Affirmed in Part and Reversed and Remanded in Part and Memorandum Opinion filed June 30, 2020.

In The

Fourteenth Court of Appeals

NO. 14-18-00469-CV

TOMMY L. SLACK AND ALISA SLACK, Appellants

V.

THE CONSULATE OF GREECE, Appellee

On Appeal from the County Civil Court at Law No. 4
Harris County, Texas
Trial Court Cause No. 1044448

M E M O R A N D U M O P I N I O N

In this landlord/tenant dispute, two landlords appeal the trial court's grant of the tenant's summary-judgment motions. The trial court ordered that (1) the landlords take nothing by their counterclaims for breach of the lease and conversion, and (2) the tenant recover as a matter of law on its claims for breach of the lease and bad-faith retention of the security deposit under section 92.109(a) of the Property Code. Concluding that the summary-judgment evidence raised

genuine fact issues precluding summary judgment as to the landlords' conversion claim and the tenant's breach-of-lease and section 92.109(a) claims, we reverse and remand as to these claims. Because the landlords have not challenged all of the summary-judgment grounds as to the landlord's counterclaim for breach of the lease, we affirm the trial court's judgment as to this claim.

I. FACTUAL AND PROCEDURAL BACKGROUND

Appellants/defendants/counter-plaintiffs Tommy L. Slack and Alisa Slack (collectively the "Slack Parties"), as landlords, and appellee/plaintiff/counter-defendant The Consulate of Greece, as a tenant, entered into a residential lease of real property in Harris County to be used as a residence by the Consul of Greece in Houston (the "Lease"). Alexandra Theodoropoulou signed the Lease both as "Consul of Greece" and on behalf of the "Consulate of Greece." The parties to the Lease define the term "Tenant" to mean both the Consulate and "Alexandra Theodoropoulou, Consul of Greece." The primary term of the Lease ran from March 1, 2010 through February 28, 2013. The Consulate paid a $5,000 security deposit to the Slack Parties. The parties agreed in the Lease that the Slack Parties "may deduct reasonable charges from the security deposit for . . . damages to the Property, excluding normal wear and tear." The parties defined the term "Property" in the Lease to mean the leased real property and "the following non-real-property items: washer, dryer, sub zero refrigerator." The parties also agreed that "[e]xcept as otherwise permitted by law, this lease, or in writing by [the Slack Parties], the Tenant may not . . . remove any part of the Property or any of [the Slack Parties'] personal property from the Property."[1]

According to Alisa Slack, the Slack Parties requested access to the leased

[1] (underlining omitted).

property to review its condition and make any needed repairs but from May 2011 through October 2011, Theodoropoulou, in violation of the Lease, did not allow the Slack Parties access to the property. In October 2011, the Slack Parties learned that Theodoropoulou and her family had vacated the premises without giving written notice of their intent to vacate, which the Slack Parties assert the Lease required.

George Papanikolaou succeeded Theodoropoulou as the Consul of Greece in Houston. The Slack Parties assert that the Consulate allowed Alisa Slack, accompanied by Robert Van Domselaar, to access the leased property on October 7, 2011, to determine if any repairs or maintenance were needed before Papanikolaou moved into the residence. The Slack Parties hired Van Domselaar to make any needed repairs to the property. According to Alisa Slack, Van Domselaar and Alisa noticed a number of areas where the property had been damaged or otherwise needed repairs, and Van Domselaar pointed out this damage to George Vouzikis, who worked for the Consulate. Van Domselaar testified that this damage was not caused by normal wear and tear. Alisa testified that Vouzikis claimed he did not know about any damage to the property and that Alisa and Van Domselaar showed him the areas that needed repairs and told him about missing items, including a custom-made rug in the entry.

Alisa testified that after the October 7, 2011 inspection, Van Domselaar made a number of repairs to the leased property and that a representative of a different company repaired the motor in the clothes dryer, which the Slack Parties claim was damaged due to improper use.

Alisa testified that on October 15, 2011, she gave Papanikolaou a letter (the "2011 Letter") that the Slack Parties claim included "a written description and itemized list of all deductions from the security deposit for which the tenant was

liable under the [Lease]." The Consulate never paid the Slack Parties any amount based on these alleged damages and missing items. Papanikolaou moved into the leased property in October 2011, and the Consulate continued to pay rent to the Slack Parties. On February 15, 2013, the Consulate gave written notice of termination of the Lease and gave the Slack Parties a written statement of the Consulate's forwarding address for the purpose of refunding the security deposit. The parties agreed to extend the term of the Lease by one month, through March 31, 2013. The Consulate surrendered possession of the leased premises to the Slack Parties on that date.

The Slack Parties never returned any part of the security deposit to the Consulate. They assert that they have incurred more than $5,000 in costs due to damage to the leased premises and missing personal property. The Slack Parties do not assert that the Consulate owes them any rent. The only written description and itemized list of deductions from the security deposit that the Slack Parties claim to have given to the Consulate is the 2011 Letter that Alisa gave to Papanikolaou more than a year before the Consulate surrendered possession of the leased premises.[2]

The Consulate filed suit against the Slack Parties asserting that the Slack Parties breached the Lease by failing to refund the $5,000 security deposit to the Consulate. Liberally construing the petition, we conclude the Consulate also asserted a claim for bad-faith retention of the security deposit under section 92.109(a) of the Property Code, and the Consulate sought to recover three times the amount of the security deposit. The Slack Parties asserted counterclaims

[2] On appeal, the Consulate notes that Alisa Slack testified in her affidavit that she gave Papanikolaou the 2011 Letter on October 15, 2011, yet in the letter the Slack Parties refer to repairs that had been performed on October 17, 2011, indicating that Alisa Slack gave Papanikolaou the letter on or after October 17, 2011.

against the Consulate for breach of the Lease and conversion of various items of personal property.

The Consulate filed a motion for summary judgment on its breach-of-contract and section 92.109(a) claims against the Slack Parties and on the Slack Parties' breach-of-contract claim against the Consulate (the "First Motion"). The Slack Parties responded in opposition and submitted summary-judgment evidence. The trial court granted the First Motion and rendered an interlocutory summary judgment in which the court did not dispose of the Slack Parties' conversion claim. The Slack Parties sought to appeal the judgment, but this court dismissed for lack of appellate jurisdiction.

The Consulate then filed a motion for a no-evidence summary judgment as to the Slack Parties' conversion claim (the "Second Motion"). The Slack Parties responded in opposition and submitted summary-judgment evidence. The trial court granted the Second Motion and rendered a final summary judgment in which the court ordered that (1) the Slack Parties take nothing by their counterclaims for breach of the lease and conversion, and (2) the Consulate recover $15,100, plus reasonable and necessary attorney's fees, prejudgment and postjudgment interest, and court costs, on the Consulate's claims for breach of the lease and bad-faith retention of security deposit under section 92.109(a) of the Property Code.

II. ISSUES AND ANALYSIS

On appeal, the Slack Parties assert in three issues that (1) the trial court erred in granting the First Motion as to the Consulate's claims against them because the summary-judgment evidence raises a fact issue on at least one element of each claim; (2) the trial court improperly awarded the Consulate damages under Property Code section 92.109(a) because no basis existed to support a finding of bad faith by the Slack Parties; and (3) the trial court erred in granting summary

judgment as to the Slack Parties' counterclaims because the summary-judgment evidence raises genuine fact issues as to each claim.

In a traditional motion for summary judgment, if the movant's motion and summary-judgment evidence facially establish its right to judgment as a matter of law, the burden shifts to the nonmovant to raise a genuine, material fact issue sufficient to defeat summary judgment. *M.D. Anderson Hosp. & Tumor Inst. v. Willrich*, 28 S.W.3d 22, 23 (Tex. 2000). In reviewing a no-evidence summary judgment, we ascertain whether the nonmovant pointed out summary-judgment evidence raising a genuine issue of fact as to the essential elements attacked in the no-evidence motion. *Johnson v. Brewer & Pritchard, P.C.*, 73 S.W.3d 193, 206–08 (Tex. 2002). In our de novo review of a trial court's summary judgment, we consider all the evidence in the light most favorable to the nonmovant, crediting evidence favorable to the nonmovant if reasonable jurors could, and disregarding contrary evidence unless reasonable jurors could not. *Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 582 (Tex. 2006). The evidence raises a genuine issue of fact if reasonable and fair-minded jurors could differ in their conclusions in light of all of the summary-judgment evidence. *Goodyear Tire & Rubber Co. v. Mayes*, 236 S.W.3d 754, 755 (Tex. 2007). When, as in this case, the order granting summary judgment does not specify the grounds upon which the trial court relied, we must affirm the summary judgment if any of the independent summary-judgment grounds is meritorious. *FM Props. Operating Co. v. City of Austin*, 22 S.W.3d 868, 872 (Tex. 2000).

A. Did the 2011 Letter include a written description and itemization of deductions from the security deposit?

On appeal, the Slack Parties argue that the 2011 Letter included a written description and itemized list of the deductions the Slack Parties made from the security deposit for the purposes of subchapter C of Property Code chapter 92

("Subchapter C"). *See* Tex. Prop. Code Ann. § 92.101, *et seq*. (West, Westlaw through 2019 R.S.). If a tenant under a residential lease gives the landlord a written statement of the tenant's forwarding address for the purpose of refunding the security deposit and any required advance notice of surrender as a condition for refunding the security deposit, then on or before the 30th day after the date the tenant surrenders the premises, the landlord must either (1) refund the entire security deposit to the tenant or (2) deduct from the security deposit damages and charges for which the tenant is legally liable under the lease or as a result of breaching the lease (not including any amount covering normal wear and tear) and give to the tenant, the balance of the security deposit, if any, together with a written description and itemized list of all deductions.[3] *See id*. §§ 92.101, 92.103, 92.104, 92.107 (West, Westlaw through 2019 R.S.).

A landlord who fails either to return the security deposit or to provide a written description and itemized list of deductions on or before the 30th day after the date the tenant surrenders possession is presumed to have acted in bad faith. *Id*. § 92.109(d) (West, Westlaw through 2019 R.S.). A landlord who in bad faith retains a security deposit in violation of Subchapter C stands liable for an amount equal to the sum of $100, three times the portion of the deposit wrongfully withheld, and the tenant's reasonable attorney's fees in a suit to recover the deposit. *Id*. § 92.109(a) (West, Westlaw through 2019 R.S.). A landlord who in bad faith does not provide a written description and itemized list of damages and

[3] The landlord is not required to give the tenant a description and itemized list of deductions if (1) the tenant owes rent when the tenant surrenders possession of the premises; and (2) no controversy exists concerning the amount of rent owed. *See* Tex. Prop. Code Ann. § 92.104(c). But, the Consulate did not owe rent when it surrendered possession. Another statute applies when a landlord receives a security deposit for a dwelling from a tenant who fails to occupy the dwelling according to a lease between the landlord and the tenant, a fact pattern not present in today's case. *See id*. § 92.1031 (West, Westlaw through 2019 R.S.).

charges in violation of Subchapter C (1) forfeits the right to withhold any portion of the security deposit or to bring suit against the tenant for damages to the premises; and (2) is liable for the tenant's reasonable attorney's fees in a suit to recover the deposit. *Id*. § 92.109(b) (West, Westlaw through 2019 R.S.). In an action brought by a tenant under Subchapter C, the landlord has the burden of proving that the retention of any portion of the security deposit was reasonable. *Id*. § 92.109(b) (West, Westlaw through 2019 R.S.).

The Slack Parties assert that the 2011 Letter included a written description and itemized list of the deductions they made from the security deposit for the purposes of Subchapter C. The Slack Parties assert that the statutory language "on or before the 30th day after the date the tenant surrenders possession," includes the time period before the tenant surrenders possession and therefore a landlord may give the tenant the written description and itemized list of deductions from the security deposit before the tenant surrenders possession. For the purposes of our analysis, we presume without deciding that a landlord may give the tenant the written description and itemized list of deductions from the security deposit before the tenant surrenders possession and still comply with the requirement that the landlord give this information to the tenant "on or before the 30th day after the date the tenant surrenders possession." *See id*. § 92.109(d).

We now examine the 2011 Letter that the Slack Parties submitted as part of the summary-judgment evidence to see if it contains a written description and itemized list of deductions from the security deposit. *See id*. § 92.104(c), 92.109(d). In the first page of the 2011 Letter the Slack Parties welcome Papanikolaou to Houston and to their home that they are leasing to the Consulate.[4]

[4] Although the 2011 Letter shows the Slack Parties' address and phone number as the address and phone number of the sender, the 2011 Letter contains no valediction, signature, or signature block. The 2011 Letter does not contain the Slack Parties' names or expressly identify them as

After the first page, the 2011 Letter contains a list of "[d]amages during Consul Theodoropoulou['s] occupancy,"[5] in which the Slack Parties describe damages to the leased premises and apparent amounts to repair the damage totaling $2,098.12. Following this list in a section labelled "Additionally,"[6] in which the Slack Parties describe damage to two Japanese maple trees in large garden pots at the front of the house allegedly caused by the way in which Theodoropoulou's son watered these trees. The Slack Parties asserted that the trees are "barely surviving" and that the replacement value for each tree is $500. The Slack Parties also note that a rug from the "Main Entry" and a bar stool from the "Kitchen or Bar Area" are both missing, each with a value of $600. At the end of this section, the Slack Parties stated as follows:

> According to [the] Lease Contract under Section D. Deductions: (1) Landlord may deduct reasonable charges from the security deposit for: (a) damages to the Property, excluding normal wear and tear, and all reasonable costs associated to repair the Property; all of these damages were the result of gross negligence, lack of child supervision and mischief by the boy. The trimming of the Japanese Maples was under the instruction of the Consul given to the grounds staff, who are not authorized nor qualified to trim owners' plants and potted plants.

After a paragraph accusing Theodoropoulou of leaving a window open that had no screen and thus allowing rodents to enter the house, the 2011 Letter ends by quoting part of the Lease in which the parties agree that the Slack Parties "may deduct reasonable charges from the security deposit for . . .[d]amages to [the] Property, excluding normal wear and tear, and all reasonable costs [associated] to repair the Property." In the 2011 Letter, the Slack Parties do not ask or demand

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the senders, although in context and given that Alisa Slack testified that she personally presented the 2011 Letter to Papanikolaou, he may have inferred that the Slack Parties sent the letter.

[5] emphasis omitted.

[6] emphasis omitted.

that the Consulate pay the Slack Parties any amount, nor do they request the return of any missing personal property. Though the Slack Parties refer to their ability to make deductions from the security deposit, they did not state in the 2011 Letter that they intended to make, were making, or would be making any deduction from the security deposit. The sum of all the dollar amounts listed in the 2011 Letter is $4,298.12, which is less than the $5,000 security deposit, yet the Slack Parties do not mention that they are refunding any part of the security deposit. Alisa testified that she gave the 2011 Letter to Papanikolaou on October 15, 2011, more than 17 months before the Consulate surrendered possession of the leased property to the Slack Parties. There is no statement in the 2011 Letter that the Slack Parties are retaining the entire amount of the security deposit. Though the 2011 Letter contains a written description and itemized list of alleged damages to the lease premises and to two maple trees,[7] as well as a description and itemized list of allegedly missing personal property,[8] under the unambiguous language of the 2011 Letter, that document does not contain a written description and itemized list of deductions from the security deposit. *See id*. §§ 92.104(c), 92.109(d). Alisa Slack

[7] The summary-judgment evidence reflects that the maple trees were about 25 years old and in large garden pots, but the evidence does not reflect whether the roots of these trees extended into the soil of the leased realty so that these trees might be considered part of the real property. If the trees were personal property, they did not fall within the definition of "Property" under the Lease. Though one part of the Lease prohibits the Consulate from removing the Slack Parties' personal property from the Property under certain circumstances, the Slack Parties have not asserted that the Consulate removed the maple trees. In any event, we need not address in this appeal whether the maple trees were part of the realty or whether there is a proper basis for making a deduction from the security deposit based on damage to these trees.

[8] Under Property Code section 92.104, a landlord in a residential lease may deduct from the security deposit damages and charges for which the tenant is legally liable under the lease or as a result of breaching the lease (not including any amount covering normal wear and tear) and give to the tenant, the balance of the security deposit, if any, together with a written description and itemized list of all deductions. *See* Tex. Prop. Code Ann. § 92.104. Under section 17(D) of the Lease, "[e]xcept as otherwise permitted by law, this lease, or in writing by [the Slack Parties], the Tenant may not . . . remove any part of the Property or any of [the Slack Parties'] personal property from the Property." (underlining omitted).

stated in her summary-judgment affidavit that the 2011 Letter was "a letter with a written description and itemized list of all deductions from the security deposit for which [the Consulate] was liable under the [Lease]." Nonetheless, Alisa Slack's conclusory statement does not raise a fact issue as to the substance of the 2011 Letter, nor is it competent to change the 2011 Letter's plain text. *See Elizondo v. Krist*, 415 S.W.3d 259, 264 (Tex. 2013); *Abdullatif v. Choudhri*, 561 S.W.3d 590, 602–03 (Tex. App.—Houston [14th Dist.] 2018, pet. denied); *Lenox Barbeque and Catering, Inc. v. Metro. Transit Auth. of Harris County*, 489 S.W.3d 529, 532 & n.3 (Tex. App.—Houston [14th Dist.] 2016, no pet.).

B. Did the trial court err in granting summary judgment as to the Consulate's claim under section 92.109(a) of the Property Code?

Under the applicable standard of review, the summary-judgment evidence conclusively proved that the Consulate gave the Slack Parties a written statement of the Consulate's forwarding address for the purpose of refunding the security deposit and gave the Slack Parties the thirty days' written notice of surrender required by the Lease as a condition for refunding the security deposit. *See* Tex. Prop. Code Ann. §§ 92.103, 92.107. Therefore, on or before April 30, 2013 (the 30th day after March 31, 2013, the date the Consulate surrendered the premises), the Slack Parties had a statutory obligation either to (1) refund the entire security deposit to the Consulate or (2) deduct from the security deposit damages and charges for which the Consulate is legally liable under the lease or as a result of breaching the lease (not including any amount covering normal wear and tear) and give to the Consulate, the balance of the security deposit, if any, together with a written description and itemized list of all deductions. *See id*. §§ 92.101, 92.103, 92.104, 92.107. The Slack Parties concede that they retained the $5,000 security deposit. The Slack Parties did not refund the entire security deposit, and no

summary-judgment evidence shows that the Slack Parties gave the Consulate a written description and itemized list of all deductions from the security deposit, whether before May 1, 2013 or after that date. Thus, under Property Code section 92.109, the law presumes that the Slack Parties acted in bad faith in retaining the $5,000 security deposit. *See id*. § 92.109(d).

A landlord acts in bad faith when the landlord retains the security deposit in dishonest disregard of the tenant's rights. *See Pulley v. Milberger*, 198 S.W.3d 418, 428 (Tex. App.—Dallas 2006, pet. denied). Bad faith implies an intention to deprive the tenant of a lawfully due refund. *See id.*; *Leskinen v. Burford*, 892 S.W.2d 135, 136 (Tex. App.—Houston [14th Dist.] 1994, no writ). Absent rebutting evidence, the presumption that the landlord acted in bad faith compels a finding of bad faith. *See Pulley*, 198 S.W.3d at 428. To defeat the presumption of bad faith, the landlord must submit evidence showing the landlord's good faith, that is, honesty in fact in the conduct or transaction concerned. *See id.* Evidence that a landlord had reason to believe the landlord was entitled to retain a security deposit to recover reasonable charges or damages suffices to rebut the Property Code's presumption of bad faith. *See id.*; *Leskinen,* 892 S.W.2d at 136.

Though the Slack Parties did not give the Consulate a written description and itemized list of deductions from the security deposit, they did give the Consulate the 2011 Letter containing a written description and itemized list of alleged damages to the lease premises and to the two maple trees, as well as a description and itemized list of allegedly missing personal property. In this letter, the Slack Parties noted their ability to make deductions from the security deposit based on damages to the leased premises. Alisa Slack testified in a summary-judgment affidavit that the Slack Parties incurred over $6,000 in costs due to damage that occurred and items that went missing while Theodoropoulou occupied

the leased premises. The sum of all the dollar amounts listed in the 2011 Letter is $4,298.12, an amount that falls below the $5,000 held as a security deposit, and the Slack Parties summary-judgment evidence does not provide an itemized list of deductions greater than or equal to $5,000. Nonetheless, under the applicable standard of review, the summary-judgment evidence raised a genuine fact issue as to whether the Slack Parties acted with honesty in fact in retaining the security deposit and as to whether they had reason to believe they were entitled to retain the security deposit to recover reasonable charges or damages.[9] *See Pulley*, 198 S.W.3d at 430–31; *Leskinen*, 892 S.W.2d at 136. Because a genuine fact issue exists as to whether the Slack Parties acted in bad faith when they retained the security deposit without giving the Consulate a written description and itemized list of all deductions from the security deposit, the trial court erred in granting the First Motion as to the Consulate's claim under section 92.109(a) for bad-faith retention of the security deposit. *See id*. §§ 92.101, 92.103, 92.104, 92.107, 92.109. We sustain the part of the Slack Parties' first issue in which they assert that the trial court erred in granting the First Motion as to this claim.

C. Did the trial court err in granting the First Motion as to the Consulate's claim for breach of the Lease?

In the First Motion, the Consulate moved for summary judgment on the ground that the summary-judgment evidence proves as a matter of law each

[9] On appeal, the Consulate notes that Alisa Slack testified in her affidavit that she gave Papanikolaou the 2011 Letter on October 15, 2011, yet in the letter the Slack Parties refer to repairs that had been performed on October 17, 2011, indicating that Alisa Slack gave Papanikolaou the letter on or after October 17, 2011. The 2011 Letter is dated October 15, 2011. The Consulate asserts that this discrepancy in dates shows the Slack Parties' bad faith. Presuming for the sake of argument that this discrepancy shows bad faith rather than a mistake, the discrepancy does not conclusively prove that the Slack Parties acted in bad faith when they retained the security deposit without giving the Consulate a written description and itemized list of all deductions from the security deposit.

essential element of the Consulate's claim for breach of the Lease. The essential elements of a breach-of-contract claim are (1) the existence of a valid contract; (2) performance or tendered performance by the plaintiff; (3) breach of the contract by the defendant; and (4) damages sustained by the plaintiff as a result of the breach. *Aguiar v. Segal*, 167 S.W.3d 443, 450 (Tex. App.—Houston [14th Dist.] 2005, pet. denied). The Consulate asserted that the summary-judgment evidence conclusively proved each element, as would be necessary for the Consulate to obtain summary judgment on its breach-of-contract claim. *See MMP, Ltd. v. Jones*, 710 S.W.2d 59, 60 (Tex. 1986) (per curiam). On appeal, the Slack Parties assert that they have raised genuine fact issues as to whether the Consulate breached the Lease.

In the First Motion the Consulate asserted that the Consulate performed, tendered performance of, or was excused from performing its contractual obligations under the Lease. In his affidavit in support of the First Motion, Papanikolaou stated that "[t]he damages claimed by [the Slack Parties] are not true and correct." According to Papanikolaou, "[t]here were no damages during the lease term or upon its termination." Papanikolaou did not provide any facts to support these assertions, and they amount to conclusory statements that cannot support a summary judgment in the Consulate's favor. *See Elizondo*, 415 S.W.3d at 264; *Texas Central Partners, LLC v. Grimes County*, 580 S.W.3d 824, 825–26 (Tex. App.—Houston [14th Dist.] 2019, no pet.).

Under section 17(D) of the Lease, "[e]xcept as otherwise permitted by law, this lease, or in writing by [the Slack Parties], the Tenant may not . . . remove any part of the Property or any of [the Slack Parties'] personal property from the Property."[10] In her summary-judgment affidavit, Alisa Slack testified that in

[10] (underlining omitted).

October 2011, during her inspection of the house, she told Vouzikis that items from the house were missing, including "a custom-made rug in the entry." Alisa Slack also testified that she gave Papanikolaou the 2011 Letter, in which the Slack Parties stated that (1) the entry rug was missing and had a value of $600; and (2) a solid-wood bar stool, valued at $600, also was missing.

Under the applicable standard of review, the summary-judgment evidence raises a genuine issue of material fact as to whether the Consulate breached section 17(D) of the Lease by removing the Slack Parties' personal property from the leased property. *See Rehab 2112, LLC v. Audio Images Intern., Inc.*, 168 S.W.3d 308, 312 (Tex. App.—Dallas 2005, no pet.). The summary-judgment evidence does not conclusively prove that the Consulate performed, tendered performance, or was excused from performing its obligations under the Lease. *See id*. Because the Consulate did not conclusively prove each element of its claim for breach of the Lease, the trial court erred in granting the First Motion as to this claim. *See id*. We sustain the part of the Slack Parties' first issue in which they assert that the trial court erred in granting the First Motion as to the Consulate's claim for breach of the Lease.

D. Did the trial court err in granting the Second Motion as to the Slack Parties' counterclaim for conversion?

To establish their conversion claim, the Slack Parties must prove, among other things, that they owned, possessed, or had the right to immediate possession of personal property and that the Consulate exercised dominion and control over this property in an unlawful and unauthorized manner. *See Brewer & Pritchard, P.C. v. AMKO Resources Intern., LLC*, No. 14-13-00113-CV, 2014 WL 3512836, at *9 (Tex. App.—Houston [14th Dist.] July 15, 2014, no pet.) (mem. op.). In the Second Motion, the Consulate sought summary judgment against the Slack's

counterclaim for conversion based solely on the ground that there is no evidence that the Consulate exercised dominion and control in an unlawful and unauthorized manner over personal property that the Slack Parties owned.

In response to the Second Motion, the Slack Parties submitted an affidavit in which Alisa Slack testifies as follows:

- In October 2011, Alisa Slack and Robert Van Domselaar inspected the leased premises after Theodoropoulou and her family had moved out of the property.
- Van Domselaar and Alisa Slack noticed that personal property belonging to the Slack Parties was missing from the residence, including a custom-made rug in the entry way and two bar chairs from the kitchen area.
- While Van Domselaar was making a number of repairs to the leased property, the Slack Parties discovered that other personal property items—a metal ladder, a folding stool, and a library stool—were missing from the residence. The Slack Parties had left these items in the residence when they leased it to the Consulate.
- Alisa Slack met with Papanikolaou twice in October 2011, to discuss, among other things, the items of personal property that had been removed from the leased property.
- The Consulate did not return to the Slack Parties the personal property that was taken from the house, nor did the Consulate pay for this personal property.

Under the applicable standard of review, the summary-judgment evidence raises a genuine issue of material fact as to whether someone acting on behalf of the Consulate exercised dominion and control in an unlawful and unauthorized manner over the Slack Parties' personal property. *See Ramin' Corp. v. Wills*, No. 09-14-00168-CV, 2015 WL 6121602, at *11–12 (Tex. App.—Beaumont Oct. 15, 2015, no pet.) (mem. op.); *Brewer & Pritchard, P.C.*, 2014 WL 3512836, at *9. Therefore, we conclude that the trial court erred in granting the Second Motion and in rendering judgment that the Slack Parties take nothing by way of their

counterclaim for conversion. We sustain the part of the Slack Parties' third issue in which they assert that the trial court erred in granting summary judgment on their counterclaim for conversion.

E. Did the trial court err in granting the First Motion as to the Slack Parties' counterclaim for breach of the Lease?

In the First Motion the Consulate asserted various independent grounds on which it asserted entitlement to summary judgment as to the Slack Parties' counterclaim for breach of the Lease. The trial court granted the First Motion without specifying the grounds upon which the trial court relied. So, we must affirm the trial court's ruling if any of the independent grounds is meritorious. *See FM Props. Operating Co. v. City of Austin*, 22 S.W.3d 868, 872 (Tex. 2000). In this circumstance, to avoid forfeiting the point on appeal, the Slack Parties must challenge all possible grounds on which the motion could have been granted, properly or improperly. *See Fairfield Indus., Inc. v. EP Energy E&P Co.*, 531 S.W.3d 234, 253 (Tex. App.—Houston [14th Dist.] 2017, pet. denied). Failure to do so can be fatal to the appellate challenge. *See id.* Among the summary-judgment grounds that the Consulate asserted in the First Motion were the following:

> The Consulate is entitled to summary judgment on the pleadings because the facts pleaded by the Slack Parties negate their counterclaim for breach of the Lease by showing that the statute of limitations has run; the conditions precedent have not occurred; waiver and estoppel bar the claim; the doctrine of unclean hands; and the Slack Parties failed to mitigate damages.
>
> The Consulate is entitled to summary judgment on the Slack Parties' counterclaim for breach of the Lease because their pleading fails to sufficiently state a claim, and they did not cure the defect after the Consulate's challenge by special exceptions.

On appeal, although the Slack Parties have challenged other summary-judgment grounds that the Consulate asserted as to their counterclaim for breach of the Lease, they have not presented argument challenging the two grounds listed above. Even construing the Slack Parties' appellate brief liberally, we cannot conclude that they have briefed arguments challenging each of the independent grounds on which the trial court granted summary judgment as to their counterclaim for breach of the Lease. *See Fairfield Indus., Inc.*, 531 S.W.3d at 253; *Navarro v. Grant Thornton, LLP*, 316 S.W.3d 715, 719–20 (Tex. App.—Houston [14th Dist.] 2010, no pet.). The Slack Parties have not challenged all possible grounds on which the trial court could have granted the First Motion as to their counterclaim for breach of the Lease. *See FinServ Cas. Corp. v. Transamerica Life Ins. Co.*, 523 S.W.3d 129, 139 (Tex. App.—Houston [14th Dist.] 2016, pet. denied). So, they cannot prevail on this point. Therefore, we overrule the part of the Slack Parties' third issue in which they assert that the trial court erred in granting summary judgment on their counterclaim for breach of the Lease.

III. CONCLUSION

Under the unambiguous language of the 2011 Letter, that document does not contain a written description and itemized list of deductions from the security deposit. The summary-judgment evidence raised a genuine fact issue as to whether the Slack Parties acted in bad faith when they retained the security deposit without giving the Consulate a written description and itemized list of all deductions from the security deposit. So, the trial court erred in granting the First Motion as to the Consulate's claim under section 92.109(a) for bad-faith retention of the security deposit. We sustain the part of the Slack Parties' first issue in which they assert that the trial court erred in granting the First Motion as to the Consulate's claim

under section 92.109(a) for bad-faith retention of the security deposit.

Because the Consulate did not conclusively prove each element of its claim for breach of the Lease, the trial court erred in granting the First Motion as to this claim. We sustain the part of the Slack Parties' first issue in which they assert that the trial court erred in granting the First Motion as to the Consulate's claim for breach of the Lease.

Because the summary-judgment evidence raises a genuine issue of material fact as to whether someone acting on behalf of the Consulate exercised dominion and control in an unlawful and unauthorized manner over the Slack Parties' personal property, the trial court erred in granting the Second Motion and in rendering summary judgment as to the Slack Parties' conversion claim. Thus, we sustain the part of the Slack Parties' third issue in which they assert that the trial court erred in granting summary judgment on their counterclaim for conversion.

Finally, because the Slack Parties have not briefed arguments challenging each of the independent grounds on which the trial court granted summary judgment as to their counterclaim for breach of the Lease, we overrule the part of the Slack Parties' third issue in which they assert that the trial court erred in granting summary judgment on their counterclaim for breach of the Lease.[11]

We affirm in part the trial court's summary judgment as to the Slack Parties' counterclaim for breach of the Lease. We reverse the trial court's summary judgment in part as to the Slack Parties' counterclaim for conversion and the Consulate's claims for breach of the Lease and for bad-faith retention of the security deposit, and we remand the case to the trial court for further proceedings limited to the Slack Parties' counterclaim for conversion and the Consulate's

[11] Based on our disposition of the first issue, we need not and do not address the Slack Parties' second issue.

claims for breach of the Lease and for bad-faith retention of the security deposit.

/s/ Kem Thompson Frost
Chief Justice

Panel consists of Chief Justice Frost and Justices Spain and Poissant.