Affirmed and Opinion filed May 18, 2000.

In The

Fourteenth Court of Appeals

NO. 14-99-00287-CV

JUDSON 88 PARTNERS, Appellant

V.

PLUNKETT & GIBSON, INC. f/k/a PLUNKETT, GIBSON & ALLEN, INC. and MARTHA WALDRON n/k/a MARTHA WALDRON PERRIN, Appellees

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On Appeal from the 334th District Court
Harris County, Texas
Trial Court Cause No. 97-47579

O P I N I O N

In this attorney conflict of interest case, Judson 88 Partners ("Judson") appeals a summary judgment entered in favor of Plunkett & Gibson, Inc., f/k/a Plunkett, Gibson & Allen, Inc. ("PG&A"), and Martha Waldron, n/k/a Martha Waldron Perrin ("Perrin") (collectively, "appellees") on the grounds that: (1) appellees failed to establish that Judson's claims were barred by the statute of limitations; and (2) appellees failed to negate the element of proximate cause. We affirm.

Background

While an associate at PG&A, a law firm, Perrin was hired to assist Judson, a joint venture, with obtaining the financing required to purchase a tract of land and build a car wash. Judson obtained the land, built the car wash, and leased the resulting property to two lessees (the "lessees"), one of which was ILC Enterprises, Inc. ("ILC").

After the car wash encountered financial difficulties, the lessees stopped paying rent, and Judson defaulted on the note obtained to finance the property. In October of 1996, during the ensuing litigation with the bank, Judson obtained PG&A's file which purportedly revealed: (1) an alleged conflict of interest arising from Perrin and PG&A having represented both Judson and ILC in the lease transaction; and (2) an alleged billing discrepancy in which appellees charged Judson for legal work performed for ILC.

In September of 1997, Judson filed suit against PG&A and Perrin for breach of fiduciary duty, negligence, gross negligence, fraudulent billing, negligent misrepresentation, and breach of contract. PG&A and Perrin filed a joint motion for summary judgment (the "motion") on various grounds including estoppel. On January 19, 1999, the trial court granted the motion without specifying the ground(s) on which it relied.

Standard of Review

A summary judgment may be granted if the summary judgment evidence shows that, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law on the issues expressly set out in the motion or response. TEX. R. CIV. P. 166a(c).[1] In ruling on a motion for summary judgment, a court may consider only evidence that has been referenced or set forth in a motion or response. *See* TEX. R. CIV. P. 166a(c); *Wilson v. Burford*, 904 S.W.2d 628, 628-29 (Tex. 1995). References to evidence must be specific; a general reference to a voluminous record which does not direct the trial court to the evidence relied upon is insufficient. *See Rogers v. Ricane Enterprises, Inc.*, 772 S.W.2d 76, 81 (Tex. 1989); *Guthrie v. Suiter*, 934 S.W.2d 820, 825-26 (Tex. App.—Houston [1st Dist.] 1996, no writ) (holding that the trial court was not required to sift through a lengthy deposition transcript attached to the response in search of evidence

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[1] A summary judgment for the defendant is proper if the defendant disproves at least one element of each of the plaintiff's claims or establishes all of the elements of an affirmative defense to each claim. *See American Tobacco Co. v. Grinnell*, 951 S.W.2d 420, 425 (Tex. 1997).

supporting the nonmovant's contention where the response failed to direct the court to the specific portions of the transcript on which the nonmovant relied).

When a trial court does not specify the basis for its summary judgment, the appealing party must challenge every ground asserted in the motion; a summary judgment may not be reversed on grounds not challenged in the court of appeals. *See Star-Telegram, Inc. v. Doe*, 915 S.W.2d 471, 473 (Tex. 1995); *San Jacinto River Authority v. Duke*, 783 S.W.2d 209, 209-10 (Tex. 1990). Therefore, when a summary judgment which has been sought on multiple grounds is granted without specifying the ones relied upon, the reviewing court must affirm if any grounds asserted in the motion for summary judgment are unchallenged on appeal. *See Malooly Bros. v. Napier*, 461 S.W.2d 119, 121 (Tex. 1970).

Estoppel

In this case, the motion argued as one of its three grounds that Judson's legal malpractice claims (*i.e.*, those other than fraudulent billing) failed, as a matter of law, because Judson was estopped to deny the validity of the lease at issue. As Judson conceded at oral argument, its appellate brief does not challenge that ground for summary judgment. Lacking any challenge to one of the grounds asserted for summary judgment on the legal malpractice claims, the summary judgment must be affirmed on those claims without regard to the underlying merits of the challenged or unchallenged grounds. *See Malooly*, 461 S.W.2d at 121.[2]

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[2] *Malooly* also noted that, as an alternative to challenging each summary judgment ground with a separate point of error, an appellant could simply assert one broad point of error that "the trial court erred in granting the motion for summary judgment." *See Malooly*, 461 S.W.2d at 121. "Such a point would be sufficient to . . . *allow argument* as to all the possible grounds upon which summary judgment should have been denied." *Id*. (emphasis added). The opinion concluded that the summary judgment in that case "must stand, since it may have been based on a ground not specifically challenged by the plaintiff *and since there was no general assignment that the trial court erred in granting summary judgment.*" *Id.* (emphasis added). Although this particular language might arguably be read to provide that a broad point of error is itself sufficient to challenge all grounds for summary judgment, we understand *Malooly*, taken as a whole, to instead hold that even a broad point of error must still be supported by argument challenging each independent summary judgment ground. *See Plexchem Int'l, Inc. v. Harris County Appraisal Dist.*, 922 S.W.2d 930, 930-31 (Tex. 1996) (holding that appellant preserved error on an issue where, in addition to asserting a broad point of error that the court erred in granting summary judgment, appellant's brief presented three pages of

Fraudulent Billing

Judson's petition alleged that appellees had billed Judson for legal services they had performed for ILC in connection with the lease and that Judson did not learn that appellees represented ILC in the lease transaction until Judson received appellees' files in 1996. With regard to this claim, the motion argued that: (1) Judson's fraudulent billing claim was barred by the statute of limitations because it was discoverable when Judson received its invoice for appellees' services in February of 1988 (the "invoice"), more than four years before Judson filed suit in 1997; and (2) the legal services billed to Judson were accurate, performed for the benefit and at the request of Judson, and were not fabricated from work performed for another client. Affidavits to this effect, executed by Perrin and Lewin Plunkett, a partner of PG&A who worked with Perrin there, were attached to the motion and referenced in its section on fraudulent billing.

With one exception, Judson's response to the motion (the "response") addressed only the conflict of interest claim. The only sentence in the response that pertains to the fraudulent billing claim asserts merely that the PG&A file produced to Judson in 1996 disclosed that Judson "was billed for services rendered to ILC." However, although some 740 pages of exhibits were attached to the response, including various billing statements and records from PG&A, the sentence in the response concerning fraudulent billing does not refer to any of the attachments. Nor does the response otherwise indicate where or how any of the attached exhibits support the fraudulent billing allegation.

On appeal, Judson contends that its claim for fraudulent billing is not barred by limitations because it did not and could not discover that claim until its inspection of PG&A's file produced in 1996 revealed the billing records which showed that appellees had charged Judson for work performed for ILC. However, although Judson's brief contains record references for these contentions, those references do not reflect any such billing discrepancy, and the brief does not otherwise explain how the alleged

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argument and authorities on the issue); *Pena v. State Farm Lloyds*, 980 S.W.2d 949, 958-59 (Tex. App.—Corpus Christi 1998, no pet. h.) (holding that a broad point of error does not relieve an appellant from the obligation to provide sufficient argument and authorities to sustain each ground of reversal). Otherwise, the assertion of a broad point of error would shift the burden to the appellate court to search the record for grounds on which to reverse the summary judgment. This would remove the court from its position of impartiality and require it to become an advocate for the appellant.

discrepancy can be ascertained from the billing records produced in 1996 or any other exhibits to its summary judgment response.

Judson's brief does not challenge the admissibility or sufficiency of the Perrin and Lewin affidavits as proof that appellees had not billed Judson for work performed for ILC. To the extent Judson wished to rely on any billing records or other evidence attached to its response to controvert those affidavits, it was incumbent on Judson's summary judgment response to so state, refer specifically to the supporting evidence within the exhibits,[3] and, we believe, provide any explanation or analysis required to draw the necessary inferences or reach the desired conclusions from that evidence. Because Judson's response (as well as its brief on appeal) failed to do so, Judson has failed to demonstrate any error in granting summary judgment against its claim for fraudulent billing. Accordingly, Judson's issues are overruled, and the judgment of the trial court is affirmed.

/s/ Richard H. Edelman
Justice

Judgment rendered and Opinion filed May 18, 2000.
Panel consists of Justices Yates, Fowler, and Edelman.
Do Not Publish — TEX. R. APP. P. 47.3(b).

[3] *See Rogers*, 772 S.W.2d at 81; *Guthrie*, 934 S.W.2d at 825-26.