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Court of Appeals of Texas, Houston (14th Dist.).

SPECIAL CAR SERVICES, INC. and Rudy Daenekas, Appellants,

v.

AAA TEXAS, INC. and Tracey Owen, Appellees.

No. 14-98-00628-CV.

June 3, 1999.

On Appeal from the County Court at Law, No. One, Harris County, Texas, Trial Court Cause No. 674,518.

[YATES](#), [FOWLER](#) and FROST, Justices .

OPINION

[FOWLER](#).

*1 Appellants, Special Car Services, Inc. and Rudy Daenekas, appeal from a no-evidence motion for summary judgment in favor of appellees, AAA Texas, Inc. and Tracy Owen. [\[FN1\]](#) We affirm the trial court judgment.

[FN1](#). Although "Tracy" is the correct way to spell Owen's name, it is spelled throughout the clerk's record as "Tracey" or "Tracie." However, we will leave the incorrect spelling of "Tracey" in the style of the case to mirror the petition, parts of the summary judgment, and the notice of appeal.

BACKGROUND FACTS

On September 2, 1995, Susan Alami, a AAA Texas

member, called AAA for roadside assistance. Alami's 1984 Mercedes-Benz needed a jump start. According to Alami, sparks flew from her engine when the wrecker driver attempted to jump start her car. The wrecker driver was not able to start her car, so he towed it to Alami's mechanic, Rudy Daenekas, the owner of Special Car Services. Alami contacted AAA to pay for the repairs, and Daenekas informed AAA that the repairs would cost more than \$1000. AAA informed Alami that the company wished to obtain a second estimate on the repair costs. The car was released to AAA, which had the car towed to a different mechanic. The second mechanic repaired the car for less than \$100.

On September 20, 1995, Daenekas called AAA and informed the company's agent, Owen, that the company owed him \$207 for the preparation of his estimate. Owen informed Daenekas that AAA had never authorized or agreed to such a fee.

In 1996, Daenekas began sending demand letters to AAA for payment of the \$207. In May, Daenekas sent a demand letter to AAA demanding payment before May 24, 1996. On May 13, 1996, Owen called Daenekas and discussed the payment Daenekas requested. In this conversation, Daenekas asked Owen if he was accusing him of fraud and/or fraudulent billing. To this question, Owen replied, "Yes." Shortly thereafter, Owen, acting in his capacity as an agent for AAA, sent a letter to Daenekas. This letter reads as follows:

It was my understanding that I would be charged for an estimate for damages on Susan Alami's Mercedes Benz. When I asked you for the charge for the estimate you said you would have to get back to me on that. Furthermore you said it would cost over \$1000.00 to repair the damaged parts, [sic]

It cost AAA \$100.00 to repair the car at the Mercedes dealer and the dealer said the only thing wrong with the car was a loose fuse box and the clock would not work anymore. It was only after you released the car for pickup that the \$207.00 charge was assessed. This charge seems unreasonable for an estimate. I am sure we can arrive at reasonable [sic] fee for your services.

Ultimately, Daenekas sued AAA and Owen for breach of contract, quantum meruit, fraud, sworn account, exemplary damages, and attorney's fees. In an amended petition, Daenekas added claims for negligence, gross negligence, intentional infliction of emotional distress, and negligent infliction of

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emotional distress. Both AAA and Owen filed no-evidence motions for summary judgment. The trial court granted each motion. On three points of error, Daenekas appeals the trial court's decisions to grant no-evidence summary judgment motions for both AAA and Owen.

DISCUSSION AND HOLDINGS

*2 In his three points of error, Daenekas contends he presented sufficient evidence to defeat AAA's and Owens' no-evidence motion for summary judgment on his claims of breach of contract, sworn account, quantum meruit, negligence, fraud, and intentional infliction of emotional distress. According to rule 166a(i), a party may move for a no-evidence summary judgment. See [Tex.R.Civ.P. 166a\(i\)](#). This rule reads as follows:

After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. The motion must state the elements as to which there is no evidence. The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact.

Id. Once AAA and Owens moved for a no-evidence summary judgment, the burden of proof shifted to Daenekas. "Under the no evidence summary judgment standard, 'the party with the burden of proof at trial will have the same burden of proof in a summary judgment proceeding.' " [Galveston Newspapers, Inc. v. Norris, 981 S.W.2d 797, 799-800 \(Tex.App.--Houston \[1st Dist.\] 1998, pet. denied\)](#). We must review the evidence in the light most favorable to the respondent against whom the no-evidence summary judgment was rendered, disregarding all contrary evidence and inferences. See [Graves v. Komet, 982 S.W.2d 551, 553 \(Tex.App.--San Antonio 1998, no pet.\)](#).

A no-evidence summary judgment is improperly granted if the respondent brings forth more than a scintilla of probative evidence to raise a genuine issue of material fact. Less than a scintilla of evidence exists when the evidence is "so weak as to do no more than create a mere surmise or suspicion" of a fact.

Id. (citations omitted).

After reviewing the record and all the evidence

offered by Daenekas, we believe his affidavits are so weak as to do no more than create a mere surmise or suspicion of fact. Because less than a scintilla of evidence exists, the trial court properly granted the no-evidence summary judgment motions. We, therefore, overrule points of error one, two, and three and affirm the judgment of the trial court.

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