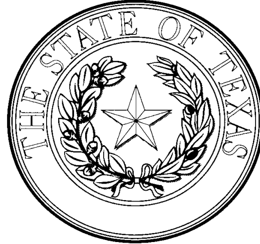
Opinion issued July 7, 2020



In The

Court of Appeals

For The

First District of Texas

NO. 01-18-01023-CV

ALI YAZDCHI, Appellant

V.

WELLS FARGO BANK, NA, Appellee

On Appeal from the 215th District Court
Harris County, Texas
Trial Court Case No. 2015-11585

MEMORANDUM OPINION

Ali Yazdchi sued Wells Fargo Bank, N.A. ("Wells Fargo") for honoring checks and withdrawal slips that he alleged were fraudulent. He alleged that while he was in prison, his attorney, William E. Ryan (now deceased), used a falsified power of attorney to withdraw money from his Wells Fargo account. He also alleged

that his brother, Mike Jones, forged his signature on several checks made payable to himself. In all, Yazdchi alleged that $615,000 was paid to Ryan and Jones and that he was entitled to recoup that amount from Wells Fargo. The trial court granted summary judgment in favor of Wells Fargo, and Yazdchi appealed.

On appeal, he challenges the grounds asserted by Wells Fargo to support its motion for summary judgment: (1) collateral estoppel; (2) statute of limitations; (3) the economic loss rule; and (4) no evidence. Based on Texas's liberal pleading rules, we conclude that the portion of Yazdchi's pleading that was labeled "breach of contract" stated a cause of action for denial of deposit liability under the Texas Finance Code. Because Wells Fargo's motion for summary judgment did not address denial of deposit liability, we hold that the trial court erred by dismissing Yazdchi's cause of action for denial of deposit liability. However, because we also conclude that collateral estoppel bars relitigation of the validity of Ryan's power of attorney, our remand is limited to Yazdchi's cause of action for denial of deposit liability regarding the allegedly forged checks. We otherwise affirm the judgment of the trial court.

Background

In November 2010, Yazdchi was convicted of theft between $20,000 and $100,000 and of falsely holding himself out to be a lawyer. He contends that, while he was in prison, his then-attorney William E. Ryan used a falsified power of

attorney to withdraw money from his account at Wells Fargo. The power of attorney, dated December 13, 2010, granted Ryan the power to withdraw funds from any account in Yazdchi's name and to sign Yazdchi's name to any check, draft, or receipt. Yazdchi contends that Ryan took the signature page from a limited power of attorney, which Yazdchi admits that he signed, and attached it to the broad power of attorney, which Yazdchi denies having signed. He further contends that his brother, Mike Jones, forged his signature and endorsed checks to himself from the Wells Fargo account. Yazdchi specifically challenges Wells Fargo's action in honoring: (1) check #102, dated February 17, 2011, in the amount of $180,000; (2) check #103, dated March 28, 2011, in the amount of $40,000; (3) check #104, dated April 6, 2011, in the amount of $30,000; (4) a withdrawal dated March 2, 2011, in the amount of $25,000; (5) a withdrawal dated March 7, 2011, in the amount of $35,000; and (6) a withdrawal dated April 11, 2011, in the amount of $305,000.

Yazdchi became aware that money was missing from his Wells Fargo accounts, and he inquired to the bank about the possibility that there had been unauthorized transactions on his account. On November 13, 2013, a financial crimes analyst from Wells Fargo sent Yazdchi a letter that said:

> We have completed our research of your inquiry about possible unauthorized transactions on your account. We found that the signatures on file for your account appear to match the signatures on the items(s) in your claim. As a result, we are not able to verify that fraud occurred, and have closed your claim. At this time, it is our intention to close this matter.

Yazdchi filed two lawsuits against Wells Fargo based on the alleged underlying facts, and he filed two additional lawsuits in which he alleged that Ryan used the same allegedly falsified power of attorney to withdraw funds from accounts he held at Chase Bank and TD Ameritrade.

On February 26, 2015, Yazdchi filed a civil action against Wells Fargo in the United States District Court for the Southern District of Texas. Yazdchi alleged that he had a preferred rate savings account at Wells Fargo with an account number that ended in 2906.[1] He alleged that, when he learned there was money missing from his account, he "immediately contacted Wells Fargo" to recover the missing funds. He identified the transactions in question, alleged that all were unauthorized, and pleaded that Ryan did not have a valid power of attorney. He also alleged that he had filed reports with law enforcement, notified Wells Fargo and requested an investigation, and requested copies of his bank statements from the bank on multiple occasions. Yazdchi alleged that despite his efforts, Wells Fargo refused to credit his account for the allegedly unauthorized withdrawals. Yazdchi asserted that Ryan's power of attorney was invalid, and he alleged breach of contract, conversion, negligence and gross negligence, bad faith, violations of the Deceptive Trade Practices Act ("DTPA"), money had and received, and unjust enrichment.

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[1] Yazdchi also alleged that $36,000 was missing from a Wells Fargo account bearing the account number ending in 8364.

On February 27, 2015, Yazdchi filed suit, pro se, in Harris County. Yazdchi's factual allegations were the same as those made the previous day in the federal lawsuit. He alleged that he had a preferred rate savings account at Wells Fargo with an account number that ended in 2906.[2] He alleged that, when he learned there was money missing from his account, he "immediately contacted Wells Fargo" to recover the missing money. He identified the transactions in question, alleged that all were unauthorized, and pleaded that Ryan did not have a valid power of attorney. He also alleged that he had filed reports with law enforcement, notified Wells Fargo and requested an investigation, and requested copies of his bank statements from the bank on multiple occasions. Yazdchi alleged that despite his efforts, Wells Fargo refused to credit his account for the allegedly unauthorized withdrawals. As to both the checks and the withdrawals, Yazdchi pleaded breach of contract, conversion, bad faith, a violation of the Deceptive Trade Practices Act, and money had and received. He also pleaded that Wells Fargo was negligent and grossly negligent "for not verifying the Fake POA."

Yazdchi also filed suit against J. P. Morgan Chase and TD Ameritrade in addition to the two nearly identical lawsuits against Wells Fargo. *Yazdchi v. TD Ameritrade*, No. 14-17-00632-CV, 2019 WL 1030182, at *1 (Tex. App.—Houston

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[2] Yazdchi also alleged that $36,000 was missing from a Wells Fargo account bearing the account number ending in 8364.

[14th Dist.] Mar. 5, 2019, pet. denied) (mem. op.); *Yazdchi v. JP Morgan Chase Bank, N.A.*, No. H-15-121, 2015 WL 12551491, at *1 (S.D. Tex. Dec. 28, 2015).

Wells Fargo moved for summary judgment on the following grounds: (1) collateral estoppel based on the federal lawsuit, which was resolved by summary judgment on the grounds of limitations, and the Chase Bank lawsuit, which determined that the Ryan affidavit was valid; (2) the three-year statute of limitations applicable to certain claims regarding negotiable instruments; (3) the economic loss rule bars tort claims; (4) no cause of action for bad faith exists under Texas law; and (5) no evidence to support elements of some of Yazdchi's causes of action. Wells Fargo attached the following evidence to its summary-judgment motion: (1) documents showing that Yazdchi has previously been declared a vexatious litigant; (2) documents that were filed in the federal case; and (3) documents, including Ryan's affidavit, filed in or pertaining to the JP Morgan Chase Bank case.

In response, Yazdchi provided the following evidence: (1) the docket control order in the underlying case; (2) documents filed in the Chase Bank case; (3) an application for a single party account at Wachovia that bore the same last four digits as the account from which Yazdchi alleged Ryan and Jones made unauthorized withdrawals; (4) a Wells Fargo account statement from April 2011 showing Yazdchi as sole owner, Ryan as sole power of attorney, and a balance of $997.66 in April 2011 as compared to a balance of $615,978.95 in February 2011. (5) the challenged

checks and withdrawal slips; (6) a letter from Wells Fargo regarding the resolution of his fraud claim as unverified; (7) Yazdchi's affidavit; (8) account statements from Wells Fargo; (9) a copy of a more limited power of attorney; (10) an affidavit from Wendy Carlson, a forensic document examiner and handwriting expert along with her curriculum vitae; and (11) a copy of the durable power of attorney that Yazdchi challenged at trial and on appeal.

The trial court granted final summary judgment without specifying the basis, and Yazdchi appealed.

Analysis

On appeal, Yazdchi challenged the summary judgment in four issues: (1) his claims are not barred by limitations; (2) Wells Fargo failed to establish all elements of collateral estoppel; (3) the economic loss rule does not apply to his claims; and (4) Wells Fargo failed to specify elements for which there is no evidence and he submitted evidence that raised genuine issues of material fact.

I. Summary judgment standards of review

We review a trial court's summary judgment de novo. *Lujan v. Navistar*, Inc., 555 S.W.3d 79, 84 (Tex. 2018). A no-evidence motion for summary judgment is essentially a directed verdict granted before trial. *Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 581–82 (Tex. 2006). A party may move for no-evidence summary judgment if, after an adequate time for discovery, there is no evidence of one or more

essential elements of a claim or defense on which the nonmovant would have the burden of proof at trial. TEX. R. CIV. P. 166a(i). The motion must state the elements as to which there is no evidence. *Id.* "The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact." *Id.*; *see Hahn v. Love*, 321 S.W.3d 517, 524 (Tex. App.—Houston [1st Dist.] 2009, pet. denied) (citing *Sw. Elec. Power Co. v. Grant*, 73 S.W.3d 211, 215 (Tex. 2002)).

To prevail on a traditional motion for summary judgment, the movant must show that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Lujan*, 555 S.W.3d at 84. A defendant moving for traditional summary judgment must conclusively negate at least one essential element of each of the plaintiff's causes of action or establish conclusively each element of an affirmative defense. *Henkel v. Norman*, 441 S.W.3d 249, 251 (Tex. 2014) (per curiam); *Wendt v. Sheth*, 556 S.W.3d 444, 448 (Tex. App.—Houston [1st Dist.] 2018, no pet.). If the movant carries this burden, "the burden shifts to the nonmovant to raise a genuine issue of material fact precluding summary judgment." *Lujan*, 555 S.W.3d at 84; *see Maldonado v. Maldonado*, 556 S.W.3d 407, 414 (Tex. App.—Houston [1st Dist.] 2018, no pet.).

"We review the evidence presented by the motion and response in the light most favorable to the party against whom the summary judgment was rendered,

crediting evidence favorable to that party if reasonable jurors could, and disregarding contrary evidence unless reasonable jurors could not." *Mack Trucks*, 206 S.W.3d at 582. "[S]ummary judgment cannot be affirmed on grounds not expressly set out in the motion or response." *Stiles v. Resolution Trust Corp.*, 867 S.W.2d 24, 26 (Tex. 1993).

II. There was no evidence to support Yazdchi's claims for bad faith, gross negligence, punitive damages supported by malice, and violation of the DTPA.

In the trial court, Wells Fargo raised traditional and no-evidence grounds for summary judgment. When a motion for summary judgment asserts both no-evidence and traditional grounds, we first review the no-evidence grounds. *Cmty. Health Sys. Prof'l Servs. Corp. v. Hansen*, 525 S.W.3d 671, 680 (Tex. 2017).

On appeal, Yazdchi asserts that Wells Fargo failed to specify which elements of his claims lacked evidence. We disagree. Wells Fargo asserted that there was no evidence of "any conduct by Wells Fargo that would give rise to a claim that Wells Fargo acted with a specific intent to harm or with conscious indifference to an extreme degree of risk of serious injury to Plaintiff that would be necessary to establish" a claim for "bad faith," gross negligence, or punitive damages based on malice. In the alternative, Wells Fargo argued that no cause of action for bad faith exists under Texas law outside the context of disputes with insurance companies. Wells Fargo also asserted that there was no evidence that it had made any material

misrepresentations as is necessary to support a cause of action for violation of the DTPA. These statements specified what elements of Yazdchi's claims were challenged on the basis of no evidence.

We agree with Wells Fargo's alternative argument that Texas law does not recognize a stand-alone cause of action for "bad faith." Moreover, there is no evidence of the type of bad faith that must be shown in an insurance claim. *See Lyons v. Millers Cas. Ins. Co. of Tex.*, 866 S.W.2d 597, 601 (Tex. 1993) (tort of bad faith denial of insurance claim requires evidence that the insurer had no reasonable basis to delay or deny the claim and that it knew or should have known it had no reasonable basis for its actions).

Yazdchi presented no evidence that Wells Fargo acted with gross negligence or with actual malice, as is required to support a finding of punitive damages, because none of his evidence addressed Wells Fargo's intention or awareness of the alleged wrongfulness of its actions. *See Boerjan v. Rodriguez*, 436 S.W.3d 307, 311 (Tex. 2014) (gross negligence requires a showing that (1) the defendant acted with an extreme degree of risk, considering the probability and magnitude of the potential harm to others and (2) the defendant had actual, subjective awareness of the risk involved, but nevertheless proceeded in conscious indifference to the rights, safety, or welfare of others); *Safeshred, Inc. v. Martinez*, 365 S.W.3d 655, 662–63 (Tex. 2012) (explaining the heightened standard necessary to show actual malice, which

can range from evidence that the defendant acted intentionally in causing the harm to intentionally engaging in additional harmful behaviors such as harassment).

Yazdchi's summary-judgment evidence did not identify any material misrepresentations made by Wells Fargo upon which he relied. *See Doe v. Boys Clubs of Greater Dall., Inc.*, 907 S.W.2d 472, 478 (Tex. 1995) (one element of claim for violation of the DTPA is that the defendant engaged in false, misleading, or deceptive acts).

We hold that the trial court did not err by granting summary judgment as to Yazdchi's claims for bad faith, gross negligence, punitive damages, and violation of the DTPA.

III. Yazdchi is collaterally estopped from relitigating the validity of the Ryan power of attorney.

Wells Fargo argued that Yazdchi was collaterally estopped from challenging the validity of the Ryan power of attorney and the federal court's determination that the three-year statute of limitations in section 3.118(g) of the Texas Business and Commerce Code barred all his claims.

"The doctrine of collateral estoppel or issue preclusion is designed to promote judicial efficiency, protect parties from multiple lawsuits, and prevent inconsistent judgments by precluding the relitigation of issues." *Sysco Food Servs., Inc. v. Trapnell*, 890 S.W.2d 796, 801 (Tex. 1994). "Collateral estoppel applies when an issue decided in the first action is actually litigated, essential to the prior judgment,

and identical to an issue in a pending action." *Casa Del Mar Ass'n, Inc. v. Gossen Livingston Assocs., Inc.*, 434 S.W.3d 211, 219 (Tex. App.—Houston [1st Dist.] 2014, pet. denied) (citing *Tex. Dep't of Pub. Safety v. Petta*, 44 S.W.3d 575, 579 (Tex. 2001)). "A party seeking to assert the bar of collateral estoppel must establish that (1) the facts sought to be litigated in the second action were fully and fairly litigated in the first action; (2) those facts were essential to the judgment in the first action; and (3) the parties were cast as adversaries in the first action." *Sysco Food Servs.*, 890 S.W.2d at 801. Strict mutuality of parties is not required; however, the party against whom the doctrine is asserted must have been either a party or in privity with a party in the first action. *Id.*

In its motion for summary judgment, Wells Fargo argued that the validity of the Ryan power of attorney had been determined by the federal court in the Chase Bank lawsuit. Yazdchi argued that the order of summary judgment in the Chase Bank case was vacated. On appeal, Yazdchi argues that collateral estoppel does not apply to the Ryan power of attorney because (1) the validity of the power of attorney was not essential to the judgment in the Chase Bank case, (2) the issue was not fully and fairly litigated because the Chase Bank case was decided under the federal rules for summary judgment, and (3) the judgment in the Chase Bank case is void.

Under Rule 166a(c), "[i]ssues not expressly presented to the trial court by written motion, answer or other response shall not be considered on appeal as

grounds for reversal." TEX. R. CIV. P. 166a(c); *see Bob v. Cypresswood Cmty. Ass'n*, No. 01-14-00311-CV, 2015 WL 3423753, at *3 (Tex. App.—Houston [1st Dist.] May 28, 2015, no pet.) (mem. op.) ("We will not consider a ground for reversal that was not expressly presented to the trial court by written motion, answer, or other response to the motion for summary judgment.") (citing *Unifund CCR Partners v. Weaver*, 262 S.W.3d 796, 797–98 (Tex. 2008) (per curiam)). Yazdchi did not argue in the trial court that the validity of the power of attorney was not essential to the judgment in the Chase Bank case, or that the issue was not fully and fairly litigated because the Chase Bank case was decided under the federal rules for summary judgment. Therefore, we do not consider those grounds for reversal. *See* TEX. R. CIV. P. 166a(c); *see also Unifund CCR Partners*, 262 S.W.3d at 797–98; *Bob*, 2015 WL 3423753, at *3.

We do, however, consider Yazdchi's argument that collateral estoppel does not apply because the Chase Bank judgment was void. Yazdchi has previously raised the same argument, regarding the collateral estoppel effect of the Chase Bank case's determination that the power of attorney was void. *See Yazdchi v. TD Ameritrade*, No. 14-17-00632-CV, 2019 WL 1030182, at *1 (Tex. App.—Houston [14th Dist.] Mar. 5, 2019, pet. denied) (mem. op.). *TD Ameritrade* was an appeal from a take-nothing summary judgment in Yazdchi's suit against TD Ameritrade ("Ameritrade") and Ryan for conversion, bad faith, violation of the DTPA, breach of contract, and

negligence. *Id.* The same power of attorney that is at issue in Yazdchi's case against Wells Fargo was at issue in the Ameritrade case as well as the Chase Bank case. *Id.* The court of appeals explained the procedural history of the Chase Bank case:

> In a separate federal suit styled as *Yazdchi v. JP Morgan Chase Bank, N.A.*, No. 4:15-cv-00121, in the Southern District of Texas, Houston Division ("the Chase Lawsuit"), Yazdchi sued JPMorgan Chase Bank ("Chase") for claims arising from the same power of attorney. As in this case, he alleged that his notarized signature was on the second page of a more limited power of attorney, and that Ryan had switched the first page of that document for another, broader power of attorney, which Ryan used to withdraw funds from Yazdchi's Chase bank account without Yazdchi's consent.
>
> Chase moved for summary judgment, producing evidence that included a letter to Chase dated March 14, 2013 "acknowledging the power of attorney up to that point and revoking it from that point forward." *Yazdchi v. JP Morgan Chase Bank, N.A. (Chase I)*, CV H-15-121, 2015 WL 12551491, at *3 (S.D. Tex. Dec. 28, 2015). In December 2015, the federal district court granted Chase's motion for summary judgment and dismissed Yazdchi's claims with prejudice. *See id.* at *4.
>
> Yazdchi appealed from that ruling, and the appeal deprived the federal district court of jurisdiction over the Chase Lawsuit. *See Yazdchi v. JP Morgan Chase Bank, N.A. (Chase II)*, CV H-15-121, 2016 WL 4097142, at *3 (S.D. Tex. Aug. 2, 2016). Nevertheless, Yazdchi later filed a motion for reconsideration in the district court, which purported to grant the motion, vacate the judgment, and remand the case to state court. *See id.* After Chase pointed out that the trial court lacked jurisdiction to take such action, the trial court vacated those rulings. *See id.* Yazdchi then attempted a state-court appeal of the federal court's acknowledgment that it lacked jurisdiction to vacate the summary judgment or to remand the Chase Lawsuit to state court, and our sister court dismissed the case for want of jurisdiction. *See Yazdchi v. JP Morgan Chase Bank, N.A. (Chase III)*, No. 01-17-00301-CV, 2017 WL 2255773, at *1 (Tex. App.—Houston [1st Dist.] May 23, 2017, no pet.) (per curiam) (mem. op.). Yazdchi's federal appeal of the

> Chase summary judgment also was unsuccessful, and Supreme Court of the United States denied certiorari. *See Yazdchi v. JPMorgan Chase Bank, N.A. (Chase IV)*, 138 S. Ct. 2578 (May 29, 2018). Thus, the federal court's summary judgment in Chase's favor remains a final judgment.

Id.

In a motion for summary judgment, Ameritrade argued that Yazdchi was barred by collateral estoppel from contesting the validity and authenticity of the Ryan power of attorney. *Id.* at *2. On appeal from the take-nothing summary judgment, Yazdchi argued, among other things, that collateral estoppel did not apply because the Chase Bank judgment was void. *Id.*

The court of appeals disagreed and explained why the Chase Bank judgment was final and preclusive:

> In his remaining arguments, Yazdchi contends that the final judgment rendered in the Chase Lawsuit in December 2015 has no effect because the federal district court issued an order vacating the judgment and remanding the case to state court. Although the federal court later vacated that order, thereby reinstating the judgment, Yazdchi asserts that the federal court could not vacate its earlier order because, having remanded the case, the federal court no longer had jurisdiction over the case.
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> Yazdchi already has litigated this issue in the federal courts and lost. *See Chase II*; *Chase IV*. The federal district court concluded that, by filing a notice of appeal, Yazdchi deprived the trial court of jurisdiction. *See Chase II*, 2016 WL 4097142, at *3. Because Yazdchi did not ask the trial court to vacate its judgment and remand the case until after the court lost jurisdiction, its order purporting to grant the requested relief was void when issued. *See, e.g.*, *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94, 118 S. Ct. 1003, 1012, 140 L. Ed. 2d 210 (1998) ("Without jurisdiction the court cannot proceed at all in

> any cause.”); *Ex parte Reed*, 100 U.S. 13, 23, 25 L. Ed. 538 (1879) (“Every act of a court beyond its jurisdiction is void.”). The federal district court had the power to acknowledge this, and it did so by setting aside the vacatur-and-remand order on the ground that it lacked jurisdiction to issue it. *See Chase II*, 2016 WL 4097142, at *3. The federal court’s judgment on that issue is not subject to collateral attack in state court. *See* U.S. CONST. art. IV, § 1; *Morton v. City of Boerne*, 345 S.W.3d 485, 488 (Tex. App.—San Antonio 2011, pet. denied); *Bexar Metro. Water Dist. v. City of San Antonio*, 228 S.W.3d 887, 895 (Tex. App.—Austin 2007, no pet.). The judgment rendered in the Chase Lawsuit in December 2015 therefore remains a final judgment with preclusive effect.

Id. at *5–6. We agree with the Fourteenth Court of Appeals that the judgment rendered in the Chase Bank lawsuit is final and has preclusive effect. Accordingly, we conclude that the trial court did not err by granting summary judgment as to all Yazdchi’s claims regarding Ryan’s withdrawals from his accounts.[3]

IV. Yazdchi’s claims for conversion and money had and received are barred by limitations.

We have already held that the trial court properly granted summary judgment as to all Yazdchi’s claims relating to the Ryan power of attorney, as well as his claims for bad faith, gross negligence, and violations of the DTPA. We now focus our analysis on Yazdchi’s remaining claims regarding the three allegedly forged checks: breach of contract, conversion, negligence, and money had and received.

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[3] Yazdchi’s claim for negligence solely concerned the Ryan power of attorney. Yazdchi alleged that Wells Fargo was negligent for “not verifying the Fake POA.”

In the trial court, Wells Fargo argued that all Yazdchi's claims are barred by limitations. Wells Fargo argued that Yazdchi's allegations that it improperly paid three checks written to Yazdchi's brother, Mike Jones, were barred by the three-year statute of limitations in section 3.118(g) of the Business and Commerce Code, which provides:

> Unless governed by other law regarding claims for indemnity or contribution, the following actions must be commenced within three years after the cause of action accrues:
>
> (1) an action for conversion of an instrument, an action for money had and received, or like action based on conversion;
>
> (2) an action for breach of warranty; or
>
> (3) an action to enforce an obligation, duty, or right arising under this chapter and not governed by this section.

TEX. BUS. & COM. CODE § 3.118(g). "Instrument" means "negotiable instrument." *Id.* § 3.104(b). A check is a negotiable instrument. *1/2 Price Checks Cashed v. United Auto. Ins. Co.*, 344 S.W.3d 378, 383 (Tex. 2011).

On appeal, Yazdichi does not argue that the trial court erred by granting summary judgment as to his conversion and money had and received causes of action based on limitations. Instead, he argued that Wells Fargo ignored or misconstrued his breach of contract claim, which he contends was substantively a cause of action for denial of deposit liability. We conclude that Yazdichi has waived any error regarding the trial court's granting of summary judgment based on limitations as to

his claims for conversion and money had and received. *See* TEX. R. APP. P. 38.1 (brief must "contain a clear and concise argument for the contentions made, with appropriate citations to authorities"); *see also Gunn v. McCoy*, 554 S.W.3d 645, 677 (Tex. 2018) (issue waived when brief did not include argument or citation to authority); *Abdelnour v. Mid Nat'l Holdings, Inc.*, 190 S.W.3d 237, 241 (Tex. App.—Houston [1st Dist.] 2006, no pet.) ("Issues on appeal are waived if an appellant fails to support his contention by citations to appropriate authority or cites only to a single non-controlling case.").

V. Under Texas's notice pleading rules, Yazdchi's "breach of contract" claim is a claim for denial of deposit liability.

On appeal, Yazdichi argues that although he labeled his cause of action "breach of contract," in fact his pleading was for denial of deposit liability.

"A deposit contract between a bank and an account holder is considered a contract in writing for all purposes and may be evidenced by one or more agreements, deposit tickets, signature cards, or notices as provided by [s]ection 34.302, or by other documentation as provided by law." TEX. FIN. CODE § 34.301(a). "While a bank's wrongful payment of a general deposit does not breach the deposit agreement, a bank's refusal to pay such funds to the rightful account holder will." *Fed. Deposit Ins. Corp. v. Lenk*, 361 S.W.3d 602, 607 (Tex. 2012). "A cause of action for denial of deposit liability on a deposit contract without a maturity date does not accrue until the bank has denied liability and given notice of the denial to

the account holder." TEX. FIN. CODE § 34.301(b). "A bank that provides an account statement . . . to the account holder is considered to have denied liability and given the notice as to any amount not shown on the statement. . . ." TEX. FIN. CODE § 34.301(b). However, the account statement must be provided to the account holder, not an imposter. *Lenk*, 361 S.W.3d at 608.

"Texas follows a 'fair notice' standard for pleading, which looks to whether the opposing party can ascertain from the pleading the nature and basic issues of the controversy and what testimony will be relevant." *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 896 (Tex. 2000). "When a party fails to specially except, courts should construe the pleadings liberally in favor of the pleader." *Id.* at 897. Under federal procedural rules, a pleading must provide greater factual detail and a connection to the elements of a cause of action. *Reaves v. City of Corpus Christi*, 518 S.W.3d 594, 609–10 (Tex. App.—Corpus Christi 2017, no pet.) (explaining the federal pleading practice after *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Because of the difference in pleading standards, a pleading, like Yazdchi's, that could be found to sufficiently state a claim for denial of deposit liability in a Texas court may not be deemed to state the same claim in a federal district court.[4]

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[4] Because the same language may result in pleading of different claims—one a claim for denial of deposit liability and the other a claim for breach of contract that may not state a cause of action at all—we cannot conclude that the state-court claim was

Wells Fargo did not file special exceptions in this case. Under the title "breach of contract," Yazdchi alleged that Wells Fargo failed to keep his funds safe and "refused to put the funds back into" his account despite many requests. We conclude that this pleading, along with Yazdchi's factual pleadings, provided fair notice that his claim was for denial of deposit liability. *See* TEX. FIN. CODE § 34.301(a); *Lenk*, 361 S.W.3d at 607.

The statute of limitations for denial of deposit liability is four years. *See Lenk*, 361 S.W.3d at 610 (citing four-year residual statute of limitations in TEX. CIV. PRAC. & REM. CODE § 16.051). We need not address whether the claim accrued as of the April 2011 account statement or in 2013 when Yazdchi's account statements were sent to him in prison. The last allegedly forged check was dated April 6, 2011. He filed this lawsuit on February 27, 2015, less than four years after the last allegedly forged check and within the statute of limitations.

Wells Fargo argues that even if the trial court erred by not construing Yazdchi's pleading to include a claim for denial of deposit liability, the error would be harmless because he litigated denial of deposit liability in the federal court. We disagree. A summary judgment cannot be granted "on grounds that were not presented," *Johnson v. Brewer & Pritchard, P.C.*, 73 S.W.3d 193, 204 (Tex. 2002),

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barred by collateral estoppel, which requires that the issue warranting preclusion be identical. *See Casa Del Mar Ass'n*, 434 S.W.3d at 219 (issue decided in first action must be identical to issue in a pending action for collateral estoppel to apply).

nor can it "be affirmed on grounds not expressly set out in the motion or response." *Stiles*, 867 S.W.2d at 26. Wells Fargo did not address the claim for denial of deposit liability or expressly set out in its motion that it was precluded by the federal court's ruling. Accordingly, we hold that the trial court erred by granting summary judgment as to Yazdchi's claims for breach of deposit liability. However, because we have also held that the court properly granted summary judgment as to all the claims pertaining to the Ryan power of attorney, our remand to the trial court is limited to the denial of deposit liability claims based on the three checks identified in Yazdchi's pleading.

Conclusion

We reverse the trial court's grant of summary judgment as to the claim that Yazdchi characterized as "breach of contract," which we conclude was a claim for denial of deposit liability regarding the allegedly forged checks. We reverse the dismissal of this claim, and we remand it to the trial court for further proceedings in accordance with this opinion. We affirm the remainder of the trial court's judgment.

Peter Kelly
Justice

Panel consists of Chief Justice Radack and Justices Kelly and Goodman.