerships that are not limited partnerships and the rules of law and equity govern"); *see also Doctors Hosp. at Renaissance, Ltd. v. Andrade*, 493 S.W.3d 545, 547 (Tex. 2016) (determining limited partnership's liability under section 153.303).

Thus, whether the GP was the Limited Partnership's agent under the terms of the agreement or partnership law is beside the point. *Cf. Pasadena Assocs. v. Connor*, 460 S.W.2d 473, 479 (Tex. App.—Houston [14th Dist.] 1970, writ ref'd n.r.e.) (stating that a finding of agency was insufficient without further finding that the acts resulting in the injury or damage in question were performed as agent and within the scope of the agent's authority and that it was incumbent on the plaintiffs to request these issues be submitted to jury). The partnership's liability resulting from "a wrongful act or omission or other actionable conduct" of the GP depends not on a general agency relationship but on whether the partner acted in the ordinary course of business of the partnership or with the authority of the partnership. *See* TEX. BUS. ORGS. CODE § 152.303(a).

As discussed above, TCP requested two broad form questions be submitted to the jury: whether either or both the GP and the Limited Partnership breached the partnership agreement. The question whether the GP acted in the ordinary course of business of the Limited Partnership or with the authority of the partnership as to the conduct at issue was not submitted to the jury or requested to be submitted.

Under rule of civil procedure 279, all independent grounds of recovery or of defense not conclusively established under the evidence and no element of which is submitted or requested are waived on appeal. *See* TEX. R. CIV. P. 279; *Bianco Brain & Spine, PLLC v. Jones*, No. 02-23-00220-CV, 2025 WL 1141886, at *42 (Tex. App.—Fort Worth Apr. 17, 2025, pet. abated) (mem. op.). Thus, TCP needed to show either that its theory of recovery was not an independent ground of recovery, *see, e.g.*, *Bianco Brain & Spine*, 2025 WL 1141886, at *43–46 (concluding vicarious liability based on respondeat superior was an independent ground of recovery), or that this ground of recovery was conclusively established under the evidence. TCP did not address either of these questions in its motion to modify the judgment, and it has not addressed them in its briefing before us.

We conclude the trial court did not abuse its discretion in denying TCP's motion to modify the judgment as to the issues raised by TCP in its first two issues. We overrule TCP's first two issues.

B. Guaranty fee breach

In its third issue, TCP argues that it "conclusively established each of the requisite elements of its breach of contract claim against the Limited Partnership with respect to the issuance of Guaranty Fees to certain limited partners," and that the trial court therefore erred in denying its JNOV motion. We review de novo the denial of a JNOV motion. under a legal sufficiency standard. *Trinity Indus. Leasing Co. v. Lattimore Materials Corp.*, 736 S.W.3d 19, 25 (Tex. App.—Dallas 2024, pet. granted). A trial court should grant a motion for judgment notwithstanding the verdict when (1) the evidence is conclusive and one party is entitled to recover as a matter of law or (2) a legal principle precludes recovery. *Blackstone Med., Inc. v. Phoenix Surgicals, L.L.C.*, 470 S.W.3d 636, 645 (Tex. App.—Dallas 2015, no pet.); *see* TEX. R. CIV. P. 301. We review challenges to a trial court's ruling on a motion for JNOV under the same legal sufficiency test applied to appellate no-evidence challenges. *Profinity, LLC v. One Techs., L.P.*, No. 05-14-00403-CV, 2015 WL 9257025, at *8 (Tex. App.—Dallas Dec. 17, 2015, no pet.). The 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." *Basic Capital Mgmt., Inc. v. Dynex Commercial, Inc.*, 402 S.W.3d 257, 261 (Tex. App.—Dallas 2013, pet.

denied). We view the evidence in the light most favorable to the verdict, crediting favorable evidence if reasonable jurors could, and disregarding contrary evidence unless reasonable jurors could not. *Id.* at 261–62. The jury is the sole arbiter of disputed testimony, the credibility of the witnesses, and of the weight to give their testimony – jurors may choose to believe one witness and disbelieve another. *Id.* at 262. A reviewing court may not impose its own opinion to the contrary. *Id.* In reviewing the verdict, we must assume that jurors credited testimony favorable to the verdict and disbelieved testimony contrary to it. *Id.* Further, "[w]hen a party challenges the legal sufficiency of the evidence supporting an adverse finding on an issue on which the party had the burden of proof, it must show that the evidence establishes as a matter of law all vital facts in support of the issue." *PopCap Games, Inc. v. MumboJumbo, LLC*, 350 S.W.3d 699, 710 (Tex. App.—Dallas 2011, pet. denied).

To prove a claim for breach of contract, a plaintiff must establish (1) the existence of a valid contract between plaintiff and defendant, (2) the plaintiff's performance or tender of performance, (3) the defendant's breach of the contract, and (4) the plaintiff's damage as a result of the breach. *Hunter v. PriceKubecka, PLLC*, 339 S.W.3d 795, 802 (Tex. App.—Dallas 2011, no pet.).

TCP contends the Limited Partnership breached the LPA by paying guaranty fees as increased ownership interests, which it argues were prohibited under the LPA. It directs us to section 7.1 of the agreement, which provides that, "[e]xcept as otherwise provided herein, no Partner shall be entitled to any compensation, whether by way of a percentage return or interest on Capital Accounts or otherwise, other than the share of profits and cash flow expressly set forth herein." TCP further directs us to the testimony of partnership secretary Tripp Rice and limited partner Mark Sepulveda, as well as minutes from partnership meetings. Rice testified as follows:

> Our partnership met. We agreed on what the terms of the fee were gonna be. Those were agreed between the parties, a resolution . . . We met as a partnership, the guaranty fee was discussed at length. Multiple parties within the partnership put forward proposals. A path forward was agreed between the parties. That's reflected in the minutes. The parties -- the partnership then relied on those agreements to enter into the loan with Independent Bank . . . .

The partnership meeting minutes from July 21, 2015 reflect that limited partners Don Poarch and Ted Miller would require the partnership to pay a fee for the personal loan guarantees necessary under the Independent Bank proposal. Following the July 21 meeting, Sepulveda said it was clear from Miller's proposal that Poarch and Miller would take their fee through a reallocation of equity. He said the virtue of the arrangement was that it "kept us from having to write a check because we were not cash flowing enough to cover that fee. So either we would have to have had a cash call for that, or we could have just reallocated the current equity in the deal." Sepulveda believed that all partners were aware of and unanimously approved the way the guaranty fees were to be structured.

In an August 25, 2015 email, Rice informed the other partners as follows:

> Pursuant to the August 5, 2015 joint meeting of Park Ten Commons GP, LLC and Park Ten Commons Partners, L.P. (the "Partnership"), it was decided that the Partnership would proceed with securing financing for the shopping center from Independent Bank. As you are aware, due to the financial condition of the Partnership, recourse financing is the Partnership's only realistic option, as non recourse financing would require significant capital contributions from the partners. In the meeting, Robert Neely agreed to provide his guaranty to facilitate the financing, for an annual fee of 8%. Ted Miller and Don Poarch agreed to back up [TCP's] Robert Neely's guaranty (to the extent Robert Neely elected not to provide his guaranty) by providing their guaranties for an annual fee of 10%. As you will recall, the discussion of the guaranty fee arose in connection with an analysis (the "Analysis") I circulated via email to the Partnership on July 21, 2015. That Analysis showed Ted Miller's and Don Poarch's proposed fee schedule for providing their guaranties. It contemplated an annual 18% fee on the guaranteed amount, required by Independent Bank or Iberia Bank. Subsequent to the meeting, on August 6, 2015 Robert Neely notified the Partnership via email that he would not provide his guaranty.
>
> Consistent with the framework discussed in connection with Robert Neely's proposed guaranty and the Analysis, Ted Miller and Don Poarch will provide their guaranties as required by Independent Bank, in exchange for an annual guaranty fee of 10%, which will be payable in pre-payout ownership interests of the Partnership, in lieu of cash.

The minutes from an October 20, 2015 meeting of the partnership reflect that Neely stated that "the refinancing guarantee fee discussed and approved during the August 5, 2015 meeting was not approved." Miller disagreed with Neely but noted Neely's position. At trial, Neely testified that the GP was run by Poarch and Miller and that they "were going to be the decision makers." Neely did not learn about the dilution until he saw the tax return – he believed it was a mistake. He knew from his experience that "the general partner just can't squeeze" out the limited partners. Neely acknowledged that he was aware of the guaranty fee would be paid with equity "when they sent the proposal that [he] said no to," but he did not believe any dilution would happen after he rejected the proposal. He said "there was no response that said hey, we're going to go ahead with this anyway, so [he] had no reason to believe that we were going to be diluted." David Thomas, who described himself as TCP's "eyes and ears and boots on the ground in Houston," also testified he never approved a guaranty fee being paid out of limited partners' interests. He said he did not believe that taking other limited partners' interests to satisfy the guarantees was ever discussed at the August 5, 2015 meeting. Thomas said he found out about the dilution by the tax return, like Neely had.

Rice testified that the guaranty fee dilutions were ultimately effected following Miller and Poarch's guarantees.

We cannot conclude TCP conclusively proved the Limited Partnership's breach of contract such that the trial court erred in denying the JNOV motion. Although some evidence showed partnership approval of the guaranty fee arrangements, other evidence called that approval into question. First, much of the evidence cited by TCP deals with the approval of the guaranty fees and the Independent Loan deal in general rather than the specific "pre-payout ownership interests" nature of the fees. Second, TCP's own evidence showed that Neely said that the specific fee structure had not been approved or even understood by the partners. Rather, Neely testified the guaranty fee arrangement resulted from the GP's attempt to "squeeze out" the limited partners. The testimony of Thomas echoed this.

Thus, viewing all of the evidence in the light most favorable to the verdict, and allowing the jury its role as the sole arbiter of disputed testimony, the credibility of the witnesses, and of the weight to give their testimony, we conclude the trial court did not err in denying the JNOV motion as to the Limited Partnership's alleged breach. *See Basic Capital Mgmt., Inc.*, 402 S.W.3d at 261–62. We decide TCP's third issue against it.

C. Declaratory relief

In its final issue, TCP contends the trial court erred in denying its motion to modify the judgment in failing to grant TCP declaratory relief reinstating its ownership interest in the limited partnership. TCP argues that, "[b]ecause the jury found that Park Ten GP breached the LPA, and the only breach alleged by TCP Park 10 was the wrongful dilution of TCP Park 10's 6.95650% ownership interest, it logically follows that TCP Park 10's ownership interest should be reinstated." Appellees argue in response that declaratory relief violates the one satisfaction rule. We agree with appellees.

Under the one satisfaction rule, a plaintiff is entitled to only one recovery for any damages suffered. *Sky View at Las Palmas, LLC v. Mendez*, 555 S.W.3d 101, 106 (Tex. 2018). "There can be but one recovery for one injury, and the fact that more than one defendant may have caused the injury or that there may be more than one theory of liability, does not modify this rule." *Stewart Title Guar. Co. v. Sterling*, 822 S.W.2d 1, 8 (Tex. 1991). Whether the rule applies is determined not by the cause of action, but by the injury. *Allan v. Nersesova*, 307 S.W.3d 564, 574 (Tex. App.—Dallas 2010, no pet.) (applying the rule when the plaintiff elected to recover on her breach-of-contract claim).

Here, as discussed above, the charge instructed the jury on damages as follows:

> What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Plaintiff Limited Partner for its damages, if any that resulted from [the GP's failure to comply with the LPA]?
>
> Consider the following elements of damages, if any, and none other. Do not add any amount for interest on damages, if any.
>
> Answer in dollars and cents for damages, if any.
>
> The loss of value of Plaintiff Limited Partner's interest in the limited partnership.

The breaches at issue at trial all related to the dilution of TCP's interest in the Limited Partnership, and TCP recovered damages for "the loss of value" of its interest in the partnership. Declaratory relief awarding TCP its undiluted 6.95650% ownership interest in the partnership would therefore put TCP "in a better position than if the contract had been performed," *see Sky View at Las Palmas, LLC*, 555 S.W.3d at 113, because it would award TCP its original interest in the partnership in addition to the loss of value of its interest in the partnership. Each remedy addresses the single injury of the lost partnership interest. Consequently, awarding declaratory relief to TCP in addition to the contractual damages it recovered would constitute an impermissible double recovery. *See Grisaffi v. Rocky Mountain High Brands, Inc.*, No. 05-18-01020-CV, 2020 WL 948377, at *3 (Tex. App.—Dallas Feb. 27, 2020, no pet.) (mem. op.) (explaining that, in applying the one satisfaction rule, "our review focuses on the injury, not 'technically differing acts' or the type or variety of causes of action" and concluding that the monetary and declaratory relief awarded to the plaintiff improperly compensated it for the single injury of wrongful issuance of stock). Accordingly, we conclude the trial court did not err in denying TCP's motion to modify the judgment as to TCP's claim for declaratory relief.[2] We overrule TCP's final issue.

Conclusion

Having overruled TCP's four issues, we affirm the trial court's judgment.

/Mike Lee/
MIKE LEE
JUSTICE

[2] Appellees also contend that TCP waived its right to declaratory relief by failing to join indispensable parties, *i.e.*, the other limited partners. Given our resolution of the issue, we need not address this question.