

Opinion filed June 11, 2020



In The

# Eleventh Court of Appeals

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No. 11-18-00141-CV

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**MANUEL CAZARES AND WIFE, MARTHA CAZARES,  
Appellants**

**V.**

**ISRAEL L. SEGOVIA, Appellee**

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**On Appeal from the County Court at Law  
Midland County, Texas  
Trial Court Cause No. CC20262**

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## **MEMORANDUM OPINION**

This is an appeal from a dismissal under Rule 91a of the Texas Rules of Civil Procedure granted in favor of Appellee, Israel L. Segovia, in a suit in which Appellants, Manuel Cazares and Martha Cazares, sought to recover damages for breach of contract, fraud, and intentional infliction of emotional distress. *See* TEX. R. CIV. P. 91a.1. In a single issue, Appellants argue that the trial court erred

when it dismissed their claims because the live pleadings satisfied the minimum requirement of demonstrating a basis in law and fact. We affirm.

### *Background Facts*

Appellants and Appellee allegedly entered into a contract for the sale of property located at 1005 North Lamesa Road, Midland, Texas, 79701. The agreed-upon sales price for the property was \$80,000, which was to be paid through a \$4,000 down payment followed by \$900 in monthly installments. At some point, the monthly installments were modified from \$900 to \$600 to prevent foreclosure.

In their brief, Appellants argue that Appellee then breached the contract when he declared that the contract for the sale of real estate was a rental agreement. From the alleged facts, it is unclear whether any actions were taken by Appellee other than a verbal declaration. After the alleged breach, Appellants filed an original petition seeking damages for breach of contract, fraud, intentional infliction of emotional distress, attorney's fees, and court costs.<sup>1</sup>

In response, Appellee filed a Rule 91a motion to dismiss, arguing that Appellants' claims had no basis in law or fact. *See* TEX. R. CIV. P. 91a.1. In the alternative, Appellee additionally filed an answer to the original petition. The trial court set the motion for a hearing. Ultimately, the trial court granted Appellee's motion and dismissed Appellants' claims without prejudice. This appeal followed.

### *Standard of Review*

We review de novo a trial court's order dismissing a cause of action under Rule 91a. *City of Dallas v. Sanchez*, 494 S.W.3d 722, 724 (Tex. 2016). Our review is based solely on the allegations in the live petition and any attachments. *See* TEX. R. CIV. P. 91a.6; *see also Weizhong Zheng v. Vacation Network, Inc.*, 468

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<sup>1</sup>We note, as Appellee has correctly pointed out, that neither attorney's fees nor court costs are valid causes of action—though they were listed as “causes of action” in Appellants' petition.

S.W.3d 180, 183 (Tex. App.—Houston [14th Dist.] 2015, pet. denied) (“Determinations of whether a cause of action has any basis in law and in fact are both legal questions which we review *de novo*, based on the allegations of the live petition and any attachments thereto.”). We additionally “construe the pleadings liberally in favor of the plaintiff, look to the pleader’s intent, and accept as true the factual allegations in the pleadings.” *Weizhong*, 468 S.W.3d at 183–84; *see Bethel v. Quilling, Selander, Lownds, Winslett & Moser, P.C.*, 595 S.W.3d 651, 655 (Tex. 2020).

### *Analysis*

In accordance with Rule 91a of the Texas Rules of Civil Procedure, “a party may move to dismiss a cause of action on the grounds that it has no basis in law or fact.” TEX. R. CIV. P. 91a.1. Dismissal is appropriate under Rule 91a “if the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle the claimant to the relief sought.” *Id.* Dismissal is additionally appropriate if “no reasonable person could believe the facts pleaded.” *Id.*

In this case, Appellants pleaded the following facts in their original petition:

5. There is attached hereto and made a part hereof for all purposes a certain Contract for Sale, Disclosure of Information of Lead-Based Paint or Lead Based Paint Hazards by **MANUEL CAZARES** and seller **ISRAEL L SEGOVIA** on October 19, 2013. This is Shown herein as **Exhibit A**.

6. There never was a lease agreement but this was for the sale of real property. There has been an attempt on the part of the Defendant herein to declare this as a rental agreement as distinguished for a contract for sale herein.

7. The Plaintiffs herein desires for this to be declared a contract for sale of land and not a lease agreement. This was/is false.

8. There is no document that has been signed by the Plaintiffs herein that has ever indicated that this piece of real estate was only rented. This is incorrect; it was a purchase.

9. There were payments that were to be made which the Plaintiffs have kept their portion of the contract and made the payments. In fact, on one occasion so that the Defendant would not have any right of foreclosure an agreement was reached when the payment was reduced from nine hundred (\$900.00) a month to six hundred dollars (\$600.00) a month.

Appellants also attached the contract itself to the original petition as an exhibit, and we will consider it accordingly. The contract, however, merely outlines the terms of the alleged contract for sale of property; it does not bolster Appellants' causes of action with any additional facts. We will discuss each cause of action in turn.

#### *Breach of Contract*

Appellants first contend that they alleged a plausible claim against Appellee for breach of contract and that the trial court erred in granting Appellee's Rule 91a motion to dismiss as to such claim. To succeed on a breach of contract claim, a plaintiff must show "(1) the existence of a valid contract; (2) the plaintiff performed or tendered performance; (3) the defendant breached the contract; and (4) that the plaintiff was damaged as a result of the breach." *Runge v. Raytheon E-Sys., Inc.*, 57 S.W.3d 562, 565 (Tex. App.—Waco 2001, no pet.).

Based on the facts alleged, Appellants have—at most—pleaded sufficient facts as to elements one and two of their breach of contract claim. Appellants have not pleaded facts to show how Appellee has breached the contract. Absent a clause within the contract prohibiting the parties from referring to the contract as a rental agreement, we fail to see how the alleged facts show any breach. Similarly, Appellant has pleaded no facts concerning how Appellants have been damaged as a result of any breach by Appellee.

Taken together, these facts allege little more than (1) that a contract exists; (2) that the contract was for the sale of real property; (3) that the contract was not a rental agreement; (4) that Appellee has declared that the contract was a rental agreement; and (5) that Appellants have paid some money to Appellee, albeit less money now than they originally agreed to pay at the inception of the contract. These allegations, even if presumed true, do not present a cause of action grounded in fact or law as required by Rule 91a. We affirm the ruling of the trial court as to the dismissal of Appellants' breach of contract claim.

#### *Fraud*

Appellants next contend that they alleged a plausible claim against Appellee for fraud and that the trial court erred in dismissing said claim. To prevail on a claim of fraud, a plaintiff must show that “(1) the defendant ‘made a material representation that was false’; (2) the defendant ‘knew the representation was false or made it recklessly as a positive assertion without any knowledge of its truth’; (3) the defendant intended to induce the plaintiff to act upon the representation; and (4) the plaintiff actually and justifiably relied upon the representation and suffered injury as a result.” *JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C.*, 546 S.W.3d 648, 653 (Tex. 2018) (quoting *Ernst & Young, L.L.P. v. Pac. Mut. Life Ins. Co.*, 51 S.W.3d 573, 577 (Tex. 2001)). The last element is two-fold: “the plaintiff must show that it actually relied on the defendant’s representation and, also, that such reliance was justifiable.” *Id.*

In their original petition, Appellants did not plead any facts to show any materially false representations that Appellee made or in what respects any such representations were false. Further, Appellants have not pleaded facts to show how Appellee intended to induce reliance on any false representations or how Appellants

justifiably relied upon any representations. We affirm the ruling of the trial court as to the dismissal of Appellants' fraud claim.

*Intentional Infliction of Emotional Distress*

Appellants no longer press their claim for intentional infliction of emotional distress. Nevertheless, to avoid any ambiguity, we will consider it as we did the other claims. "To recover damages for intentional infliction of emotional distress, a plaintiff must establish that: (1) the defendant acted intentionally or recklessly; (2) the defendant's conduct was extreme and outrageous; (3) the defendant's actions caused the plaintiff emotional distress; and (4) the resulting emotional distress was severe." *Hoffmann-La Roche Inc. v. Zeltwanger*, 144 S.W.3d 438, 445 (Tex. 2004) (citing *Standard Fruit & Vegetable Co. v. Johnson*, 985 S.W.2d 62, 65 (Tex. 1998)).

As with Appellants' claim of fraud, Appellants have not pleaded facts relative to any of the elements of Appellants' claim for intentional infliction of emotional distress. We affirm the ruling of the trial court as to the dismissal of this claim.

*Attorney's Fees*

Finally, Appellants encourage us to reverse the award of attorney's fees to Appellee if we reverse any part of the order below. Because we have concluded that the trial court did not err when it dismissed Appellants' causes of action, we overrule Appellants' request to reverse the award of attorney's fees. Rule 91a states that "the court must award the *prevailing party* on the motion all costs and reasonable and necessary attorney fees incurred with respect to the challenged cause of action in the trial court." TEX. R. CIV. P. 91a.7 (emphasis added).<sup>2</sup> Accordingly, the trial

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<sup>2</sup>At the time Appellants filed their original petition, Texas Rule of Civil Procedure 91a.7 stated that the court "must" award attorney's fees and other costs incurred to the prevailing party. Since then, the rule has been amended to read "the court may award." See Final Approval of Rules for Dismissals and Expedited Actions, Misc. Docket No. 13-9022 (Tex. Feb. 12, 2013), *printed in* 76 TEX. B.J. 221 (Mar. 2013), *as amended by* Order Amending Texas Rule of Civil Procedure 91a.7, Misc. Docket No. 19-9052 (Tex. July 11, 2019), *printed in* 82 TEX. B.J. 631 (Sept. 2019).

court's award of attorney's fees to Appellee was proper. We overrule Appellants' sole issue on appeal.

*This Court's Ruling*

We affirm the order of the trial court.

KEITH STRETCHER  
JUSTICE

June 11, 2020

Panel consists of: Bailey, C.J.,  
Stretcher, J., and Wright, S.C.J.<sup>3</sup>

Willson, J., not participating.

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<sup>3</sup>Jim R. Wright, Senior Chief Justice (Retired), Court of Appeals, 11th District of Texas at Eastland, sitting by assignment.