Affirmed and Opinion Filed August 28, 2026

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-25-00425-CV

QU FOOD EXPRESS LLC, Appellant
V.
YOMIE YOGURT LLC, Appellee

On Appeal from the 493rd District Court
Collin County, Texas
Trial Court Cause No. 493-06934-2023

MEMORANDUM OPINION

Before Justices Goldstein, Smith, and Clinton
Opinion by Justice Clinton

This appeal arises from a landlord-tenant dispute over a commercial lease agreement. The tenant, Yomie Yogurt, LLC sued its landlord Qu Food Express, LLC (QFE) for breach of a commercial lease. After a bench trial, the trial court entered judgment in favor of Yomie Yogurt for actual damages and attorney's fees. QFE appealed. We affirm the trial court in this memorandum opinion. *See* TEX. R. APP. P. 47.4.

ISSUES ON APPEAL

QFE asserts ten issues on appeal. QFE's complaints include the following overarching issues on appeal: (1) whether there is legally insufficient evidence of a meeting of the minds between the parties to establish a valid lease agreement; (2) whether Yomie Yogurt's breach of contract claim is barred due to Yomie Yogurt's prior material breaches; (3) whether there is legally insufficient evidence to support the award of lost profits; (4) whether the trial court erred in awarding Yomie Yogurt damages for its remodeling and moving costs; (5) whether the trial court erred in awarding attorney's fees to Yomie Yogurt; and (6) whether the trial court erred in entering an alternative conclusion that the parties entered into an oral lease agreement, and the oral lease agreement does not fall within an exception to the statute of frauds.

BACKGROUND

Yomie Yogurt is a Texas limited liability company, and Wenjuan Dong is a member. Yomie Yogurt is a retail food establishment selling yogurt drinks and smoothies. In February 2021, Yomie Yogurt entered into a commercial lease agreement with Saigon Mall, LLC to lease an 800 square foot space in zTao Marketplace to operate its yogurt business (Original Lease). The Original Lease had a twenty-four month term beginning on June 15, 2021, and a base monthly rent of $3,300 for months one through twelve, and $3,465 for months thirteen through twenty-four. Yomie Yogurt made all monthly rent payments during the Original

Lease period. Additionally, Yomie Yogurt paid a $3,300 security deposit pursuant to the Original Lease.

In 2022, QFE acquired zTao Marketplace. Saigon Mall assigned its interest, rights, and obligations under the Original Lease to QFE, including Yomie Yogurt's original security deposit. Qu "Joe" Yizhou is the property manager for QFE with authority to act on behalf of QFE, including the authority to enter into contracts and lease agreements. In April 2023, Joe met with Dong about either extending the Original Lease or entering into a new lease. On June 14, 2023, the day before the end of the rental period under the Original Lease, Joe and Dong orally agreed on a new lease with a two-year rental term to begin on July 1, 2023, with a monthly rental of $3,700. Joe told Dong he would have a draft of the lease drawn up.

On or about June 14, 2023, Joe provided Dong with a draft lease agreement. Dong objected to certain new or different terms, including: (1) the draft stated a three-year term instead of a two-year term, and (2) the draft contained a provision preventing Yomie Yogurt from opening a second location within a five-mile range. Joe represented to Dong he would revise the draft. Joe and Dong also agreed Yomie Yogurt could pay one-half of the current $3,465 monthly rent under the Original Lease for the days between June 15 and June 30, 2023. Yomie Yogurt agreed and paid the agreed-to rent. Joe and Dong further agreed Yomie Yogurt would begin paying the $3,700 monthly rent under the new lease on July 1, 2023.

On or about June 19, 2023, Dong and Joe, in each other's presence, placed their initials on 34 separate pages of the lease agreement (New Lease). Dong testified she initialed each page of the New Lease because Yomie Yogurt wanted to renew the lease and wanted the New Lease to become effective. After initialing the New Lease on each page, Joe and Dong traveled to the bank inside zTao Marketplace to have the New Lease notarized. They discovered the notary was out to lunch. Joe told Dong not to worry about the notarization. Joe stated since he and Dong had initialed everything, the New Lease "is already effective and you can just keep on paying the $3,700."

Yomie Yogurt timely delivered its rent checks in the amount of $3,700 to QFE for July, August, and September of 2023 in accordance with the New Lease. QFE accepted and deposited these rent checks. Yomie Yogurt tendered a check for $3,700 to QFE for the month of October 2023. Dong personally delivered that check to an accountant in QFE's office. A few hours later, QFE returned the check to Dong without explanation. On October 6, 2023, QFE sent a letter titled "Notice to Vacate for Non-Payment of Rent," demanding Yomie Yogurt pay the rent due for October 2023, in the amount of $3,700. Yomie Yogurt tendered a check for $3,700 to QFE for the month of October 2023 a second time. QFE again refused to deposit the check.

QFE filed an eviction lawsuit against Yomie Yogurt (First Eviction Suit). The First Eviction Suit was abated on or about November 11, 2023. Thereafter, QFE accepted and deposited the rent checks from Yomie Yogurt for October, November, and December of 2023, as well as January, February, March, April, and May of 2024, each in the amount of $3,700 as required under the New Lease. On November 20, 2023, Yomie Yogurt sued QFE and Joe for, among other things, breach of contract.

QFE dismissed the First Eviction Suit without prejudice following the abatement of its First Eviction Suit and filed another eviction suit against Yomie Yogurt (Second Eviction Suit). QFE and Yomie Yogurt then entered into a written Rule 11 agreement resolving the Second Eviction Suit, which included the following term, "If Yomie Yogurt fails to vacate by June 15, judgment for possession shall issue without further hearing."

Yomie Yogurt vacated the premises before June 15, 2024, and paid rent through June 15, 2024. Yomie Yogurt maintained insurance through June 15, 2024 and removed its trade fixtures as permitted. Yomie Yogurt obtained a new retail space in Plano, Texas but incurred moving costs, purchased new equipment, and finished out the leasehold at its new space. Yomie Yogurt sent QFE a demand for return of its $3,300 security deposit. QFE failed to return the security deposit to Plaintiff within sixty (60) days of the demand.

Yomie Yogurt tried the breach of contract case to the trial court. The trial court entered judgment in favor of Yomie Yogurt and held a post-trial hearing regarding entry of judgment. The trial court's amended final judgment awarded

Yomie Yogurt $61,111.58 in actual damages, $24,957 in attorney's fees, and recovery of its security deposit under the lease. The trial court entered findings of fact and conclusions of law. QFE filed a notice of appeal and this appeal follows.

ANALYSIS

Standard of Review

Evidence is legally sufficient if more than a scintilla of evidence exists. *Browning–Ferris, Inc. v. Reyna*, 865 S.W.2d 925, 928 (Tex. 1993). More than a scintilla of evidence exists if the evidence furnishes some reasonable basis for differing conclusions by reasonable minds about a vital fact's existence. *Litton Loan Servicing, L.P. v. Manning*, 366 S.W.3d 837, 840 (Tex. App.—Dallas 2012, pet. denied). In reviewing a legal sufficiency challenge to the evidence, we credit evidence that supports the verdict if a reasonable factfinder could have done so and disregard contrary evidence unless a reasonable factfinder could not have done so. *Akin, Gump, Strauss, Hauer & Feld, L.L.P. v. Nat'l Dev. & Research Corp.*, 299 S.W.3d 106, 115 (Tex. 2009); *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005). We consider all the evidence in the light most favorable to the prevailing party and indulge every reasonable inference in that party's favor. *St. Joseph Hosp. v. Wolff*, 94 S.W.3d 513, 520 (Tex. 2002).

In an appeal from a bench trial, the trial court's findings of fact have the same weight as a jury verdict. *Fulgham v. Fischer*, 349 S.W.3d 153, 157 (Tex. App.—Dallas 2011, no pet.). We review a trial court's findings of fact under the same legal and factual sufficiency of the evidence standards used when determining if sufficient evidence exists to support an answer to a jury question. *Id.*

In a bench trial, the trial court, as factfinder, is the sole judge of the credibility of the witnesses. *Id.* As long as the evidence falls within the zone of reasonable disagreement, we will not substitute our judgment for that of the factfinder. *City of Keller*, 168 S.W.3d at 822. We review de novo a trial court's conclusions of law. *Fulgham*, 349 S.W.3d at 157. We are not bound by the trial court's legal conclusions, but the conclusions of law will be upheld on appeal if the judgment can be sustained on any legal theory supported by the evidence. *Id.* at 157–58. Incorrect conclusions of law will not require reversal if the controlling findings of fact will support a correct legal theory. *Id.* at 158.

Issues I and V—Legal Sufficiency Regarding Meeting of the Minds

In its first and fifth issues, QFE argues: (1) there is legally insufficient evidence of a meeting of the minds regarding the New Lease, and (2) the "trial evidence negates any meeting of the minds." Issues one and five are essentially the same; therefore we address them together.

Specifically, in its legal sufficiency argument, QFE challenges the trial court's finding of fact number 13 which states:

> 13. On or about June 19, 2023, Joe, on behalf of QFE, and Dong, on behalf of Yomie Yogurt, initialed each page of the lease agreement (the 'New Lease'). After affixing their initials, a written contract was formed by and between Yomie Yogurt and QFE. By initialing each

> page of the New Lease, [Yomie Yogurt] and QFE intended to be bound, and were bound by the terms of the New Lease.

QFE contends the New Lease is unenforceable without signatures on the lease. We disagree.

Signatures are often evidence of the mutual assent required for an enforceable contract, but they are not essential. *Phillips v. Carlton Energy Grp., LLC*, 475 S.W.3d 265, 277 (Tex. 2015). But a contract need not be signed by the parties to be executed, and hence binding, unless the parties explicitly require signatures as a condition of their mutual assent. *Mid-Continent Cas. Co. v. Global Enercom Mgmt., Inc.*, 323 S.W.3d 151, 157 (Tex. 2010) (per curiam) (if a written draft of an agreement is prepared, submitted to both parties, and each of them expresses his unconditional assent thereto, there is a written contract).[1] Mutual assent is often referred to as the meeting of the minds. *Chubb Lloyds Ins. Co. of Tex. v. Buster & Cogdell Builders, LLC*, 668 S.W.3d 145, 151 (Tex. App.—Houston [1st Dist.] 2023, no pet.). Whether mutual assent exists as to a contract's subject matter and essential terms is an objective inquiry, turning on what the parties said and did, not on their subjective states of mind. *Id.* Unexpressed subjective intent is irrelevant. *Id.* We look to the communications between the parties and to their actions and the surrounding circumstances. *Id.*

[1] This issue was further addressed in the parties' post-submission letter briefs. We conclude the New Lease contains no provision the parties explicitly required signatures as a condition of their mutual assent.

A party can manifest its assent by conduct, provided it intends to engage in the conduct and knows or has reason to know that the other party may infer from its conducts that it assents. *BPX Operating Co. v. Strickhausen*, 629 S.W.3d 189, 202 (Tex. 2021). A party can manifest its assent to a contract by beginning the performance the contract requires of the party. *Mid-Continent Cas. Co.*, 323 S.W.3d at 157. Whether mutual assent exists is usually a question of fact. *Foreca, S.A. v. GRD Dev. Co.*, 758 S.W.2d 744, 745–46 (Tex. 1988).

Here, there is more than a scintilla of evidence of the parties' mutual assent to be bound by the New Lease. Joe and Dong initialed all 34 pages of the New Lease in each other's presence. Dong testified she initialed each page of the New Lease because Yomie Yogurt wanted to renew the lease and wanted the New Lease to become effective. When Joe and Dong went to have the New Lease notarized, the notary was at lunch. At that time, Joe told Dong not to worry about the notarization. Joe told Dong that since he and Dong had initialed everything, the New Lease "is already effective and you can just keep on paying the $3,700." Thereafter, both parties performed under the New Lease. Specifically, QFE continued to permit Yomie Yogurt to possess the premises and operate its business after June 15, 2023. In turn, Yomie Yogurt timely delivered its rent checks in the amount of $3,700 to

QFE for July through September 2023 in accordance with the New Lease. QFE accepted and deposited these rent checks.[2]

QFE also argues there was no mutual assent because Dong did not place her initials on the space provided on each page of the lease for the guarantor's initials.[3] However, Dong explained she placed her initials on each page as the tenant and she considered herself to be the guarantor. Dong testified:

> Q. Sorry. Ms. Dong, are you looking at Exhibit 4 right now?
>
> A. Yes.
>
> Q. Do you see that is the copy of the proposed three-year lease initialed by you?
>
> A. Yes.
>
> Q. And you initial in the tenant line; right? You did—
>
> A. Yes.
>
> * * *
>
> Q. Ms. Dong, in the guarantor—do you see the guarantor line here?
>
> A. I see it.
>
> Q. You didn't initial in the guarantor line, did you?
>
> A. Well, "guarantor" is myself.
>
> Q. And you didn't initial any of that throughout the whole proposed lease; isn't that correct?

[2] Although QFE, at first, refused Yomie Yogurt's October 2023 rent payment and filed an eviction suit, QFE later dismissed that suit and accepted and deposited the rent checks from Yomie Yogurt for October through December 2023, and January through May 2024.

[3] At the bottom of each page of the New Lease, three blank spaces are listed for the initials of the following: (1) the landlord, (2) the tenant, and (3) the guarantor.

> A. I can't—well, I am my own guarantor; however, I cannot understand this lease.
>
> Q. So the answer to my question is yes, I did not sign on the guarantor line throughout the whole proposed lease; is that correct?
>
> A. Well, I am my own guarantor. And I did sign it.

Dong further explained that she and Joe initialed the pages of the New Lease in each other's presence and Joe never asked her to initial the guarantor line:

> Q. (BY MS. LIN) Ms. Dong, on page 17 of that proposed three-year lease is the signature page for guarantor, right?
>
> A. Correct.
>
> Q. And you didn't sign it; right?
>
> A. I initialed it.

As discussed above, initials are acceptable forms of mutual assent. The evidence shows Dong initialed each page of the New Lease, including the guaranty signature page that identified Dong by name as the guarantor for Yomie Yogurt's obligations under the New Lease. Dong also initialed Exhibit B to the New Lease, titled "Retail Lease Guaranty," which identifies Dong as the guarantor. Dong initialed the pages of the New Lease with the understanding that she was binding Yomie Yogurt to the lease and herself as guarantor.

The fifth issue mirrors the first. QFE argues, "On the evidence presented at trial, there is simply no meeting of the minds sufficient to give rise to any multi-year lease agreement between Yomie and Food Express." In its argument, QFE ignores the evidence of mutual assent discussed above and focuses on the trial testimony of QFE's manager, Joe. Focusing on Joe's contrary evidence is inconsistent with our mandated legal sufficiency standard of review. We credit evidence that supports the verdict if a reasonable factfinder could have done so and disregard contrary evidence unless a reasonable factfinder could not have done so. *City of Keller*, 168 S.W.3d at 827.

Here, we conclude there exists more than a scintilla of evidence to establish the parties mutual assent for the existence and enforcement of the New Lease. There exists more than a scintilla of evidence to support the trial court's finding and conclusion the New Lease is a valid, enforceable contract between QFE and Yomie Yogurt, and Yomie Yogurt and QFE intended to be bound by its terms.

We overrule issues one and five.

Issues II and VI—Alternative Ground Based on Oral Agreement

In issues two and six, QFE asserts a legal sufficiency challenge to the trial court's alternative findings and conclusions regarding the existence of an oral agreement between QFE and Yomie Yogurt that falls within an exception to the statute of frauds.

Because we have concluded in our discussion of issues one and five there exists a valid written lease agreement between the parties, and because we are otherwise affirming the judgment of the trial court, we need not address QFE's alternative issues regarding the existence of an oral agreement between QFE and

Yomie Yogurt. A court of appeals does not need to address every alternative ground stated in an order if one meritorious ground would uphold the entire order. *Fuentes v. Union de Pasteurizadores de Juarez Sociedad Anonima de Cap. Variable*, 527 S.W.3d 492, 503 (Tex. App.—El Paso 2017, no pet.) (citing *State v. Ninety Thousand Two Hundred Thirty–Five and no cents in U.S. Currency ($90,235.00)*, 390 S.W.3d 289, 292 (Tex. 2013)).

Accordingly, we do not reach QFE's issues two and six.

Issue III—Legal Sufficiency Regarding Lost Profits

In issue three, QFE argues there is legally insufficient evidence of $20,000 in recoverable "sales damages." We reject this argument.

The trial court's finding of fact regarding damages states:

> 26. [Yomie Yogurt] suffered actual damages in the amount of $61,111.58, comprised of moving expenses, finish out of the new leasehold, as well as *lost profits* due to forced closure of the yogurt store for one month, as a result of QFE's breach of the lease.

(Emphasis added.) The trial court's corresponding conclusion of law regarding damages states:

> 37. [Yomie Yogurt] was damaged as a result of the breach of the New Lease by QFE. [Yomie Yogurt] is entitled to recover actual damages resulting from the breach. [Yomie Yogurt] suffered actual damages in the amount of $61,111.58, comprised of moving expenses, finish out expenses of the new leasehold, as well as *lost profits* due to forced closure of the yogurt store for one month, as a result of QFE ' s breach of the lease.

(Emphasis added.) After closing arguments, the trial court announced its decision. As to the trial court's reasoning behind the award of $61,111.58 in damages, the trial court stated:

> $41,111.58 is associated with the actual damages under the breach of contract for renovation or other harm. And then as well, there was a testimony related to $20,000 loss in sales. The Court believes that the testimony would support that or other numbers for various other reasons as well.

But when the trial court entered its "damages" finding and conclusion it determined the $61,111.58 in total damages is comprised of "moving expenses, finish out expenses of the new leasehold, as well *as lost profits*," but not lost sales. (Emphasis added.) QFE's "lost sales" argument is based on semantics and misconstrues the true nature of Dong's testimony Yomie Yogurt incurred $20,000 in "lost profits." QFE ignores much of Dong's testimony when it claims Dong was only testifying to lost "sales." Dong did testify about Yomie Yogurt's $20,000 in lost sales for the month between June 14 and July 14, 2023. However, Dong made clear the $20,000 in lost sales was actually lost profits because this $20,000 constituted pure net profit over and above Yomie Yogurt's monthly operating costs and expenses for that time period. Dong's testimony stated:

> A. After that it was low season and peak season. And during the low season, we net around 10,000. And during the peak season, we net around 20,000 per month.

* * *

> A. And it—for low season, it was usually from October to March. And peak season is from April to September.
>
> Q. And these numbers, 10,000 and 20,000 you're talking about, these are take-home numbers?
>
> A. Yes.

Dong's testimony establishes the months of June and July are within Yomie Yogurt's peak season during which it historically netted at least $20,000 per month in profit. Dong testified the $20,000 in lower sales for the relevant time period would have otherwise been pocketed by Yomie Yogurt as pure net profit. Dong provided testimony and supporting documents regarding Yomie Yogurt's historical financial information as to revenues and profit margins for prior June/July months.

We reject QFE's argument the evidence must be characterized as dealing only with lost sales and not lost profits. Dong's testimony provides: (1) legally sufficient evidence of the existence of "lost profits" incurred by Yomie Yogurt caused by QFE's breach, and (2) legally sufficient evidence to support the $20,000 amount. *See Reyna*, 865 S.W.2d at 928; *Manning*, 366 S.W.3d at 840.

We overrule issue three.

Issues IV and IX—Attorney's Fees

In issues four and nine, QFE argues the trial court erred in awarding Yomie Yogurt attorney's fees because there is legally insufficient evidence to support the award. QFE's argument does not challenge the reasonableness, necessity, or amount of the award. Instead, QFE argues an award of attorney's fees to Yomie Yogurt is improper because the engagement agreement with the law firm Song Whidden, PLLC, Yomie Yogurt's attorneys, is signed only by Dong and purports to be an engagement agreement between Song Whidden and Dong as the client.

We first note in issues four and nine, QFE sets forth no citations to any legal authority or case law to support its argument. Failure to cite applicable authority or provide substantive analysis waives an issue on appeal. *Huey v. Huey*, 200 S.W.3d 851, 854 (Tex. App.—Dallas 2006, no pet.).

Alternatively, the trial court entered findings Yomie Yogurt retained Song Whiddon to represent it in the lawsuit. Notwithstanding the engagement letter, the record clearly establishes: (1) the Song Whidden law firm represented Yomie Yogurt in the lawsuit, and (2) QFE and its attorneys were aware Song Whidden was representing Yomie Yogurt.

Yomie Yogurt's original, first amended, and second amended petitions all list Song Whidden as Yomie Yogurt's attorneys of record. There are two Rule 11 agreements and an agreed order between the parties signed by QFE's attorney and by a Song Whidden attorney on behalf of Yomie Yogurt. The record reveals QFE never filed a sworn motion to show authority under Rule 12 of the Texas Rules of Civil Procedure stating QFE believed the suit is being prosecuted or defended without authority. Simply put, the evidence establishes Song Whidden attorneys represented Yomie Yogurt throughout this litigation. When asked why Dong signed the Song Whidden engagement letter, attorney Whidden testified it was customary for Song Whidden to sign engagement letters with individuals so they had a guarantor for its fees.

Here, Yomie Yogurt was entitled to recover its attorney's fees for breach of contract. Song Whidden represented Yomie Yogurt throughout the litigation. Yomie Yogurt's attorneys testified at trial concerning the amount, reasonableness, and necessity of attorney's fees without substantive challenge. The form of Song Whidden's engagement letter does not preclude Yomie Yogurt from recovering its attorney's fees against QFE. The trial court did not err in awarding Yomie Yogurt its attorney's fees.

We overrule issues four and nine.

Issue VII—Prior Material Breach

In issue seven, QFE argues Yomie Yogurt committed prior material breaches of the New Lease and is therefore barred from recovering under breach of contract. Specifically, QFE argues Yomie Yogurt breached the New Lease by: (1) failing to provide QFE with a new security deposit, and (2) failing to provide QFE with certificates of insurance.

The contention a party to a contract is excused from performance because of a prior material breach by the other contracting party is an affirmative defense that must be affirmatively pleaded. *Blackstone Med., Inc. v. Phoenix Surgicals, L.L.C.*, 470 S.W.3d 636, 646 (Tex. App.—Dallas 2015, no pet.). Ordinarily, the party asserting an affirmative defense has the burden of both pleading and proving the defense. *Huntress v. Hickory Trail Hosp., L.P.*, No. 05-19-00892-CV, 2020 WL 2781795, at *9 (Tex. App.—Dallas May 29, 2020, pet. denied) (mem. op.). A party attacking the legal sufficiency of the evidence supporting an adverse finding on an issue on which that party bore the burden of proof must demonstrate all vital facts in support of the issue were established as a matter of law. *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 241 (Tex. 2001) (per curiam). The analysis requires we first examine the record in the light most favorable to the verdict for some evidence supporting the finding, crediting evidence favoring the finding if a reasonable fact finder could and disregarding contrary evidence unless a reasonable fact finder could not. *City of Keller*, 168 S.W.3d at 827. Some evidence, meaning more than a scintilla, exists when the evidence supporting the finding as a whole rises to a level that would enable reasonable and fair-minded people to differ in their conclusions. *Merrell Dow Pharms., Inc. v. Havner*, 953 S.W.2d 706, 711 (Tex. 1997).

There are three elements to the affirmative defense of prior material breach: (1) the party suing for breach of contract breached the agreement, (2) the alleged breach was material, and (3) the alleged breach by the party suing for breach of contract was prior to the alleged breach by the party being sued. *Hunter*, 2020 WL 4211241, at *7.

The trial court entered the following conclusion of law, "36. Plaintiff did not materially breach the New Lease." The findings of fact and conclusions of law also contained the following, "Any finding of fact more properly considered as a conclusion of law shall be considered a conclusion of law, and vice versa." We conclude conclusion of law 36 can be viewed as a finding of fact on QFE's affirmative defense of prior material breach. *See Teri Rd. Partners, Ltd. v. 4800 Freidrich Lane L.L.C.*, No. 03-13-00221-CV, 2014 WL 2568488, at *3 (Tex. App.—Austin June 4, 2014, pet. denied) (mem. op.) (citing *Seasha Pools, Inc. v. Hardister*, 391 S.W.3d 635, 640 (Tex. App.—Austin 2012, no pet.) (trial court's designation of items as findings of fact or conclusions of law is not controlling on appeal, and appellate court may treat court's ruling as factual finding or legal conclusion regardless of label used)). To the extent conclusion of law 36 can be considered a conclusion of law, we review it de novo to determine whether it is legally correct. *BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002).

We first address QFE's claim Yomie Yogurt breached the New Lease by failing to provide QFE with a new security deposit. We conclude there exists more than a scintilla of evidence that Yomie Yogurt did not breach the New Lease.

The record shows Yomie Yogurt deposited $3,300 as a security deposit under the Original Lease which was retained by QFE even after the New Lease was entered. In fact, QFE retained the $3,300 security deposit during this lawsuit and was ordered in the final judgment in this case to return it to Yomie Yogurt. The New Lease stated the security deposit is $3,700. Dong testified QFE did not require Yomie Yogurt to provide or update a new security deposit:

Q. Did you ever have to update it with Qu Food Express?

> A. Yizhou Qu did not ask me to update the security deposit or adding more to the security deposit. After we signed the contract, he asked me to continue to pay the new rent.
>
> Q. Did anyone at Qu Food Express ever tell you you needed to update or pay more as a security deposit?
>
> A. No.

Dong also testified when entering into the New Lease, Joe "didn't bring up the $3,700 security deposit and did not ask me to pay for it." This is consistent with the undisputed fact the $3,300 security deposit under the Original Lease was not returned by QFE to Yomie Yogurt when the New Lease began. It was kept on deposit by QFE and essentially substituted as the security deposit for the New Lease.

We next address QFE's claim Yomie Yogurt breached the New Lease by failing to provide QFE with certificates of insurance. We conclude there exists more than a scintilla of evidence that Yomie Yogurt did not breach the New Lease.

The evidence shows Yomie Yogurt maintained insurance listing QFE as additional insured. The trial court admitted into evidence two certificates of insurance for Yomie Yogurt for the years 2023 and 2024 showing Yomie Yogurt was insured for an aggregate of $2,000,000. Each certificate showed QFE as the certificate holder and as an additional insured under the policy. Dong testified these two certificates of insurance "is the insurance that I've handed over to the supermarket." Dong testified:

> Q. Did you provide each of these to Qu Food Express?

A. Yes. A few days after we signed with Yizhou Qu, I took it over to him and he said no problem.

We hold there exists legally sufficient evidence Yomie Yogurt did not breach the New Lease by: (1) failing to provide QFE with a new security deposit, or (2) failing to provide QFE with certificates of insurance.

Additionally, the affirmative defense of prior material breach also requires proof the alleged prior breach was material. *Bartush-Schnitzius Foods Co. v. Cimco Refrigeration, Inc.*, 518 S.W.3d 432, 436 (Tex. 2017); *Mustang Pipeline Co. v. Driver Pipeline Co.*, 134 S.W.3d 195, 196 (Tex. 2004). Having concluded there is more than a scintilla of evidence that Yomie Yogurt did not breach the New Lease, we need not reach the issue of materiality.[4]

We overrule issue seven.

Issue VIII—Yomie Yogurt's Recovery of Moving and Finish Out Expenses

In issue eight, QFE argues the trial court erred in awarding damages to Yomie Yogurt for its remodeling and moving costs because Yomie Yogurt "voluntarily" left the leased premises. QFE claims a Rule 11 Agreement between the parties in an

[4] Nonetheless, we would overrule issue seven because QFE does not provide adequate legal argument Yomie Yogurt's alleged breaches are material. QFE's one-page briefing does not set forth clear and concise argument regarding materiality and contains no citations to legal authority. Texas Rule of Appellate Procedure 38.1(i) calls for the brief to guide us through the appellant's argument with clear and understandable statements of the contentions being made. *Bolling v. Farmers Branch Indep. Sch. Dist.*, 315 S.W.3d 893, 896 (Tex. App.—2010 Dallas, no pet.). And, just as importantly, existing legal authority applicable to the facts and the questions we are called on to answer must be accurately cited. *Id.*

eviction lawsuit bars, as a matter of law, Yomie Yogurt from recovering remodeling and moving costs. We disagree.

As a threshold matter, we conclude QFE has failed to preserve error on this issue. Reviewing the record, we find QFE failed to specifically object to the trial court to Yomie Yogurt recovering its moving costs and finish out expenses due to the Rule 11 agreement in the second eviction suit. We conclude QFE has failed to preserve its complaint for our review. *See* TEX. R. APP. P. 33.1(a)(1); *Albelbaisi v. Truist Bank*, No. 05-24-01509-CV, 2026 WL 1406903, at *15 (Tex. App.—Dallas May 19, 2026, no pet.) (mem. op.).

We overrule issue eight.

Issue X—QFE's Claim for Breach of the Holdover Clause

In issue ten, QFE argues the trial court "committed reversible error" by refusing to sign a judgment in its favor on its breach of contract counterclaim for enforcement of the holdover tenant provision in the Original Lease and for damages caused to the premises when Yomie Yogurt moved out in June 2023. As to the holdover clause, QFE contends Yomie Yogurt became a holdover tenant at the end of the Original Lease and was then obligated to pay 150% of the base monthly rental.

QFE's briefing is sparse as to its tenth issue. QFE does not provide clear and concise adequate legal argument regarding Yomie Yogurt's alleged breaches of the Original Lease or any specific damages it allegedly suffered. QFE's briefing contains no citations to legal authority. Texas Rule of Appellate Procedure 38.1(i) calls for the brief to guide us through the appellant's argument with clear and understandable statements of the contentions being made. *Bolling v. Farmers Branch Indep. Sch. Dist.*, 315 S.W.3d 893, 896 (Tex. App.—2010 Dallas, no pet.). And, just as importantly, existing legal authority applicable to the facts and the questions we are called on to answer must be accurately cited. *Id.* We also note that QFE phrases its tenth issue as the trial court committed reversible error "by refusing to sign a judgment in favor of QFE…" This is a generic phrase that lacks specificity. "From our perspective, we must be able to discern what question of law we will be answering." *Id.* If an appellant is unable to or does not articulate the question to be answered, then his brief fails at that point. *Id.* QFE's tenth issue presents nothing for our review.

We overrule issue ten.

CONCLUSION

We affirm the judgment of the trial court.

/Tina Clinton/
TINA CLINTON
JUSTICE