

Affirmed and Memorandum Opinion filed January 8, 2026.



In The

Fourteenth Court of Appeals

NO. 14-25-00025-CV

MJM REPAIRS, LLC, Appellant

V.

CP2 REALTY HOLDINGS, LLC, Appellee

**On Appeal from the 113th District Court
Harris County, Texas
Trial Court Cause No. 2019-12512**

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

Plaintiff MJM Repairs, LLC (the Subcontractor) sued Defendant CP2 Realty Holdings, LLC (the Property Owner) to recover the outstanding balance owed under a construction contract. The jury returned a verdict in the Subcontractor's favor on its quantum meruit claim and assessed \$40,000 in damages. The trial court granted the Property Owner's motion for judgment notwithstanding the verdict, concluding that the Subcontractor's express contract with the General Contractor precluded its quantum meruit claim. We affirm.

BACKGROUND

The Property Owner contracted with Jipeli Construction LLC (the General Contractor) to refurbish an office building it owned in north Houston. The General Contractor then contracted with the Subcontractor for the plumbing work. According to the Subcontractor, the work was almost complete when another plumber was retained to complete the job. The Subcontractor sued the Property Owner to collect the remainder it was owed under its contract with the General Contractor and asserted claims for breach of contract, sworn account, quantum meruit, unjust enrichment, and promissory estoppel, and to foreclose on its mechanic's lien.

The parties proceeded to trial, and the jury returned a verdict finding that (1) the Subcontractor did not breach its contract with the General Contractor, and (2) the Subcontractor was entitled to recover in quantum meruit from the Property Owner. The Property Owner filed a motion for judgment notwithstanding the verdict, asserting that the jury's finding that the Subcontractor did not breach its contract vitiated the Subcontractor's quantum meruit claim. The trial court granted the motion, entered a take-nothing judgment against the Subcontractor, and declared that the Subcontractor's mechanic's lien was invalid. The trial court also awarded the Property Owner its attorney's fees. The Subcontractor timely appealed.

ANALYSIS

I. Directed verdict

The Subcontractor asserts that the trial court erred by entering judgment in the Property Owner's favor because sufficient evidence supports the jury's findings. We disagree.

The trial court may disregard a jury’s verdict and render judgment notwithstanding the verdict (JNOV) if a directed verdict would have been proper, meaning the evidence conclusively establishes a party’s right to judgment as a matter of law. *See* Tex. R. Civ. P. 301; *Viajes Gerpa, S.A. v. Fazeli*, 522 S.W.3d 524, 530 (Tex. App.—Houston [14th Dist.] 2016, pet. denied). We review the trial court’s ruling on a motion for JNOV under the same standard used for any motion that would render judgment as a matter of law: we credit evidence favoring the verdict if reasonable jurors could, disregard contrary evidence unless reasonable jurors could not, and review the evidence in the light most favorable to the nonmovant. *Guajardo v. Hitt*, 562 S.W.3d 768, 775 (Tex. App.—Houston [14th Dist.] 2018, pet. denied) (citing *City of Keller v. Wilson*, 168 S.W.3d 802, 823 (Tex. 2005)). Our review is de novo with respect to pure questions of law. *Id.*

Here, the case was submitted to the jury on the theory of quantum meruit: “Did [the Subcontractor] perform compensable work for [the Property Owner] for which [the Subcontractor] was not compensated?”¹ *See* Comm. on Pattern Jury Charges, State Bar of Tex., *Texas Pattern Jury Charges: Business, Consumer, Insurance & Employment* PJC 101.42 (2024); *see also, e.g., Corey v. Rankin*, No. 14-17-00752-CV, 2018 WL 5914531, at *3 (Tex. App.—Houston [14th Dist.] Nov. 13, 2018, no pet.). The jury responded “Yes.”

Quantum meruit is an equitable remedy based on an implied promise to pay for benefits received and requires showing (1) valuable services were rendered or materials furnished, (2) for the person sought to be charged, (3) the services or

¹ The jury question was accompanied by the following instruction:

MJM Repairs performed compensable work, if it rendered valuable services or furnished valuable materials to CP2; CP2 accepted, used, and benefited from the services or materials; and under the circumstances, CP2 was reasonably notified that MJM Repairs expected to be compensated for the services or materials.

materials were accepted and used by the person sought to be charged, (4) under such circumstances to reasonably notify the person to be charged that the party seeking recovery was expecting to be paid by the person sought to be charged. *Vortt Expl. Co. v. Chevron U.S.A., Inc.*, 787 S.W.2d 942, 944 (Tex. 1990); *Bluelinx Corp. v. Tex. Constr. Sys., Inc.*, 363 S.W.3d 623, 627 (Tex. App.—Houston [14th Dist.] 2011, no pet.).

A party generally cannot recover under quantum meruit when there is a valid contract covering the services or materials furnished, as there was here. *Vortt Expl. Co.*, 787 S.W.2d at 944; *Bluelinx Corp.*, 363 S.W.3d at 627. This rule applies not only when the plaintiff seeks to recover in quantum meruit from the party with whom it expressly contracted, but also where, as here, the plaintiff seeks to recover from a third party to the contract who benefited from its performance. *Hester v. Friedkin Cos.*, 132 S.W.3d 100, 106 (Tex. App.—Houston [14th Dist.] 2004, pet. denied). The Texas Supreme Court has recognized three exceptions to this general rule; as relevant here, an express contract does not bar a quantum meruit claim when (1) a contractor under a construction contract (here, the Subcontractor) breaches the contract, and (2) the owner accepts and retains the benefits arising as a direct result of the contractor's partial performance. *Bluelinx Corp.*, 363 S.W.3d at 629 (citing *Truly v. Austin*, 744 S.W.2d 934, 936 (Tex. 1988)). A plaintiff who establishes this exception to the express-contract defense is allowed to recover the reasonable value of its services less any damages suffered by the defendant due to its breach. *Truly*, 744 S.W.2d at 937.

Citing this law, the Property Owner argued in the trial court that it was entitled to a JNOV because the first prong of the exception to the express-contract defense is not met: the jury found that the Subcontractor did not breach its express

contract with the General Contractor.² The trial court granted the JNOV, and we agree: the jury’s finding that the Subcontractor did not breach its express contract with the General Contractor bars its quantum meruit claim against the Property Owner. *See, e.g., Bluelinx Corp.*, 363 S.W.3d at 629 (plaintiff could not recover via quantum meruit for goods and services covered by the parties’ contract where “the jury found that neither party breached the contract”); *Pepi Corp. v. Galliford*, 254 S.W.3d 457, 463 (Tex. App.—Houston [1st Dist.] 2007, pet. denied) (same). The Subcontractor’s quantum meruit claim fails.

The Subcontractor asserts to the contrary that the jury charge did not submit the Subcontractor’s quantum meruit claim but rather its claim to foreclose on a mechanic’s lien attached to the Property Owner’s property. The Subcontractor did not cite any case law or other authority to support this contention. Nor did the charge submit all elements necessary to show entitlement to a lien foreclosure.³

Moreover, foreclosure on a mechanic’s lien requires establishing a “valid debt.” *See Crawford Servs., Inc. v. Skillman Int’l Firm, L.L.C.*, 444 S.W.3d 265, 267 (Tex. App.—Dallas 2014, pet. dismiss’d). Here, the only theory submitted to establish a valid debt was quantum meruit—but the Subcontractor’s recovery under that theory was precluded by the jury’s finding that the Subcontractor did not breach its contract with the General Contractor. Therefore, the trial court did not err by granting the Property Owner’s motion for JNOV, rendering a take-nothing judgment against the Subcontractor, and invalidating its mechanic’s lien.

² Specifically, the jury answered “No” in response to the question, “Did MJM Repairs fail to comply with its contract with Jipeli Construction?”

³ To foreclose on a lien, the lienholder must establish (1) it performed the labor or furnished the materials, (2) the debt is valid, and (3) it substantially complied with the statutory requirements for perfecting a lien. *Crawford Servs., Inc. v. Skillman Int’l Firm, L.L.C.*, 444 S.W.3d 265, 267 (Tex. App.—Dallas 2014, pet. dismiss’d).

We overrule the Subcontractor's first issue.

II. Pleading deficiency

In its second issue, the Subcontractor asserts that the Property Owner was not entitled to judgment on its express-contract defense because the Property Owner failed to plead it. *See Tricon Tool & Supply, Inc. v. Thumann*, 226 S.W.3d 494, 502 (Tex. App.—Houston [1st Dist.] 2006, pet. denied) (“The defendant must plead and prove the affirmative defense of an express contract or the defendant waives it.”).

This issue was not preserved for appellate review. “A party who fails to raise the lack of a pleading in the trial court before submission of the case cannot seek reversal on appeal based on the alleged pleading deficiency.” *Tex. Ear Nose & Throat Consultants, PLLC v. Jones*, 470 S.W.3d 67, 87 (Tex. App.—Houston [14th Dist.] 2015, no pet.). Here, the Subcontractor did not raise its pleading challenge before submission of the case; rather, it first raised this argument in its motion to modify filed three weeks after the trial court signed its final judgment. Therefore, the Subcontractor did not timely raise its pleading challenge. *See id.*

In any event, the express-contract defense was tried by consent. The Subcontractor asserted a breach of contract claim in its original petition and, during trial, offered into evidence its contract with the General Contractor. The Subcontractor's owner testified that the company had completed “99 percent of the job” and was seeking the remainder of the contracted-for payment. The Subcontractor did not object when the issue of its contractual compliance was submitted to the jury. Because the Subcontractor invoked its rights under the contract and did not complain about the submission of the contractual issue, it cannot now complain of an alleged pleading deficiency. *See, e.g., Christus Health v. Quality Infusion Care, Inc.*, 359 S.W.3d 719, 723 (Tex. App.—Houston [1st

Dist.] 2011, no pet.) (express-contract defense was tried by consent where the plaintiff asserted a claim for breach of contract, evidence on the issue was presented at trial, and the contractual issues were submitted to the jury).

We overrule the Subcontractor's second issue.

III. Declaratory judgment

In its final issue, the Subcontractor asserts that the trial court erred in awarding the Property Owner its attorney's fees under the Declaratory Judgment Act. We disagree.

The Property Owner asserted a counterclaim for a declaratory judgment stating that the Subcontractor's mechanic's lien was invalid and requesting its attorney's fees. The Declaratory Judgment Act expressly authorizes the award of attorney's fees. *See* Tex. Civ. Prac. & Rem. Code § 37.009 ("In any proceeding under this chapter, the court may award costs and reasonable and necessary attorney's fees as are equitable and just."). Similarly, the Texas Property Code also permits awarding fees in this type of case: a proceeding to declare a lien "invalid or unenforceable." *See* Tex. Prop. Code § 53.156.

The Subcontractor contends that the Property Owner's declaratory judgment claim was a "mirror image counterclaim" that presented the same issues as those addressed by the Subcontractor's petition and thus did not support an award of attorney's fees. We disagree. The Subcontractor doesn't cite any cases applying the mirror image rule to cases where one party seeks to foreclose on a lien and one party seeks to declare it invalid. Indeed, the Property Code treats these claims as distinct proceedings, *see, e.g., id.* §§ 53.154 ("Foreclosure"), 53.160 ("Summary Motion to Remove Invalid or Unenforceable Lien"), and requires an award of fees in both, *id.* § 53.156 ("In any proceeding to foreclose a lien or . . . in any

proceeding to declare that any lien or claim is invalid or unenforceable in whole or in part, the court shall award costs and reasonable attorney's fees as are equitable and just."").

Nor do the cases cited by the Subcontractor even conclude that the mirror-image rule applied. *See BHP Petroleum Co. v. Millard*, 800 S.W.2d 838, 840, 842 (Tex. 1990) (mirror-image rule did not apply when the plaintiff filed a breach of contract claim and the defendant counterclaimed for a declaratory judgment interpreting the parties' contract and their rights under it); *Winner v. Jarrah*, No. 01-19-00155-CV, 2020 WL 477222, at *7 (Tex. App.—Houston [1st Dist.] Jan. 30, 2020, no pet.) (mirror-image rule did not apply where both parties filed declaratory judgment claims). Therefore, we decline to conclude that the Property Owner's declaratory judgment claim was a mirror image counterclaim that precluded its attorney's fees award.

We overrule the Subcontractor's third issue.

CONCLUSION

We affirm the trial court's final judgment.

/s/ Katy Boatman
 Justice

Panel consists of Justices Wise, Hart, and Boatman.