

**In The**  
***Court of Appeals***  
***Ninth District of Texas at Beaumont***

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**NO. 09-16-00341-CV**

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**TRACY PAUL SMITH AND JENNIFER BLACKMAN SMITH, Appellants**

**V.**

**LANCELOT HOMES LLC, Appellee**

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**On Appeal from the 60th District Court**  
**Jefferson County, Texas**  
**Trial Cause No. B-197814**

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**MEMORANDUM OPINION**

Appellants, Tracy Paul Smith and Jennifer Blackman Smith (“the Smiths”), appeal from a summary judgment in favor of appellee, Lancelot Homes LLC. We conclude that the trial court did not err in granting Lancelot’s motion for summary judgment and affirm the trial court’s judgment.

**BACKGROUND**

In September 2013, the Smiths entered into a “Construction/Purchase Agreement” with Fresh Start Homes, LLC (“Fresh Start”). The contract provided

that Fresh Start would build the Smiths a home for \$180,000, which included the lot purchase amount of \$30,000. As part of the contract, the Smiths agreed to use their best efforts to obtain construction financing. The contract further provided that if the Smiths failed to receive a firm, unconditional loan commitment within thirty days after signing the contract, Fresh Start, at its sole election, could declare the contract null and void or grant the Smiths additional days to secure a loan.

According to the contract, if the Smiths failed to perform their obligations, Fresh Start, at its sole option, could declare the contract null and void, with no further liability. The contract also provided that the “Builder reserves all rights it may have to fix a lien on the Property if Homeowner[s] fail to timely make payments, and the filing of the lien shall not affect the parties’ rights as otherwise set forth herein.” The contract specifically stated that the contract documents were not assignable and that the contract could be amended only in writing signed by the duly authorized representative of the builder and the homeowner. The contract also provided that all controversies, claims, or matters in question arising out of or relating to the contract or any breach or termination of the contract would be subject to binding arbitration.

In August 2015, Fresh Start executed an Assignment of the Construction Purchase Agreement between Fresh Start and the Smiths. The Assignment stated that Fresh Start “sells, assigns and conveys all of the rights, duties and obligations

set forth in that one certain Construction Purchase Agreement” between Fresh Start and the Smiths to Lancelot Homes, LLC (“Lancelot”). The Assignment further provided that the transfer would be effective from and after September 15, 2013.” In May 2014, Lancelot prepared a mechanic’s lien note in the amount of \$153,000. The lien stated that the full amount was payable at closing within 150 calendar days from the date of the lien.

In August 2015, Perry C. Thomas, the President of Lancelot, executed an affidavit claiming a mechanic’s and materialman’s lien. The lien set forth an unpaid claim in the amount of \$163,062 for labor and materials furnished on the construction of improvements to the real property subject to the Construction Purchase Agreement between Fresh Start and the Smiths. In May 2016, Thomas executed a second affidavit which asserted that Lancelot was the assignee of all of Fresh Start’s rights under the Construction/Purchase Agreement, and was the holder of a perfected lien on the property. According to Thomas’s affidavit, the house had not been completed, the property had not been designated as the Smiths’ homestead, the Smiths had not paid for the construction of the home or secured financing as they were required to do under the contract, and the amount of \$163,062 was due and payable. Thomas further averred that the Smiths’ pleadings alleging that Lancelot had submitted a forged contract to the court were false.

In May 2016, Rodney Davis, the owner of Fresh Start, also executed an affidavit in which he stated that the Smiths did not pay any money up front and that approximately three to four months into construction, Mrs. Smith had begun requesting changes and additions to the construction plans but refused to pay the additional costs. Davis averred that Mrs. Smith's demands drastically slowed and delayed construction. According to Davis, in the seventh or eighth month of construction, communications with the Smiths had broken down. To move forward, Davis asked Thomas to assist in getting a punch list from Mrs. Smith showing the additional changes she wanted. Davis stated that Thomas was able to establish a small line of communication with the Smiths, but they continued making unreasonable demands. Davis averred that it was his perception that the Smiths had made these demands to slow construction and to get out of the binding contract because they were having problems securing financing and could no longer afford the home. Davis further averred that he and Thomas had made several efforts to move forward and finalize the construction of the home, but once the Smiths began sending derogatory texts and making phone calls filled with profane language, all contact ceased.

In November 2015, Lancelot filed suit against the Smiths to foreclose on its lien against the real property and improvements. Lancelot pleaded that it was the

assignee of all of Fresh Start's rights under the Construction/Purchase Agreement and the holder of a perfected mechanic's lien on the property in the amount of \$163,062; that the lien note was due, owing, and payable; and that all conditions precedent under Texas Property Code chapter 53 had been accomplished. Lancelot further pleaded that the Smiths had materially breached and failed to cure their respective Construction Agreement obligations to Lancelot, or to Fresh Start prior to the assignment, for the work performed in building the home. According to its petition, Lancelot sought to judicially foreclose on the property encumbered by the lien.

Mrs. Smith filed an answer to the suit, in which she alleged that Lancelot and its attorney had knowingly filed fraudulent documents and forged her signature in an attempt to foreclose on her property. Mrs. Smith also alleged that Lancelot had no basis for filing the lawsuit because she had no binding contract with Lancelot, an illegal assignee of Fresh Start. In response to Mrs. Smith's answer, Lancelot filed a first amended petition, in which it stated that the Smiths had not alleged that they had made any payments to anyone for the construction of the home or that they had secured financing. Lancelot pleaded that the Smiths did not contest the validity of the lien, and because the Smiths consented to having Lancelot take over the construction of the home, they waived any claim of non-assignability of the

Construction Agreement. Lancelot also denied the allegation that the Construction Agreement had been forged. The Smiths filed an answer to Lancelot's amended petition in which they asserted affirmative defenses challenging the assignability of the Construction Agreement and the validity of their signatures on a new contract that Lancelot submitted to the court.

Lancelot filed a traditional motion for summary judgment on the ground that it had a valid mechanic's and materialman's lien on the property and was entitled to judgment as a matter of law. In its motion, Lancelot stated that because the Smiths had failed to answer discovery, Lancelot's Requests for Admissions should be deemed admitted, and Lancelot requested that the trial court take judicial notice of those deemed admissions. In support of its motion, Lancelot attached the Construction/Purchase Agreement, Assignment of Rights from Fresh Start to Lancelot, mechanic's lien note, affidavit claiming mechanic's lien, affidavits of Thomas and Davis, and the discovery requests submitted to the Smiths with signed returned receipt. The record shows that the Smiths did not file a response to Lancelot's motion for summary judgment.

In June 2016, the trial court conducted a hearing on Lancelot's motion for summary judgment. During the hearing, Mrs. Smith stated that while she had agreed that Lancelot could assist in completing the home, she had refused to sign a contract

with Lancelot. Mrs. Smith argued that the contract she entered into with Fresh Start clearly says it is not assignable. Mrs. Smith also argued that because the builders no longer had the original contract that she and her husband had signed, Lancelot submitted a forged contract to the court. Mrs. Smith maintained that because the home was not complete, her loan was never able to go through. The trial court reset the matter for sixty days and suggested that Mrs. Smith hire a lawyer, but Mrs. Smith did not. During the second hearing, Lancelot's attorney argued that the contract required the Smiths to obtain a loan so that the house could be built, and did not allow the Smiths to wait until the house was completed. Lancelot's attorney further argued that the non-assignability clause was irrelevant because Mrs. Smith consented to Lancelot completing the home and she worked with Thomas on the changes in construction. Mrs. Smith testified that she had not paid any money toward the home.

The trial court found that there was no genuine issue of material fact, granted Lancelot's motion for summary judgment, and ordered judgment in favor of Lancelot in the amount of \$163,062 plus court costs and interest to be satisfied in whole or in part by foreclosure of the mechanic's lien. This appeal ensued.

## STANDARD OF REVIEW

We review summary judgment orders *de novo*. *Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 215 (Tex. 2003). The party moving for traditional summary judgment must establish that no genuine issue of material fact exists and it is entitled to judgment as a matter of law. Tex. R. Civ. P. 166a(c); *Randall's Food Mkts., Inc. v. Johnson*, 891 S.W.2d 640, 644 (Tex. 1995). If the moving party produces evidence entitling it to summary judgment, the burden shifts to the nonmovant to present evidence that raises a material fact issue. *Walker v. Harris*, 924 S.W.2d 375, 377 (Tex. 1996). In determining whether there is a disputed issue of material fact precluding summary judgment, we take evidence favorable to the nonmovant as true. *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548-49 (Tex. 1985). We review the summary judgment record “in the light most favorable to the nonmovant, indulging every reasonable inference and resolving any doubts against the motion.” *City of Keller v. Wilson*, 168 S.W.3d 802, 824 (Tex. 2005).

## ANALYSIS

On appeal, the Smiths question whether Lancelot has standing in the case, whether Lancelot submitted forged documents to the court, and whether Lancelot made any effort to complete the home and provide the documents necessary for financing. Lancelot argues that the Smiths’ brief is wholly inadequate. Our review

of the Smiths' brief shows that the briefing on the issues contains no citation to any legal authority. *See* Tex. R. App. P. 38.1(i). Even interpreting the Smiths' brief liberally, we cannot conclude that the issues are adequately briefed. *See Proctor v. White*, 155 S.W.3d 438, 441 (Tex. App.—El Paso 2004, pet. denied) (concluding appellants waived challenge to summary judgment on several claims because their argument consisted of several pages referring to evidence in support of their factual allegations without a single reference to relevant case law or legal principles).

Even if we do not take into account the Smiths' inadequate briefing, we conclude that Lancelot conclusively established that there were no genuine issues of material fact and Lancelot was entitled to judgment as a matter of law. *See* Tex. R. Civ. P. 166a(c); *Johnson*, 891 S.W.2d at 644. Lancelot's summary-judgment proof is clear, positive, and direct, is credible and free from contradictions and inconsistencies, and could have been readily controverted by the Smiths. *See* Tex. R. Civ. P. 166a(c). Accordingly, Lancelot met its initial burden of establishing its right to foreclose on its mechanic's lien due to the Smiths' failure to pay for the construction of the home. Thus, the burden shifted to the Smiths to raise a genuine issue of material fact that would preclude summary judgment. *See Walker*, 924 S.W.2d at 377. The record shows that the Smiths failed to file a response to Lancelot's motion for summary judgment, and thus failed to challenge any of

Lancelot's summary judgment evidence. We conclude that the trial court did not err in granting Lancelot's motion for summary judgment. We overrule the Smiths' issues on appeal and affirm the trial court's judgment.

AFFIRMED.

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STEVE McKEITHEN  
Chief Justice

Submitted on April 25, 2017  
Opinion Delivered June 22, 2017

Before McKeithen, C.J., Horton and Johnson, JJ.