



Case Summaries March 15, 2024

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DECIDED CASES

MUNICIPAL LAW

Authority

City of Dallas v. Emps.' Ret. Fund of the City of Dallas, ___ S.W.3d ___, 2024 WL ___ (Tex. Mar. 15, 2024) [[22-0102](#)]

At issue is whether the City of Dallas could properly give veto power over amending its city code to a third party.

By ordinance, the City of Dallas established the Employees' Retirement Fund of the City of Dallas, which provides benefits for Dallas employees, and codified that ordinance in Chapter 40A of its city code. A board of trustees administers the Fund. The City later adopted another ordinance that purports to prevent any further amendments to Chapter 40A unless the board approves them. In 2017, the City amended Chapter 8 of its code—by ordinance, without the board's approval—to impose term limits on the Fund's board members.

The Fund resisted the term-limits amendment because it was passed without the board's approval. The Fund and the City each sought declaratory relief about the amendment's validity. The trial court rendered judgment for the City. The court of appeals reversed. According to that court, Chapter 40A was a codified trust document, and trust law barred amendment to it except as the document provided. The amendment, it held, was invalid because imposing term limits on the board changed the trust document's terms without board approval.

The Supreme Court reversed. Although it agreed with the court of appeals that the ordinance imposing term limits amended Chapter 40A, the Court held that the board's veto power was unenforceable and could not prevent the otherwise valid term-limits amendment from taking effect. That amendment impliedly repealed the board's veto power. Chapter 40A's status as a codified ordinance meant that the term-limits amendment was just one ordinance amending another, not an ordinance purporting to amend something protected by a separate or higher source of law. Even if trust law applies to the Fund, trust law does not authorize much less require the City to bestow the core power of legislating on any third party, such as the board. To hold otherwise would improperly prevent the City from amending its own code, authority that is constitutionally given only to the City.

The Court declined to analyze a separate issue about whether the amendment remained valid despite being passed without the City voters' approval. The Court

remanded the case to the court of appeals to consider this separate issue in the first instance.

GOVERNMENTAL IMMUNITY

Contract Claims

Legacy Hutto v. City of Hutto, ___ S.W.3d ___, 2024 WL ___, (Tex. Mar. 15, 2024) (per curiam) [[22-0973](#)]

This case concerns statutory requirements for a contract between a governmental entity and a business entity.

Legacy Hutto sued the City for its failure to pay for work Legacy had performed under a contract. Section 2252.908(d) of the Government Code prohibits a governmental entity from entering into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity when the contract is signed. Legacy had never submitted the disclosure. The City argued that the lack of disclosure meant that the contract was not “properly executed,” as required by Chapter 271 of the Local Government Code, which waives a governmental entity’s immunity to suit for breach of contract. The City thus argued that its immunity to suit was not waived for Legacy’s claim. The City filed a plea to the jurisdiction and a Rule 91a motion on that basis.

The trial court granted the City’s plea and motion but also granted Legacy leave to replead. Both parties appealed. The court of appeals affirmed, holding that Chapter 271’s waiver of immunity requires compliance with Section 2252.908(d). The court of appeals also held that the trial court’s consideration of the City’s Rule 91a motion was inappropriate due to the court’s lack of subject-matter jurisdiction but that any complaint about that error was moot. Finally, the court held that it lacked appellate jurisdiction to review the order granting Legacy leave to replead, as that order was not final or otherwise appealable.

Both parties petitioned for review. After they had done so, the Legislature passed HB 1817, which amended Section 2252.908 to require that a governmental entity notify a business entity of its failure to submit a disclosure of interested parties. HB 1817 also provides that a contract is deemed to be “properly executed” until the governmental entity provides notice to the business entity. Lastly, it permits a court to apply the new statutory requirements to already-pending cases if the court finds that failure to enforce the new requirements would lead to an inequitable or unjust result. Due to this change in the law, the Supreme Court granted the petitions for review, vacated the court of appeals’ judgment, and remanded for the trial court to conduct further proceedings in accordance with the new statutory requirements.

GRANTED CASES

FAMILY LAW

Division of Marital Estate

In re J.Y.O., ___ S.W.3d ___, 2022 WL 2071113 (Tex. App.—Dallas 2022), *pet. granted* (Mar. 15, 2024) [[22-0787](#)]

At issue in this case is the trial court's characterization and division of a discretionary bonus, retirement account, and marital residence.

The trial court rendered Lauren and Hakan Oksuzler divorced in December 2019. The next February, Hakan was scheduled to receive a \$140,000 bonus from his employer, Bank of America. The bonus was at the sole discretion of Bank of America and contingent on Hakan's continued employment; however, the bonus was based on work he performed while the parties were still married. In addition to the bonus, Hakan contributed to a retirement account through Bank of America before and during the marriage. Hakan also owned the marital residence as his separate property before the marriage, but the parties executed a deed while they were married that listed both Hakan and Lauren as the grantor and grantee.

In August 2020, the trial court signed a final divorce decree that awarded Hakan as his separate property the \$140,000 bonus, a portion of his retirement account, and the marital residence. The court of appeals (1) affirmed the judgment awarding Hakan the bonus because his right to it vested when the parties were no longer married; (2) reversed the judgment awarding Hakan a portion of his retirement account because he presented no evidence that the funds in the account were separate property; and (3) reversed the judgment awarding Hakan the marital residence because he presented no evidence rebutting the presumption that he gifted one half of the residence to Lauren.

Hakan petitioned the Supreme Court for review, arguing that the marital residence and a portion of his retirement account are his separate property. Lauren cross-petitioned the Court for review, arguing that the bonus should not be awarded entirely to Hakan as his separate property because it compensated him for work performed during the marriage.

The Court granted both petitions for review.

EMPLOYMENT LAW

Age Discrimination

Tex. Tech Univ. Health Scis. Ctr.-El Paso v. Flores, 657 S.W.3d 502 (Tex. App.—El Paso 2022), *pet. granted* (Mar. 15, 2024) [[22-0940](#)]

The issue in this case is whether the trial court should have granted Tech's plea to the jurisdiction on the plaintiff's age-discrimination claim.

Loretta Flores, age 59, applied to work as Chief of Staff for university president, Dr. Richard Lange. Lange, however, had personally encouraged Amy Sanchez, a 37-year-old Tech employee, to apply for the Chief of Staff position. Both candidates met the education and experience requirements and submitted all required application materials. Flores submitted an additional five letters of recommendation from her previous roles at Tech. Lange made mention of Flores's age during her interview, although the parties dispute what was said. Lange ultimately hired Sanchez for the position.

Flores sued for age discrimination and retaliation. Tech filed a plea to the jurisdiction, which the trial court denied. The court of appeals reversed as to the

retaliation claim but affirmed as to age discrimination, holding that a reasonable fact finder could conclude that Lange’s proffered reasons for not hiring Flores were pretextual and that age was at least a motivating factor in Tech’s decision not to select Flores for the Chief of Staff position.

Tech petitioned the Supreme Court for review, arguing that Flores did not meet the required showing that Tech’s proffered reason for denying Flores the position was both false and a pretext for discrimination. The Court granted Tech’s petition for review.

ATTORNEYS

Legal Malpractice

Newsom, Terry & Newsom, LLP v. Henry S. Miller Com. Co., ___ S.W.3d ___, 2022 WL 3908542 (Tex. App.—Dallas 2022), *pet. granted* (Mar. 15, 2024) [[22-1143](#)]

In this case, the issues are the propriety of an assignment of a legal-malpractice claim and whether a jury instruction impermissibly commented on the weight of the evidence.

HSM is a real estate broker. Its former employee negotiated the purchase of nine commercial properties on behalf of a client. During the negotiations, the employee represented to the seller that the buyer was the beneficiary of a multimillion-dollar trust, that he had verified the buyer’s financial means, and that the transactions would close imminently. But after the closing date was rescheduled multiple times, the buyer disappeared. The properties were either deeded to banks in lieu of foreclosure or sold at a loss.

Lawyer Steven Terry represented HSM and its employee in the seller’s subsequent lawsuit. Despite knowing that the buyer could be held at least partly responsible for the seller’s damages, Terry initially did not try to find him or designate him as a responsible third party. Terry claims that he suspected the buyer of being a con man and did not want to help the seller develop facts showing that HSM’s employee had lied. Terry later changed his mind and moved to designate the buyer as an RTP shortly before trial. The seller objected to the motion’s untimeliness. The trial court denied the motion and ultimately rendered judgment on the jury’s verdict for the seller.

In the aftermath, HSM sued Terry for legal malpractice, alleging that he was negligent in failing to timely designate the buyer as an RTP and in stipulating that HSM was responsible for the employee’s conduct. Around the same time, the seller filed an involuntary bankruptcy petition against HSM. The reorganization plan approved by the bankruptcy court assigned part of HSM’s malpractice claim to the seller and also gave the seller the right to veto any settlement between HSM and Terry.

This appeal arises from the second trial of the legal-malpractice suit. The trial court rendered judgment on the jury’s verdict for HSM, awarding it \$15 million in actual and exemplary damages. A split panel of the court of appeals reversed and remanded for a third trial. The majority held that language in a jury instruction on designating RTPs constituted an impermissible comment on the weight of the evidence about the buyer’s responsibility. Terry also reurged his challenge, rejected by the court in the first appeal, that HSM’s recovery is barred because the assignment of its malpractice claim and settlement-veto power to the seller is impermissible under Supreme Court caselaw. The court declined to reconsider that holding.

HSM and Terry filed cross-petitions for review, which the Supreme Court granted.

PROCEDURE—PRETRIAL

Multidistrict Litigation

In re Jane Doe Cases, argument granted on pet. for writ of mandamus (Mar. 15, 2024) [[23-0202](#)]

This mandamus arises out of the “tag-along” transfer of the underlying lawsuit to an MDL involving other sex-trafficking cases. The issue in this case is whether the MDL panel erred by refusing to remand the case, thereby allowing it to remain in the MDL.

In the underlying case, Jane Doe alleges that she was a victim of sex trafficking. She contends that another user befriended her on Facebook and sent her messages convincing her to meet in person, after which she was forced into sex with several others at a hotel owned by Texas Pearl. In 2018, Doe sued Facebook and Texas Pearl, alleging they both had roles in facilitating her trafficking. In 2019, the MDL panel transferred seven other cases involving sex trafficking allegations to an MDL pretrial court. In 2022, Texas Pearl filed a Notice of Transfer of Tag-Along Case to move the underlying case into the MDL, asserting that Doe’s claims are closely related to the MDL cases because those cases also involve sex-trafficking allegations against hotels. Facebook responded with a Motion to Remand Improper Tag-Along Transfer, arguing the case should be remanded back to the previous trial court.

The MDL pretrial court denied Facebook’s motion to remand. The MDL panel denied Facebook’s motion for rehearing. Facebook sought mandamus relief in the Supreme Court, arguing the underlying case is not related to those in the sex-trafficking MDL, and the inclusion of the case in the MDL will not improve convenience or efficiency.

The Supreme Court granted review of Facebook’s mandamus petition.

PROFESSIONAL SERVICES

Anti-Fracturing Rule

Rivas v. Pitts, ___ S.W.3d ___, 2023 WL 3070811 (Tex. App.—Austin 2023), pet. granted (Mar. 15, 2024) [[23-0427](#)]

At issue is whether a plaintiff can maintain fraud and breach of fiduciary duty claims against his accountants.

From 2007 to 2018, Brandon Pitts and other accountants at the Pitts & Pitts firm provided accounting services to Rudolph Rivas, a custom home builder. These services included preparing tax returns and financial statements, defining ledger accounts, and training Rivas’s staff in various accounting skills. In 2016, Rivas discovered several accounting errors that had artificially inflated the valuation of shareholder equity in his company. Rivas had to pay millions of dollars to various financial institutions to avoid defaulting on loans. Rivas also struggled to secure new lines of credit, and several of his businesses have since failed.

Rivas sued the accountants for professional negligence, breach of contract, breach of fiduciary duty, and fraud. The accountants filed a traditional and no-evidence motion for summary judgment as to each claim. The trial court granted the accountants’ motion without stating its reasoning.

The court of appeals affirmed in part and reversed in part. The court first held that Rivas had waived or confessed error with respect to his negligence and breach of contract claims, and it affirmed the summary judgment for those claims. That left Rivas’s claims for fraud and breach of fiduciary duty. The accountants argued that these

claims are barred by the anti-fracturing rule, which prohibits a plaintiff from converting a claim for professional negligence into some other common law or statutory claim. The accountants also argued that there is no evidence to support either claim. The court of appeals rejected both arguments and reversed the summary judgment with respect to the fraud and breach of fiduciary duty claims.

The accountants petitioned the Supreme Court for review, urging their anti-fracturing rule and no-evidence points. The Supreme Court granted the petition.