Opinion issued June 23, 2020

In The

Court of Appeals

For The

First District of Texas

NO. 01-18-00914-CV

WOODROW MILLER, Appellant

V.

MAPLEWOOD SQUARE COUNCIL OF CO-OWNERS, Appellee

On Appeal from the 113th District Court
Harris County, Texas
Trial Court Case No. 2017-84842

MEMORANDUM OPINION

Woodrow Miller is appealing a judgment rendered in favor of Maplewood Square Council of Co-Owners. In sixteen issues, Miller argues that the trial court erred by granting Maplewood's motion for summary judgment, denying his motion

for summary judgment, and denying his motion to abate. We affirm the trial court's judgment.

Background

Maplewood Square Council of Co-Owners (Maplewood) filed suit against "Woodrow Miller d/b/a Judgment Recovery Express" seeking judicial foreclosure of a condominium unit owned by Miller, due to Miller's failure to pay periodic maintenance assessments. Maplewood sought a monetary judgment for breach of contract and breach of sworn account, as well as an order authorizing foreclosure of its assessment lien, and attorney's fees. Miller was personally was served with process.

In its petition, Maplewood alleged that it is a non-profit corporation, set up to administer Maplewood Square Condominiums (the Subdivision), and that Miller, individually, is the owner of a lot in the Subdivision (Unit 105). The Declaration of Covenants, Conditions and Restrictions of Maplewood Square Condominiums establishing restrictive covenants or deed restrictions applicable to all lots in the Subdivision are recorded in the Official Public Records of Harris County in 1977. Maplewood also adopted bylaws establishing restrictive covenants or deed restrictions applicable to all lots in the subdivision. The Declaration and Bylaws require all property owners in the Subdivision to pay assessments, whether maintenance, special, or otherwise. The Declaration also states that Maplewood has

a lien against all lots and improvements thereto to secure the payment of the assessments.

Miller answered and filed a counterclaim against Maplewood for filing a fraudulent document claiming an interest in real property in violation of Civil Practice and Remedies Code Chapter 12 and requesting certain declaratory relief pertaining to his liability for the assessments. Miller also filed a motion to abate.

The parties filed countervailing summary judgments. The trial court granted Maplewood's motion for summary judgment, denied Miller's motion for summary judgment, and denied Miller's motion to abate.

Standard of Review

In a summary judgment case, the issue on appeal is whether the movant met the summary judgment burden by establishing that no genuine issue of material fact exists, and that the movant is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009). We review a summary judgment de novo. *Travelers Ins. Co. v. Joachim*, 315 S.W.3d 860, 862 (Tex. 2010).

We take as true all evidence favorable to the nonmovant, and we indulge every reasonable inference and resolve any doubts in the nonmovant's favor. *Fielding*, 289 S.W.3d at 848; *Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 215 (Tex. 2003). We consider the evidence presented in the light most favorable to the

nonmovant, crediting evidence favorable to the nonmovant if reasonable jurors could, and disregarding evidence contrary to the nonmovant unless reasonable jurors could not. *Fielding*, 289 S.W.3d at 848; *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005).

When, as here, both parties move for summary judgment and the trial court grants one motion and denies the other, the reviewing court should review both parties' summary judgment evidence and determine all questions presented. *Fielding*, 289 S.W.3d at 848. The reviewing court should render the judgment that the trial court should have rendered. *See Myrad Props., Inc. v. LaSalle Bank Nat'l Ass'n*, 300 S.W.3d 746, 753 (Tex. 2009); *Fielding*, 289 S.W.3d at 848.

Preservation and Waiver

A. Maplewood's Legal Authority to Sue

In his first and third issues, Miller argues that Maplewood does not have standing to enforce the Declaration's restrictions because the Subdivision's corporate charter has been forfeited and Maplewood is in violation of the Declaration. A challenge to a party's legal authority to sue presents a challenge to capacity, not standing. *See Austin Nursing Ctr., Inc. v. Lovato*, 171 S.W.3d 845, 848–49 (Tex. 2005) (stating capacity is procedural issue dealing with personal qualifications of party to litigate); *see generally Cognata v. Down Hole Injection, Inc.*, 375 S.W.3d 370, 376 (Tex. App.—Houston [14th Dist.] 2012, pet. denied) ("A

forfeiture of corporate privileges deprives a corporation of the capacity to sue, but incapacity does not make a suit void."). Unlike standing, "[i]ncapacity must be challenged with a verified plea or else it is waived." *Cognata*, 375 S.W.3d at 376; *see also* TEX. R. CIV. P. 93(1); *Lovato*, 171 S.W.3d at 849.

Rule 93 provides that a pleading must be verified by affidavit if it alleges the plaintiff does not have the legal capacity to sue. TEX. R. CIV. P. 93(1); *John C. Flood of DC, Inc. v. SuperMedia, L.L.C.*, 408 S.W.3d 645, 653 (Tex. App.—Dallas 2013, pet. denied). A valid verification must be based on personal knowledge. *Mekeel v. U.S. Bank Nat'l Ass'n*, 355 S.W.3d 349, 355 (Tex. App.—El Paso 2011, pet. dism'd) (citing *Kerlin v. Arias*, 274 S.W.3d 666, 668 (Tex. 2008)). Any qualifying verbiage, such as a statement that the affidavit is "based on the best of one's personal knowledge," renders the affidavit legally invalid. *See Mekeel*, 355 S.W.3d at 355 (citation omitted); *cf. Wimmer v. Hanna Prime, Inc.*, No. 05-08-01323-CV, 2009 WL 3838867, at *2 (Tex. App.—Dallas Nov. 18, 2009, no pet.) (mem. op.) (holding affidavit containing qualifying language, i.e., "to the best of my knowledge," did not satisfy Rule 93). In the affidavit attached to his amended answer, Miller swore that the alleged facts were "true and correct to the best of his knowledge." The qualifying language, however, renders Miller's verification legally invalid and insufficient to satisfy the requirements of Rule 93. *See Mekeel*, 355 S.W.3d at 355. Because Miller

failed to verify his plea in accordance with Rule 93, he has waived his challenge to Maplewood's capacity. *See Lovato*, 171 S.W.3d at 849.

We overrule Miller's first and third issues.

B. Arguments Not Raised in the Trial Court

In his second issue, Miller argues that the trial court erred by granting summary judgment in Maplewood's favor because Maplewood's claims are barred by the statute of limitations. In his fourth, fifth, seventh, eighth, and ninth issues, Miller argues that the trial court erred by granting summary judgment in Maplewood's favor because Maplewood did not establish that it had complied with various provisions of Property Code section 81.102. *See* TEX. PROP. CODE § 81.102 (setting forth requirements for contents of declaration, master deed, or master lease for condominium regimes created before January 1, 1994). Among other things, Miller argues that Maplewood did not satisfy section 81.102's requirements that condominium declarations contain certain information describing the property, because Maplewood did not submit an attachment to the Declaration containing the legal description of Unit 105 depicted by a plat as part of its summary judgment evidence. Miller further contends that the Declaration violates the statute of frauds for want of an adequate property description. In his sixth issue, Miller argues that the trial court erred by granting summary judgment in Maplewood's favor because Maplewood did not prove that Miller "failed to pay his fractional interest, expressed

as a percentage, which Unit 105 bears to the entire Property, and which each Unit owns in and to the Common Elements, and the fractional share, expressed as a percentage, of the common expenses for each Unit, as set out on a referenced Plan which was not admitted in evidence." In his eleventh issue, Miller argues that Property Code section 81.102 does not authorize "the creation of By-Laws for a condominium regime which By-Laws pre-date the filing of the Declaration of the condominium for record," and therefore, the Maplewood's bylaws do not exist and have no effect on the declaration.

In his tenth and fifteenth issues, Miller argues that Maplewood failed to prove that it has a vendor's lien or a contractual lien on Unit 105. Specifically, Miller argues that Maplewood did not submit an attachment to the Declaration containing the legal description of Unit 105 depicted by a plat as part of its summary judgment, and therefore, there is no proof that Unit 105 is subject to assessment liens or a vendor lien under the Declaration.

Miller did not raise any of these arguments in his response to Maplewood's summary judgment motion and, therefore, Miller has not preserved these issues for our review. *See* TEX. R. CIV. P. 166a(c) ("Issues not expressly presented to the trial court by written motion, answer or other response shall not be considered on appeal as grounds for reversal."); *see also ExxonMobil Corp. v. Lazy R Ranch, LP*, 511 S.W.3d 538, 545 (Tex. 2017).

We overrule Miller's second, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, and fifteenth issues.

Motions for Summary Judgment

In his twelfth and fourteenth issues, Miller argues that the trial court erred by granting summary judgment in Maplewood's favor because Maplewood did not meet its burden of proof and there were questions of material fact that precluded summary judgment. In his thirteenth issue, Miller argues that the trial court erred by denying his motion for summary judgment.

A. Breach of Contract and Suit on Sworn Account

In order to establish its claim for breach of contract, Maplewood had to come forward with competent summary judgment proof (1) that there was a valid contract, (2) that Maplewood had performed under the contract, (3) that Miller breached the contract, and (4) that Maplewood suffered damages as a result. *See Woodhaven Partners, Ltd. v. Shamoun & Norman, LLP*, 422 S.W.3d 821, 837 (Tex. App.—Dallas 2014, no pet.).

To establish a sworn account, a party must show: (1) that there was a sale and delivery of the merchandise or performance of the services; (2) that the amount of the account is just, that is, that the prices were charged in accordance with an agreement or in the absence of an agreement, they are the usual, customary and reasonable prices for that merchandise or services; and (3) that the amount is unpaid.

Day Cruises Mar., LLC v. Christus Spohn Health Sys., 267 S.W.3d 42, 53 (Tex. App.—Corpus Christi 2008, pet. denied).

A suit on a sworn account is not an independent cause of action; it is a procedural rule with regard to evidence necessary to establish a prima facie right of recovery of certain types of contractual claims. *See* TEX. R. CIV. P. 185; *see Rizk v. Fin. Guardian Ins. Agency, Inc.*, 584 S.W.2d 860, 862 (Tex. 1979); *see also Schum v. Munck Wilson Mandala, LLP*, 497 S.W.3d 121, 124 (Tex. App.—Texarkana 2016, no pet.). Specifically, Rule 185 provides that if an action "is founded on an open account . . . on which a systematic record has been kept, and is supported by [an] affidavit of the party, his agent or attorney," then the account "shall be taken as prima facie evidence." TEX. R. CIV. P. 185. If "the defendant fails to file a sworn denial of the account, no further evidence is required." *Brown Found. Repair & Consulting, Inc. v. Friendly Chevrolet Co.*, 715 S.W.2d 115, 116 (Tex. App.—Dallas 1986, writ ref'd n.r.e.) (citing *Airborne Freight Corp. v. CRB Mktg., Inc.*, 566 S.W.2d 573, 575 (Tex. 1978) (per curiam)); *see also Enernational Corp. v. Exploitation Engrs., Inc.*, 705 S.W.2d 749, 750 (Tex. App.—Houston [1st Dist.] 1986, writ ref'd n.r.e.) ("When a nonmovant fails to file a required sworn written denial in a case on a sworn account, the movant is entitled to a summary judgment on the pleadings, because noncompliance with Tex. R. Civ. P. 185 conclusively establishes that there is no defense.").

B. Discussion

1. Maplewood's Summary Judgment Motion

In its petition, Maplewood alleged that "WOODROW MILLER D/B/A JUDGMENT RECOVERY EXPRESS is an individual residing in Harris County, Texas" and Miller is "record owner of a lot" in "The Subdivision," i.e., Unit 105. Maplewood also alleged that its Declaration, which was on file in the Official Public Records of Harris County, established restrictive covenants or deed restrictions applicable to all lots in the subdivision, including Unit 105. Maplewood further alleged that Miller purchased Unit 105 and his "purchase was made expressly subject to the terms of the restrictive covenants for The Subdivision." According to Maplewood, the restrictions "state that each owner of a lot in The Subdivision is a member of [Maplewood] and, as such, is obligated to pay assessments, whether maintenance, special or and otherwise." Maplewood also attached an affidavit by Jane Godwin, Maplewood's property manager, to its petition in which Godwin averred that the "balance due on the account of WOODROW MILLER D/B/A JUDGMENT RECOVERY EXPRESS at 5929 Queensloch Dr. #105, Houston, TX 77096, as of November 21, 2017" was $17,606.17. She also provided a list showing how the balance was calculated. The list included the date for each assessment, the type of assessment, e.g., residential assessment, late fee, interest, and the amount

owed for each assessment. For example, the first delinquent charge is for a "Residential Assessment" due on January 1, 2015 in the amount of $372.28.

In support of its motion for summary judgment on its breach of contract and sworn account claims, Maplewood filed another affidavit by Godwin in which she averred that the "\balance due on the account of WOODROW MILLER D/B/A JUDGMENT RECOVERY EXPRESS as of June 14, 2018 was $20,964.53. She also provided a list showing how the balance was calculated. The list of fees included in the affidavit is as detailed as the one included in the affidavit attached to Maplewood's petition. Maplewood also attached a copy of the Declaration and several deeds establishing a chain of title beginning with New Texas, Inc. and ending with Miller. Specifically, the deeds reflect that New Texas, Inc. sold the property to Yigal Bosch in 1998, who then purported to sell the property to Riverview of Highland in 2013. Maplewood provided proof that Riverview, however, did not exist as a legal entity in 2013, and therefore, the purported transfer to Riverview was of no force and effect and Riverview did not acquire an interest in the property. The property was then foreclosed upon to satisfy a money judgment against Bosch, and Judgment Recovery Express acquired the property in 2014 at a foreclosure sale. In 2015, "Judgments 2 Ca$h, LLC dba Judgment Recovery Express" deeded the property to Miller, individually. The transfer to Miller was made expressly subject to the terms of the restrictive covenants set forth in the Declaration.

"Condominium declarations are treated as contracts between the parties." *Schwartzott v. Etheridge Prop. Mgmt.*, 403 S.W.3d 488, 498 (Tex. App.—Houston [14th Dist.] 2013, no pet.). "Owners of condominium units accept the terms, conditions, and restrictions in the condominium declaration by accepting deeds to individual units." *Bosch v. Open Pines Condo. Owners Ass'n, Inc.*, No. 01–09–00507–CV, 2010 WL 4484189, at *4 (Tex. App.—Houston [1st Dist.] Nov. 10, 2010, pet. denied) (mem. op.) (quoting *Daly v. River Oaks Place Council of Co–Owners*, 59 S.W.3d 416, 418 (Tex. App.—Houston [1st Dist.] 2001, no pet.)). By purchasing Unit 105, Miller accepted the terms of the Declaration and agreed to be bound by them. Accordingly, Maplewood's evidence, the Declaration, establishes the existence of a valid contract between Maplewood and Miller. *Cf. McCloskey v. Clubs of Cordillera Ranch, LP*, No. 04-17-00234-CV, 2017 WL 6502444, at *2 (Tex. App.—San Antonio Dec. 20, 2017, no pet.) (mem. op.) (holding condominium declaration did not violate statute of frauds because owner accepted terms of declaration by purchasing condominium unit).

The Declaration states that Maplewood's board will set the amount of annual assessments owed by each owner and that such assessments are payable in equal monthly installments. The Declaration also gives Maplewood a "lien on a Unit for any unpaid assessments," "together with interest thereon and reasonable attorney's fees incurred in collection of same and the enforcement of said lien." Maplewood's

board is also authorized to "bring an action at law against the Co-Owner personally obligated to pay an assessment or foreclose the lien against the Unit, or both, and interest costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment." Thus, the plain language of the Declaration establishes that Maplewood may assess fees against each property owner and gives Maplewood a continuing lien on the unit that was created by recordation of the Declaration. *See* TEX. PROP. CODE § 82.113(a) ("An assessment levied by the association against a unit or unit owner is a personal obligation of the unit owner and is secured by a continuing lien on the unit and on rents and insurance proceeds received by the unit owner and relating to the owner's unit."); *id.* § 82.113(c) ("The association's lien for assessments is created by recordation of the declaration, which constitutes record notice and perfection of the lien. Unless the declaration provides otherwise, no other recordation of a lien or notice of lien is required.").[1]

The Declaration also provides that:

> Upon the sale or conveyance of a Unit, except through foreclosure of a first Mortgage of record or deed in lieu thereof as specifically provided in the immediately preceding paragraph, all unpaid assessments shall first be paid out of the sale price as provided in Section 18 of the Act; provided however, that if such unpaid assessments are not paid or collected at the time of a sale or conveyance of a Unit, the grantee of the same shall be jointly and severally liable with the selling Co-Owner for all unpaid assessments against the latter for his share of the common

[1] Article IX(D) states that, "[s]aid liens shall be effective as and in the manner provided for by [the Property Code] and shall have the priorities established by [the Property Code]."

> expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the selling Co-Owner the amounts paid by the grantee therefor […]

Therefore, under Article IX(E)(2) of the Declaration, Miller became liable for all unpaid assessments when he purchased the property.

To the extent that Miller argues that Maplewood is not entitled to summary judgment because it did not prove that he was the owner of the property, Maplewood was not required to prove that Miller is the owner of Unit 105 because Miller judicially admitted to this fact in his pleading. "A judicial admission must be a clear, deliberate, and unequivocal statement." *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 905 (Tex. 2000) (quoting *Regency Advantage Ltd. P'ship v. Bingo Idea–Watauga, Inc.*, 936 S.W.2d 275, 278 (Tex. 1996)). Such an admission "occurs when an assertion of fact is conclusively established in live pleadings, making the introduction of other pleadings or evidence unnecessary." *Id.* (quoting *Chilton Ins. Co. v. Pate & Pate Enters., Inc.*, 930 S.W.2d 877, 884 (Tex. App.—San Antonio 1996, writ denied)). In his counter-petition, Miller stated unequivocally, "Plaintiff is Woodrow Miller, the owner of Unit #105 of MAPLEWOOD SQUARE CONDOMINIUMS." Although Maplewood was not required to prove that Miller is the owner of Unit 105 because Miller judicially admitted to this fact in his pleading, we note that Maplewood, nevertheless, provided the 2015 deed establishing that Miller, individually, is the owner of Unit 105. *See Horizon/CMS Healthcare Corp.*,

34 S.W.3d at 905. Godwin's affidavit establishes that Miller has not complied with the Declaration because he has not paid any assessment for the Unit from January 1, 2015 until June 14, 2018. This evidence establishes that Maplewood is entitled to summary judgment as a matter of law on its breach of contract claim. *See Woodhaven Partners, Ltd.*, 422 S.W.3d at 833. This evidence, coupled with the Declaration that gives Maplewood a continuing lien on the property that went into effect when the Declaration wase filed, also establishes that Maplewood is entitled to summary judgment as a matter of law on its judicial foreclosure claim.

Miller's argument that the Declaration's covenants do not apply to Unit 105 because it was acquired at an execution sale is unavailing. The Declaration states that the purchaser of a property becomes liable for past assessments "[u]pon the sale or conveyance of a Unit, except through foreclosure of a first Mortgage of record or deed in lieu thereof." Had the drafters intended to exclude any other type of sale or conveyance, they could have easily done so. The Declaration also states that owners of the property are liable for current assessments against their units, and it does not carve out any exceptions for property acquired by an execution sale. Miller has judicially admitted that he is the owner of Unit 105, and the 2015 deed also establishes this fact.

With respect to Maplewood's suit on a sworn account, Maplewood's pleading and Godwin's affidavit are sufficient to establish Maplewood's prima facie right of

recovery of the assessments set forth in Godwin's affidavit. *See* TEX. R. CIV. P. 185. As previously discussed, a sworn denial must be based on personal knowledge, and Miller's affidavit, in which he swore that the alleged facts in his amended answer were "true and correct to the best of his knowledge," is insufficient to comply with the personal knowledge requirement. *Cf. Rizk*, 584 S.W.2d at 862–63 (holding affidavit stating that "the facts and statements contained [in answer] are true and correct of [affiant's] own personal knowledge" satisfied requirements of Rule 185).[2] Because Miller did not file a sworn written denial sufficient to satisfy Rule 185, Maplewood is entitled to summary judgment on its suit for sworn account as a matter of law. *See Enernational Corp.*, 705 S.W.2d at 750 ("When a nonmovant fails to file a required sworn written denial in a case on a sworn account, the movant is entitled to a summary judgment on the pleadings, because noncompliance with Tex. R. Civ. P. 185 conclusively establishes that there is no defense."). Even if Miller had filed a sworn denial, Maplewood would still be entitled to summary judgment because it presented "legal and competent summary judgment evidence establishing the validity of its claim as a matter of law." *See Woodhaven Partners, Ltd.*, 422 S.W.3d at 834–35 (citation omitted).

Because Maplewood proved its entitlement to summary judgment as a matter of law, it became Miller's burden as the non-movant to present grounds for avoiding

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[2] Miller does not dispute Maplewood's assertion that he did not file a sworn denial.

summary judgment. *Home Loan Corp. v. JPMorgan Chase Bank, N.A.*, 312 S.W.3d 199, 205 (Tex. App.—Houston [14th Dist.] 2010, no pet.). Miller argues that Maplewood is not entitled to summary judgment because the evidence raises questions of fact with respect to Maplewood's claims.

Specifically, Miller argues that the evidence raises a question of fact with respect to whether Bosch's property interest in Unit 105 was foreclosed upon and sold at auction to satisfy a money judgment or delinquent taxes. The nature of the sale, however, makes no difference with respect to whether Maplewood is entitled to prevail on its claims against Miller. *See Fraire v. Budget Rent-A-Car of El Paso, Inc.*, 441 S.W.3d 523, 527 (Tex. App.—El Paso 2014, pet. denied) (stating fact is material if its existence might affect outcome of suit). As previously discussed, the evidence establishes that Miller is the owner of the property; whether the property had been previously foreclosed upon and sold at auction to satisfy a money judgment or delinquent taxes is irrelevant with respect to Miller's obligation to pay the assessments.

Miller argues that a purported transfer of the property from Bosch to Riverview in 2013 raises a question of fact with respect to Miller's chain of title and therefore, whether he is bound by the Declaration. Miller's arguments regarding Riverview, however, are unavailing because Maplewood provided summary judgment evidence that Riverview did not exist as a legal entity at the time of the

purported sale and, therefore, it established as a matter of law that the deed to Riverview was void and Riverview never acquired an interest in the property. *See Parham Family Ltd. P'ship v. Morgan*, 434 S.W.3d 774, 788 (Tex. App.—Houston [14th Dist.] 2014, no pet.) ("[I]n Texas, a deed is void if the grantee is not in existence at the time the deed is executed."). Miller's arguments that the trial court erred by granting summary judgment in Maplewood's favor because Maplewood failed to prove that "the Declaration authorized [Maplewood] to charge Woodrow Miller rather than Riverview for payment of the assessments," that Riverview is not liable for the delinquent assessments, and "that Riverview of Highland, Ltd, is current with Appellee regarding the payment of assessments," are unavailing for the same reason—the summary judgment record establishes that Riverview never acquired an ownership interest in the property.[3]

Miller also argues that the trial court erred by granting Maplewood's motion because there is no summary judgment evidence proving that the "Maplewood Square Council of Co-Owners" is organized as a Texas non-profit corporation. Miller did not raise this issue in his response to Maplewood's summary judgment motion and, therefore, Miller has not preserved this issue for our review. *See* TEX.

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[3] Miller has not provided any citations to authority supporting his position that Riverview's deed must be vacated and set aside in order for Maplewood to prevail on its summary judgment motion, despite the uncontroverted evidence that the deed is void.

R. CIV. P. 166a(c); *see also ExxonMobil Corp.*, 511 S.W.3d at 545. Similarly, Miller's arguments based on Maplewood's alleged forfeiture of its corporate charter were not preserved for appeal because he did not raise them in the trial court. *See* TEX. R. CIV. P. 166a(c); *see also ExxonMobil Corp.*, 511 S.W.3d at 545.

Miller further contends that the trial court erred by granting Maplewood's motion because Maplewood failed to prove that Woodrow Miller is doing business as Judgment Recovery Express. A suit against a person, individually and doing business as an entity is a suit against only one defendant—the individual. *Rosenthal v. Nat'l Terrazzo Tile & Marble, Inc.*, 742 S.W.2d 55, 56 (Tex. App.—Houston [14th Dist.] 1987, no writ). Regardless of whether Miller was doing business as Judgment Recovery Express, the record reflects that, as Miller judicially admitted, Miller, individually, is the current owner of the property.

Miller also argues that Maplewood failed to prove that it was entitled to collect the charges alleged. Texas Rule of Civil Procedure 185 states that when an action is founded upon an open account on which a systematic record has been kept and is supported by an affidavit, the account shall be taken as prima facie evidence of the claim, unless the party resisting the claim files a sworn denial. *See* TEX. R. CIV. P. 185; *see also Rizk*, 584 S.W.2d at 862 (stating suit on sworn account is procedural rule regarding evidence necessary to establish prima facie right of recovery of certain types of contractual (account) claims). Because Miller did not file a sworn denial,

he cannot now dispute the correctness of the charges. *See Andrews v. E. Texas Med. Ctr.-Athens*, 885 S.W.2d 264, 267 (Tex. App.—Tyler 1994, no writ) (concluding that defendant who does not properly file written denial under oath cannot dispute receipt of services or correctness of charges of account).

Miller argues that the trial court erred by awarding Maplewood attorney's fees because Maplewood failed to prove that it had a right to collect attorney's fees. Miller did not raise this issue in his response to Maplewood's motion for summary judgment, and even if the argument had been preserved, Miller would still not prevail because Maplewood is authorized to recover its fees under the terms of the Declaration[4] and pursuant to chapter 38 of the Civil Practice and Remedies Code. *See* ***Epps v. Fowler***, 351 S.W.3d 862, 865 (Tex. 2011) (stating award of attorney's fees may be based on statute or contractual provision); TEX. CIV. PRAC. & REM. CODE § 38.001(7)–(8) (authorizing recovery of attorney's fees when party recovers on claim for "sworn account" or "oral or written contract").

Miller argues that Maplewood was not entitled to summary judgment because the record reflects that Maplewood's lien is inferior to the vendor's lien that Judgments 2 Ca$H, L.L.C. dba Judgment Recovery Express filed in 2015. Miller,

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[4] The Declaration expressly authorizes an award of reasonable attorney's fees incurred in the collection of any lien on a unit for unpaid assessments (Article IX (D)(1), as well as an award of attorney's fees to the prevailing party in a any proceeding arising out an alleged breach of the declaration (XVI(B)(2)).

however, does not provide sufficient citation to authority or provide substantive analysis of this argument, and therefore, he has waived this argument for purposes of appeal. *See Huey v. Huey*, 200 S.W.3d 851, 854 (Tex. App.—Dallas 2006, no pet.) ("Failure to cite to applicable authority or provide substantive analysis waives an issue on appeal.").

2. Miller's Summary Judgment Motion

Miller moved for summary judgment on his counterclaim[5] against Maplewood for filing a fraudulent document claiming an interest in real property in violation of Civil Practice and Remedies Code chapter 12.[6] On appeal, Miller argues that he is entitled to $10,000 in damages under chapter 12 because Maplewood knowingly and intentionally falsely alleged in its petition and motion that Maplewood Square Council of Co-Owners is a "Texas non-profit corporation organized to administer the Maplewood Square subdivision." Although Miller moved for summary judgment on this chapter 12 claim, he did not argue that he was entitled to judgment because Maplewood had falsely alleged that

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5 Specifically, Miller alleged that Maplewood knowingly and intentionally "filed pleadings and a lien against Woodrow Miller is D/B/A Judgment Recovery Express."

6 Miller also moved to summary judgment "that he is not doing business as Judgment Recovery Express" and "that the covenants do not specify that they apply to deeds acquired by execution sale, thus they do not apply to Unit 105 which Miller acquired by execution sale." He also argued that the Declaration violates the statute of frauds. These arguments were addressed earlier in the opinion.

it was a non-profit corporation. *See McConnell v. Southside Indep. Sch. Dist.*, 858 S.W.2d 337, 341 (Tex. 1993) ("A motion [for summary judgment] must stand or fall on the grounds expressly presented in the motion.").

We overrule Miller's twelfth, thirteenth, and fourteenth issues.

Motion to Abate

In his sixteenth issue, Miller argues that the trial court abused its discretion by denying his motion to abate. Miller asked the trial court to abate the case until Riverview filed a document with the Texas secretary of state allowing it to do business in Texas and until Riverview's deed was vacated and set aside. We review the trial court's denial of a motion to abate for abuse of discretion. *See Crawford v. XTO Energy, Inc.*, 509 S.W.3d 906, 910–11 (Tex. 2017). In his motion, Miller argued that abatement was necessary because Riverview is primarily liable for the assessments until the deed it purportedly acquired from Bosch is vacated and set aside. The record reflects that the purported transfer to Riverview is void, and therefore, Riverview never acquired an interest in the property. We further note that Miller has not provided any citations to authority supporting his position that Riverview's deed must be vacated and set aside in order for Maplewood to prevail on its summary judgment motion, despite the uncontroverted evidence that the deed is void.

We overrule Miller's sixteenth issue.

Conclusion

We affirm the trial court's judgment.

Russell Lloyd
Justice

Panel consists of Justices Lloyd, Kelly, and Goodman.