Affirmed and Memorandum Opinion filed July 31, 2025.

In the

Fourteenth Court of Appeals

NO. 14-24-00367-CV

BRAZORIA 10.5, LTD, Appellant

V.

MAC EDISON, LLC, DAVID J. FELT, SILVER SCAPE HOMES, LLC D/B/A SILVER KEY HOMES, AND PARKER APARTMENTS, LLC, Appellees

On Appeal from the 215th District Court
Harris County, Texas
Trial Court Cause No. 2017-45214

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

Appellant Brazoria 10.5, Ltd., challenges the partial summary judgment, now merged into a final judgment, rejecting Brazoria's claims that its agreement to subordinate its liens is unenforceable. According to Brazoria, the Subordination Agreement fails because (a) it is indefinite, (b) it was modified or limited by a separate written agreement, (c) its enforcement is barred by the doctrine of estoppel by deed, or (d) Brazoria is subrogated to the rights of the holder of a different, superior lien. We affirm.

I. BACKGROUND

David Felt is an officer of both Silver Scape Homes, LLC d/b/a Silverkey Homes and Mac Edison, LLC. He is also a limited partner in Brazoria 10.5, Ltd. This case arises from transactions among Silverkey, Mac Edison, and Brazoria.

A. The Transactions

Patriot Bank extended a revolving line of credit to Silverkey for its home-building and land-development business. Multiple properties secured the loan, but after certain changes in the law reduced the value of Silverkey's collateral, it needed additional security for the line of credit.

To provide that security, Felt negotiated for Mac Edison to buy slightly more than nine acres of land from Brazoria for $1.5 million. On October 19, 2011, Mac Edison and Brazoria documented the Property's sale by executing a special warranty deed with a vendor's lien, a deed of trust, and a promissory note secured by both the vendor's lien and the deed of trust and guaranteed by Felt of Silverkey. Of particular significance, Brazoria also executed a document titled, "Subordination of Lien." In the Subordination Agreement, the parties agreed that liens secured by Mac Edison's promissory note to Brazoria would be subordinated to a lien or liens securing Silverkey's debt to Patriot Bank.

Negotiations with Patriot Bank delayed the closing. On February 29, 2012, Mac Edison executed a "Deed of Trust, Security Agreement, and Financing Statement" granting Patriot Bank a security interest in the Property and agreeing that Mac Edison would not permit any lien superior or equal to Patriot's lien to attach to the Property.

The Property's sale closed on that day or shortly thereafter, and on March 5, 2012, Mac Edison recorded Patriot's deed of trust. The next day, Mac Edison recorded the documents executed in October 2011 by Mac Edison and Brazoria. Parker Apartments, LLC, later acquired Patriot's deed of trust.

Mac Edison defaulted on its debt to Brazoria in 2014. In addition, Mac Edison failed to timely pay the 2016 taxes on the Property, but later borrowed the money to do so from Propel Financial Services. Mac Edison defaulted on its debt to Propel, and to prevent Propel's foreclosure of its superior lien,[1] Brazoria began making monthly payments on the debt to Propel.

B. The Lawsuit

In light of Mac Edison's default on the note, Brazoria accelerated payment. Receiving no response, Brazoria sued Mac Edison, Silverkey, Felt, and Parker. Brazoria sought judicial foreclosure and declarations that the Subordination Agreement is unenforceable and that its own vendor's lien has priority over the lien created by Patriot's deed of trust, now owned and held by Parker. To recover damages, Brazoria sued Mac Edison for breach of the promissory note and sued Silverkey and Felt for breach of the guaranty agreement.

Mac Edison and Silverkey filed a traditional motion for partial summary judgment on the grounds that the Subordination Agreement is enforceable, and thus, Parker's lien has priority. Brazoria opposed the motion on five grounds.

First, Brazoria asserted that the Subordination Agreement fails for indefiniteness because it "does not describe the indebtedness and lien to which

[1] With exceptions inapplicable here, a lien for unpaid property taxes has priority over all other liens. *See* TEX. TAX CODE § 32.05.

[Brazoria's] lien would be subordinated," and Mac Edison and Silverkey did not seek to reform the agreement to supply that information.

Second, Brazoria argued that an email chain between Felt and Brazoria's broker Charles Kennedy created an enforceable written agreement limiting the subordination period to two years.

Third, Brazoria relied on the doctrine of estoppel by deed. According to Brazoria, Mac Edison and Silverkey were estopped to enforce the Subordination Agreement because the deed from Brazoria recites that the promissory note "is secured by a first and superior vendor's lien and superior title retained in this deed and by a first-lien deed of trust of even date."

Fourth, Brazoria pointed out that its deed to Mac Edison contains a vendor's lien. Brazoria contends that, absent voluntary subordination, Brazoria, as the vendor, retains superior legal title until the purchase money is paid. Brazoria further contends that Mac Edison had no interest in the Property until the deed from Brazoria was recorded. Brazoria reasons that because its deed to Mac Edison was not recorded until March 6, 2012, Mac Edison could not have conveyed a lien to Patriot on February 29, 2012.

And fifth, Brazoria asserted that it is subrogated to Propel's superior tax lien to the extent of the payments Brazoria made on Mac Edison's behalf.

The trial court granted Mac Edison's and Silverkey's motion for partial summary judgment. Thereafter, the parties settled all issues other than lien priority. In accordance with the settlement, the trial court rendered judgment against Mac Edison, Silverkey, and Felt for damages.[2]

[2] The judgment against Felt is non-recourse, with recovery available only from the proceeds of a foreclosure of a vendor's lien.

In a single appellate issue, Brazoria challenges the trial court's order (now merged into the final judgment) granting Mac Edison and Silverkey partial summary judgment.

II. Standard of Review

Summary judgments and contract-construction disputes present questions of law, which we review de novo. *Nettye Engler Energy, LP v. BlueStone Nat. Res. II, LLC*, 639 S.W.3d 682, 689 (Tex. 2022). To prevail on a traditional motion for summary judgment, the movant must show that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. Tex. R. Civ. P. 166a(c); *see Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 215–16 (Tex. 2003). If the movant carries this burden, the burden shifts to the nonmovant to raise a genuine issue of material fact precluding summary judgment. *See Lujan v. Navistar, Inc.*, 555 S.W.3d 79, 84 (Tex. 2018) (citing *Centeq Realty, Inc. v. Siegler*, 899 S.W.2d 195, 197 (Tex. 1995)). On review, we construe the evidence in the light most favorable to the non-movant, crediting evidence favorable to the nonmovant if a reasonable juror could and disregarding contrary evidence unless a reasonable juror could not. *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009).

III. Indefiniteness

Brazoria begins by arguing that the Subordination Agreement fails for indefiniteness.

To be enforceable, a contract need address with "a reasonable degree of certainty and definiteness" only its "material and essential" terms. *Fischer v. CTMI, L.L.C.*, 479 S.W.3d 231, 237 (Tex. 2016). A contract's essential terms are those that constitute the "basic obligations" for that type of contract as well as the particular terms that the parties would reasonably regard as "vitally important ingredients of their bargain." *San Jacinto River Auth. v. City of Conroe*, 688 S.W.3d 124, 134 (Tex. 2024). A contract is sufficiently definite if it confirms the parties' intention to be contractually bound and its terms enable a court to understand the parties' obligations and to render an appropriate remedy if the terms are breached. *Fischer*, 479 S.W.3d at 237.

A. Subordination Agreements Need Not Identify the Specific Lien Instrument of the Superior Lien.

According to Brazoria, an essential term of a subordination agreement "is the identification of the lien instrument(s) to be subordinated and lien instrument(s) to be made superior." Relatedly, Brazoria represents that the lien instrument creating the superior lien must be approved by the holder of the lien to be subrogated. Brazoria cites no authority for either proposition, nor are we aware of any.

Parties can and do agree to subordinate an existing lien to another lien that has yet to be created, which would make it impossible for a subordination agreement to identify the specific lien "instrument" creating the superior lien. For example, in *Pacific Mutual Life Insurance Co. v. Westglen Park, Inc.*, a purchaser bought six lots of real property for consideration that included a note secured by a vendor's lien and a deed-of-trust lien. 160 Tex. 1, 2, 325 S.W.2d 113, 114 (1959). The warranty deed conveying the property included the noteholder's agreement "to subordinate the lien to construction loans to be created by the Grantee herein in an amount not exceeding $14,000.00 per lot." *Id.*, 160 Tex. at 3, 325 S.W.2d at 114. The provision did not identify the holder of the superior liens, the superior lien instruments, or even the specific amounts of the superior liens; nevertheless, the Supreme Court of Texas found the provision sufficiently definite to be enforceable. *See id.*, 160 Tex. at 5, 325 S.W.2d at 116.

B. The Parties Did Not Limit the Amount of the Superior Lien or the Length of the Subrogation.

Brazoria also contends that the Subordination Agreement "does not provide information that would show agreement to any dollar amount for the superior deed of trust" and does not limit the length of the subordination.

Brazoria is correct, but the Subordination Agreement's terms show that the parties did not intend to impose such limitations. To the contrary, the Subordination Agreement states,

> For value received, Subordinating Party subordinates the Subordinated Lien against the Property to the Superior Lien and agrees that the Subordinated Lien will remain subordinate to the Superior Lien regardless of the frequency or manner of renewal, extension, change, or alteration of the Superior Lien or the Note Secured by the Superior Lien.

The agreement makes Brazoria's liens on the Property permanently inferior to a lien on the Property created to secure Silverkey's debt to Patriot, regardless of amount. The agreement's terms may be extremely broad, but they are not indefinite.

Brazoria argues that the foregoing provision is inconsistent with a $13.7 million limit on the amount of the superior lien and a two-year limit on the period of subordination. We agree. But the Subordination Agreement contains no such limitations.[3] For those, Brazoria contends we must look to a separate written agreement, to which we now turn.

---

[3] Brazoria also contends that subsequent changes in the superior lien, or in the note secured by the superior lien, could invoke the material-alteration doctrine and terminate contractual rights under the Subordination Agreement. Because Brazoria did not argue in its summary-judgment response that the Subordination Agreement was unenforceable on the grounds of material alteration or termination, we do not consider those grounds on appeal. *See* TEX. R. CIV. P. 166a(c); *Castro v. H.E.B. Grocery Co., L.P.*, No. 14-18-00277-CV, 2019 WL 2518481, at *2 (Tex. App.—Houston [14th Dist.] June 18, 2019, no pet.) (mem. op.) ("We cannot reverse a summary judgment on grounds not raised in the summary judgment response."). For the same reasons, we do not

IV. SEPARATE AGREEMENT LIMITING THE AMOUNT AND LENGTH OF SUBORDINATION

Brazoria contends that even though the Subordination Agreement itself does contain such limitations, emails exchanged in January and February 2012 are evidence of a subsequent express written agreement limiting the dollar amount of the superior lien and limiting the subordination period to two years.

Brazoria refers to the email of January 31, 2012, between its co-general partners Charles Kennedy and Lynn Shelby, with courtesy copies to its counsel and to Felt. In this email, Kennedy summarized his understanding of "the current circumstances"—that is, the circumstances more than three months after the parties executed the promissory note, the special warranty deed with vendor's lien, the deed of trust, and the Subordination Agreement.

Kennedy relates that it is his understanding that Brazoria's note was subordinated to the Bank's $13.7 million line of credit to Silverkey until the Dodd-Frank Wall Street Reform and Consumer Protection Act "is repealed or for the two years when the credit line terminates and the subordination terminates." Kennedy then wrote,

> I hope the Attorneys will correct the documents and the bank proceed to fund the deal.
>
> By this writing, I am asking [Felt] to confirm this arrangement and [Brazoria's attorney Derek Johnson][4] to correct the subordination agreement to 13.7 million and terminate after 2 years or with repeal of the [Dodd-Frank Act].
>
> I have the previous subordination agreement. . . .

---

consider Brazoria's appellate arguments concerning unilateral or mutual mistake, accident, or fraud.

[4] Johnson drafted the promissory note, the special warranty deed with vendor's lien, the deed of trust, and the Subordination Agreement.

But Felt did not confirm Kennedy's understanding. He responded,

> The bank is ready to close today. We need to make the subordination agreement conform *as close as possible* as to what you want. I want to be certain that all the documentation *meets my expectations* and I am being careful in that regard. Derek, please call me at the office when you get this and *let's discuss the subordination agreement*."[5]

Felt's response does not evidence a meeting of the minds to alter the existing Subordination Agreement. Rather than agreeing to either of the modifications Kennedy sought, Felt stated that he had to be "certain" that the agreement met his own expectations, but the agreement need only be "as close as possible" to Brazoria's desires.

Moreover, this exchange is not itself an agreement, but instead demonstrates only Brazoria's intent to have its counsel create a new written agreement in the future. But Brazoria does not contend that any other subordination agreement, or any modification of the existing Subordination Agreement, was ever drafted or executed.

Kennedy also relies on Felt's email to him on February 16, 2012, in which Felt wrote as follows:

> The bank is ready to close as are we, the problem is that the attorneys for the bank have screwed up the papers so bad that even the bank does not understand them. My attorney Wes Christian, is out of town until Tuesday. We are setting a meeting for Tuesday with the Bank, their attorney and us to go through the documents page by page, line by line and agree. Then the papers will be changed as we proceed to what all intended. We have no issue with the lender and they have agreed to all the corrections. The docs were very poorly prepared. . . .

As Brazoria characterizes this email, Felt is saying that Patriot agreed to Brazoria's requested corrections in the Subordination Agreement. But Felt refers only to papers prepared or modified by "the attorneys for the bank." The evidence is

[5] Emphasis added.

undisputed that the Subordination Agreement was prepared by Brazoria's counsel, and Brazoria does not contend that the document was altered by Patriot's attorneys.

We conclude that Brazoria failed to raise a genuine issue of material fact that a separate written agreement alters the Subrogation Agreement to impose a $13.7 million limit on the superior lien or limits the subrogation period to two years.

V. Estoppel by Deed

Brazoria next contends that estoppel by deed precludes the Subrogation Agreement's enforcement. "[E]stoppel by deed stands for the proposition that all parties to a deed are bound by the recitals in it, which operate as an estoppel." *Trial v. Dragon*, 593 S.W.3d 313, 318 (Tex. 2019). Brazoria asserts that Mac Edison, and anyone claiming an interest in the Property through Mac Edison, are estopped to deny that Brazoria's lien has priority, because they are bound by a recital in the special warranty deed with vendor's lien that the $1.5 million promissory note that forms part of the consideration for the Property "is secured by a first and superior vendor's lien and superior title retained in this deed and by a first-lien deed of trust."

The recital is stated in the present tense, and it speaks only to the circumstances existing when the deeds were executed on October 19, 2011. No one contends there were superior liens on the Property on that date.

But the recital did not prevent the Property's encumbrance by later liens of higher priority, nor does Brazoria contend otherwise. Patriot acquired a lien on the Property on February 29, 2012, and by prior agreement, Brazoria's liens then became subordinate to Brazoria's later lien.

We conclude that the doctrine of estoppel by deed does not apply in this situation.

VI. Subrogation to Rights Under the Tax Lien

In its last argument, Brazoria states that its payments on Propel's tax loan to Mac Edison "should entitle Brazoria to subrogation of the superior tax lien in the amount of such payments."[6] But that is a different lien than those at issue in this case.

In its live pleading, Brazoria mentioned real-property taxes only in its claims for damages for breach of the note and the guaranty agreement. In connection with those claims, Brazoria pleaded that Mac Edison, Silverkey, and Felt were liable "for the unpaid principal balance of the Mac Edison Note, plus accrued interest, plus interest at the contract rate, plus accrued and unpaid real property taxes." Brazoria pleaded no subrogation claims and alleged no other liens.

Brazoria instead sued for declarations that the Subordination Agreement is unenforceable and that its vendor's lien on the Property has priority over the lien created by Patriot (and subsequently transferred to Parker). Mac Edison and Silverkey moved for partial summary judgment only on the Subordination Agreement's enforceability, and that agreement subordinated only the liens securing Mac Edison's $1.5 million promissory note to Brazoria. The note states that it is secured "by a vendor's lien and superior title retained in a deed from Brazoria 10.5, Ltd to [Mac Edison] dated October 19, 2011 and by a deed of trust of even date."[7]

---

[6] In support of this statement, Brazoria cites Texas Tax Code section 32.06(h): "A mortgage servicer who pays a property tax loan secured by a tax lien transferred under this section becomes subrogated to all rights in the lien." *But see Providence Inst. for Sav. v. Sims*, 441 S.W.2d 516, 519 (Tex. 1969) ("[T]he general rule is that a person who is subrogated to the rights or securities of another may not enforce the same until the claim of the latter against the debtor has been paid in full."). Brazoria represented that it has made the monthly payments that Mac Edison owed to Propel, not that Brazoria paid the loan in full.

[7] Although the Subordination Agreement refers to a subordinated *lien* rather than subordinated *liens*, the agreement also states, "When the context requires, singular nouns and pronouns include the plural." The note is secured by two liens.

The partial summary judgment resolved the issue that the liens securing the promissory note are subordinated to the Patriot lien.

Because Brazoria's arguments about its payments to Propel have no effect on the enforceability of the Subordination Agreement,[8] we cannot reverse the trial court's summary-judgment ruling on this basis.

VII. Conclusion

Being presented with no valid basis for reversal, we overrule Brazoria's sole issue and affirm the trial court's judgment.

/s/ Tracy Christopher
Chief Justice

Panel consists of Chief Justice Christopher and Justices Jewell and McLaughlin.

[8] After the trial court rendered partial summary judgment on the Subordination Agreement, the parties settled the remaining issues. The trial court signed Brazoria's proposed judgment awarding Brazoria damages for its claims for breach of the note and the guaranty agreement. Brazoria's claim for "accrued and unpaid real property taxes" were part of those claims.