Reversed and Remanded; Opinion filed September 20, 2001.

In The

Fourteenth Court of Appeals

NO. 14-00-00375-CV

SUSAN TEEL, Appellant

V.

AMERICAN TITLE COMPANY OF HOUSTON, Appellee

On Appeal from the 312th District Court
Harris County, Texas
Trial Court Cause No. 99-18893-A

O P I N I O N

Appellant, Susan Teel, sued her former husband, his attorney, and American Title Company of Houston for civil conspiracy, real estate fraud, and common law fraud. American Title filed both a conventional motion for summary judgment and a no-evidence motion for summary judgment contending (1) Teel's suit was barred by the affirmative defense of ratification and estoppel, (2) she was not entitled to a double recovery, (3) she could not recover for mental anguish arising from an economic loss, and (4) she could produce no evidence of any element of fraud. The trial court granted summary judgment without specifying which of the motions it granted or the basis for its ruling. In six issues,

Teel contends the trial court erred in granting summary judgment for American Title. American Title brings one cross-point on appeal urging this Court to impose sanctions against Teel for pursuing a frivolous appeal. We reverse and remand.

Factual Background

Teel and her former husband, Jeffrey Yuna, acquired a house on Galveston Island during the course of their marriage. In 1995, Teel sued Yuna for divorce. The final divorce decree awarded Teel one-half of the net proceeds from the sale of the house. To facilitate the sale, Teel conveyed the property to Yuna by a special warranty deed. The deed conveyed the property to Yuna in consideration of his assumption and promise to pay the amount still owed on a promissory note executed by Teel and Yuna when they purchased the property. The deed also reserved for Teel an equitable lien on the property until such time as her share of the proceeds had been paid in full pursuant to the terms of the divorce decree.

In 1997, Yuna sold the property for $150,000. American Title served as the title company and escrow agent at the closing and sent Teel half of the net proceeds from the sale. Believing the actual fair market value of the property was $235,000, Teel refused to accept the money or release her lien on the property. Teel also alleged that Yuna converted $10,342.22 of the proceeds to his own use. Teel sought and obtained a judgment in the divorce court against Yuna for $10,342.22, plus costs and attorney fees. American Title interpleaded Teel's share of the proceeds into that suit. Thereafter, Teel filed this suit against Yuna, his attorney/broker, and American Title to recover half of the difference between the fair market value of the house and the actual sales price.

Standard of Review

Where, as here, the trial court does not state the grounds for granting the motion, and several grounds are provided, we must determine if any of the grounds would support the grant of summary judgment. *Rogers v. Ricane Enterprises, Inc.*, 772 S.W.2d 76, 79 (Tex.

1994). Summary judgment is proper if the defendant, as movant, disproves at least one element of each of the plaintiff's claims or establishes all elements of an affirmative defense. *American Tobacco v. Grinnell*, 951 S.W.2d 420, 425 (Tex. 1997). The movant has the burden of showing there are no genuine issues of material fact and it is entitled to judgment as a matter of law. *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548 (Tex. 1985). In deciding whether there is a disputed material fact issue precluding summary judgment, proof favorable to the non-movant is taken as true and the court must indulge every reasonable inference and resolve any doubts in favor of the non-movant. *Id.* at 548-49.

As distinguished from a traditional summary judgment, we review a no-evidence summary judgment under the same legal sufficiency standard as a directed verdict. *Speciality Retailers, Inc, v. Fuqua*, 29 S.W.3d 140, 146 (Tex. App.—Houston [14th Dist.] 2000, pet. denied). Here, a reviewing court views all evidence in a light most favorable to the respondent against whom the summary judgment was rendered, disregarding all contrary evidence and inferences. *Id*; *Merrell Dow Pharm., Inc. v. Havner*, 953 S.W.2d 706, 711 (Tex.1997). A no-evidence summary judgment is properly granted if the respondent fails to bring forth more than a scintilla of probative evidence to raise a genuine issue of material fact as to an essential element of the respondent's case. *Moore v. K Mart Corp.*, 981 S.W.2d 266, 269; TEX. R. CIV. P. 166a(i). Less than a scintilla of evidence exists when the evidence is "so weak as to do no more than create a mere surmise or suspicion" of a fact. *Kindred v. Con/Chem, Inc.*, 650 S.W.2d 61, 63 (Tex.1983). More than a scintilla of evidence exists when the evidence "rises to a level that would enable reasonable and fair-minded people to differ in their conclusions." *Burroughs Wellcome Co. v. Crye*, 907 S.W .2d 497, 499 (Tex.1995).

Sufficiency of the Motion for Summary Judgment

In her first issue, Teel contends American Title's no-evidence motion for summary judgment failed to specifically state the elements of fraud for which there was no evidence.

Rule 166a(i) of the Texas Rules of Civil Procedure provides that a no-evidence motion must state the elements as to which there is no evidence. TEX. R. CIV. P. 166a(i). A general assertion or conclusory motion of no evidence is not sufficient. *Abraham v. Ryland Mortgage Co.*, 995 S.W.2d 890, 892 (Tex. App.—El Paso 1999, no pet.). Here, American Title filed a skeletal motion for summary judgment that did not specify the specific elements of fraud for which it claimed there was no evidence; the motion alleged there was "no evidence of . . . any element fraud." Such a global assertion is both conclusory and insufficient.[1] Appellant's first issue is sustained.

Our disposition of the first issue makes it unnecessary to address appellant's second and third issues in which she claims that there was evidence of a conspiracy and evidence that appellee had actual knowledge of the fraud committed by Yuna.

In her fourth issue, appellant contends that the one satisfaction rule does not prevent her from recovering from the appellant. The one satisfaction rule applies to prevent a plaintiff from obtaining more than one recovery for the same injury. *Stewart Title Guar. Co. v. Sterling*, 822 S.W.2d 1, 7 (Tex. 1991). The one satisfaction rule does not apply here because appellant is pleading an injury for which she has not been previously compensated. In its motion, American Title asserts appellant's sole injury was her failure to recover her share of the proceeds from the sale of the beach house; thus, the judgment against her ex-

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[1] American Title contends that Teel had no legal interest in the property, was not a party to the sale, and could not have been defrauded by American Title. We are aware that in a divorce case, it is not unusual for the trial court to order one spouse to convey community property to the other spouse for the purpose of facilitating its sale. *See Magallanez v. Magallanez*, 911 S.W.2d 91, 94 (Tex. App.—El Paso 1995, no writ). The compensation owed to the conveying spouse is secured by an equitable lien on the property. *Votzmeyer v. Votzmeyer*, 964 S.W.2d 315, 325 (Tex. App.—Corpus Christi 1998, no pet.). Here, the undisputed summary judgment proof shows that Teel conveyed all her "right, title and interest [to Yuna], a single person, as his sole and separate property." While Teel undoubtedly had an equitable interest in the property, she did not possess legal title. *First Nat. Bank of Bellaire v. Huffman Independent School Dist.*, 770 S.W.2d 571, 573 (Tex. App.—Houston [14th Dist.] 1989), *cert. denied*, 494 U.S. 1091 (1990).

We cannot, however, consider appellate arguments made in support of a no-evidence motion for summary judgment where the defendant failed to specify in its original motion the elements for which the plaintiff allegedly has no evidence. Unless the defendant specifies the elements on which there is no evidence, the plaintiff cannot reasonably respond to the motion or know what proof it should offer in rebuttal.

husband in the conversion suit constituted a satisfaction for which it should be credited. However, the amount awarded to appellant in that suit was only for the portion of the sale proceeds that Yuna had converted to his own use. It did not include any damages for conspiracy or fraud—the injuries she now claims. Accordingly, the doctrine of one satisfaction has no application here because appellant has not previously recovered for these injuries. Appellant's fourth issue is sustained.

In her fifth issue, appellant claims the legal doctrines of ratification and estoppel do not prevent her from recovering against appellee. Ratification occurs when a person induced by fraud to enter into an agreement continues to accept benefits under that agreement after he becomes aware of the fraud, or if he conducts himself so as to recognize the agreement as binding. *Johnson v. Smith*, 697 S.W.2d 625, 630 (Tex. App.—Houston [14th Dist.] 1985, no writ). The critical factor in determining whether a principal has ratified an unauthorized act by his agent is the principal's knowledge of the transaction and his actions in light of such knowledge. *Land Title Co. of Dallas, Inc. v. F.M. Stigler, Inc.*, 609 S.W.2d 754, 756 (Tex. 1980). If the agent's act is fraud upon the principal, it is incapable of ratification because no principal would confer an authority to practice a fraud upon itself. *Herider Farms–El Paso, Inc. v. Criswell*, 519 S.W.2d 473, 478 (Tex. Civ. App.—El Paso 1975, writ ref'd n.r.e.); *Lincoln Fire Ins. Co. v. Taylor*, 81 S.W.2d 1059 (Tex. Civ. App.—Fort Worth 1935, writ dism'd). Estoppel arises where, by the fault of one, another is induced to change his or her position for the worse. *Herschbach v. City of Corpus Christi*, 883 S.W.2d 720, 236 (Tex. App.—Corpus Christi 1994, writ denied). Ratification and estoppel do not apply in this case. American Title was not acting as appellant's agent at the sale of the house. Appellant did not accept proceeds of the sale from American Title or release her lien on the property. Her recovery in the conversion suit does not constitute affirmance of the act. Finally, when appellant became aware the house had been sold for less than market value, she commenced this suit. There is also no evidence presented to suggest that appellant took any action that caused American Title to act to its detriment. Appellant's fifth issue is sustained.

In her sixth issue, appellant claims she is entitled to mental anguish damages. In its motion, American Title asserts that appellant is not entitled to mental anguish damages because of the Texas Supreme Court's holding in *Douglas v. Delp*, 987 S.W.2d 879, 885 (Tex. 1998). In that case, the Supreme Court held that when a plaintiff's mental anguish is a consequence of economic losses caused by an attorney's negligence, the plaintiff may not recover damages for that mental anguish. The holding in *Douglas* is limited to legal malpractice cases and American Title was not acting as appellant's attorney at the closing. However, mental anguish damages are generally recoverable for intentional torts. *Kneip v. Unitedbank–Victoria*, 734 S.W.2d 130, 136 (Tex. App.—Corpus Christi 1987, no writ). An injured party is entitled to recover in a tort action those damages which result directly, naturally and proximately from fraud. *Id.* (*citing Traylor v. Gray*, 547 S.W.2d 644, 656 (Tex. Civ. App.–Corpus Christi 1977, writ ref'd n.r.e.). Appellant is suing American Title for the intentional torts of civil conspiracy and fraud; thus, she may be entitled to mental anguish damages. Appellant's sixth issue is sustained.

Because we have sustained all of appellant's pertinent issues on appeal, we need not address American Title's request that this court sanction appellant. The judgment of the trial court is reversed and the case is remanded to the trial court for further proceedings consistent with this opinion.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed September 20, 2001.
Panel consists of Justices Anderson, Hudson, and Seymore.
Do Not Publish — TEX. R. APP. P. 47.3(b).