

Affirmed and Opinion filed January 10, 2002.



In The

Fourteenth Court of Appeals

NO. 14-01-00278-CV

SPRING CENTER ANIMAL CLINIC, INC., Appellant

V.

HALTNER & ASSOCIATES, INC., Appellee

**On Appeal from the County Civil Court at Law Number Four
Harris County, Texas
Trial Court Cause No. 723,480**

OPINION

Appellant, Spring Center Animal Clinic, Inc. (“Spring”), appeals a jury verdict and an order granting partial summary judgment in favor of appellee, Haltner & Associates, Inc. (“Haltner”). In three points of error on appeal, Spring asserts the trial court erred because its affirmative defense of illegality precluded Haltner from recovering on the underlying contract as a matter of law. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

On May 14, 1999, Spring entered into a contract with Haltner whereby Haltner was to provide architectural services. On May 28, 1999, Haltner submitted an invoice to Spring claiming \$14,580 due for architectural services. On June 14, 2000, Spring terminated the contract, prompting Haltner to bring suit against Spring for breach of contract. In response to the suit, Spring raised the affirmative defense of illegality, claiming that the contract was illegal because Sandra Haltner, the president of Haltner, was not an architect. Spring also filed a counterclaim seeking damages under the Texas Deceptive Trade Practices Act (“DTPA”). Haltner responded by asserting the affirmative defense of exemption and legal authorization as permitted by statute.

Spring filed a motion for summary judgment asserting the affirmative defense of illegality. Haltner responded by asserting that architectural licensing requirements do not apply to Haltner because of an exception in the statute, and by filing its own no-evidence motion for summary judgment regarding Spring’s DTPA claim. The trial court denied Spring’s motion for summary judgment, but granted Haltner’s no-evidence motion for summary judgment regarding Spring’s DTPA claim. The unresolved issues of the suit were tried to a jury. The jury awarded Haltner damages under the contract and attorney’s fees. The court entered judgment on the verdict and Spring filed a motion for new trial. The motion was denied and this appeal ensued.

II. POINTS OF ERROR ON APPEAL

Spring brings three issues on appeal: the trial court erred in (1) denying its motion for summary judgment; (2) entering judgment for Haltner because there was no evidence to support the jury’s verdict; and (3) denying Spring’s motion for new trial. The basis for Spring’s complaints is that Haltner should not have been allowed to recover on the contract because the contract is illegal as it is in violation of Texas law which requires a contract for architectural services to be performed by a registered architect.

III. DENIAL OF SPRING'S MOTION FOR SUMMARY JUDGMENT

Spring contends the trial court erred in denying its motion for summary judgment. In its motion, Spring asserted it was entitled to judgment as a matter of law because the contract is illegal. Spring's motion for summary judgment is based on section 10 of Article 249a, which makes it illegal for a firm to practice architecture and contract to provide architectural services unless all architectural services are rendered by a person who is a registered architect. *See* TEX. REV. CIV. STATS. ANN. ART. 249a, §§ 10, 13 (Vernon Supp. 2001). In its response to Spring's motion, Haltner objected to Spring's summary judgment evidence and argued that the contract in question is not illegal because it is exempted from section 10 of Article 249a by section 14. *See* TEX. REV. CIV. STATS. ANN. ART. 249a, § 14 (Vernon Supp. 2001). Section 14 allows non-architects to provide architectural plans for buildings that do not exceed two stories and twenty-thousand square feet. TEX. REV. CIV. STATS. ANN. ART. 249a, § 14(3), (4)(d) (Vernon Supp. 2001). This issue was tried to the jury and the jury found the contract was not illegal.

When an appellant unsuccessfully moves for summary judgment and subsequently loses in a trial on the merits, the order denying summary judgment cannot be reviewed on appeal. *United Parcel Serv., Inc. v. Tasdemiroglu*, 25 S.W.3d 914, 916 (Tex. App.—Houston [14th Dist.] 2000, pet. denied). Here, Spring's summary judgment contention the contract with Haltner was illegal was also rejected by the jury. Consequently, we cannot review the trial court's denial of Spring's motion for summary judgment. We overrule Spring's first point of error.

IV. NO EVIDENCE TO SUPPORT JUDGMENT

In its second point of error, Spring asserts the trial court erred in entering judgment because there was no evidence to support the verdict. On appeal, however, Spring provides only a partial reporter's record. *See* TEX. R. APP. P. 34.6(c).

Before we can address the no-evidence issue brought by Spring, we must determine

whether Spring complied with Texas Rule of Appellate Procedure 34.6(c) which sets forth the requirements for pursuing an appeal on a partial reporter's record. *Id.* The issue of whether Spring complied with Rule 34.6(c) is a threshold issue because it will determine the proper presumption to be applied in reviewing the trial court's judgment. Strict compliance with Rule 34.6(c) will activate the presumption that the omitted portions of the record are irrelevant. *CMM Grain Co., Inc. v. Ozgunduz*, 991 S.W.2d 437, 439 (Tex. App.—Fort Worth 1999, no pet.). Less than strict compliance with the rule, on the other hand, results in the appellate court applying the contrary presumption that the omitted portions of the record support the judgment rendered. *Id.* at 440.

Strict compliance with Rule 34.6(c) means both the request for a partial reporter's record and the statement of points or issues to be presented on appeal must be timely filed and appear in the appellate record. *Hilton v. Hillman Distributing Co.*, 12 S.W.3d 846, 847 (Tex. App.—Texarkana 2000, no pet.). Here, there is neither a request for a partial reporter's record, nor a statement of points or issues to be presented on appeal. Spring's failure to comply with Rule 34.6(c) is fatal to its second point of error regarding the legal sufficiency of the evidence to support the trial court's judgment because we must apply the presumption the omitted portions of the reporter's record support the trial court's judgment on the verdict. Applying that presumption, Spring cannot sustain its contention there is no evidence to support the trial court's judgment.

In addition, we find appellant waived this point of error. In order to preserve a no-evidence point of error, appellant must have raised it through a motion for new trial, motion for judgment notwithstanding the verdict, objection to the submission of the question to the jury, motion to disregard the jury's answer, or motion for directed verdict. *United Parcel Serv., Inc.*, 25 S.W.3d at 916. Appellant failed to address its no-evidence point by any of these means. Accordingly, we overrule Spring's second point of error.

V. DENIAL OF SPRING'S MOTION FOR NEW TRIAL

In its final point of error, Spring asserts the trial court erred in denying its motion for new trial. Spring's motion for new trial was based on three grounds: (1) the trial court erred when it denied Spring's motion for continuance; (2) the trial court erred when it granted Haltner's no evidence motion for summary judgment; and (3) the trial court erred when it denied Spring's motion for summary judgment. On appeal, in support of its contention the trial court erred in denying its motion for new trial, Spring submitted only the following:

The trial court was asked to reconsider and rectify trial error by granting a new trial. The denial of a new trial, in this case and on this evidence, was an abuse of discretion, which merits correction by this court.

On appeal, appellant's brief must contain a "clear and concise argument for the contentions made, with appropriate citations to authorities and to the record." TEX. R. APP. P. 38.1(h). Spring cites no authority and advances no argument in support of this point of error. Therefore, Spring waived its third and final point of error.

VI. CONCLUSION

We overrule Spring's three points of error, and affirm the judgment of the trial court.

/s/ John S. Anderson
Justice

Judgment rendered and Opinion filed January 10, 2002.

Panel consists of Justices Anderson, Hudson, and Frost.

Do Not Publish — TEX. R. APP. P. 47.3(b).