Supreme Court of Texas

No. 25-0660

Santander Consumer USA Inc.,
Petitioner,

v.

Enterprise Financial Group, Inc.,
Respondent

On Petition for Review from the
Court of Appeals for the Fifth District of Texas

PER CURIAM

Santander and Enterprise sued each other for breach of contract when the vehicle protection program they were offering did not work out as planned. After a jury trial, Enterprise was awarded damages, and Santander took nothing.

We are asked to decide whether Santander preserved objections to the jury charge. The court of appeals declined to consider the merits of the objections because it concluded that none were preserved. Because we conclude that the objections were preserved, we reverse the court of appeals' judgment and remand for that court to consider

whether the charge was erroneous and, if so, whether any error led to harm.

I. BACKGROUND

Santander makes auto loans to dealerships nationwide. Enterprise sells consumer protection products, including guaranteed asset protection (GAP) policies to help pay for losses not covered by insurance when a car is totaled or stolen. In 2012, the two companies entered into a Vendor Services Agreement under which Santander would market and sell Enterprise's GAP policies as add-ons to car loans. When an auto dealer purchased one of these policies, Santander, Enterprise, and the policy underwriter each received part of what was paid, with the remainder being held in reserve to cover losses. The arrangement was ultimately unsuccessful, and Enterprise terminated the Agreement in 2017 and later sued Santander for breach of contract and declaratory relief. Santander responded with its own counterclaims for breach of contract and declaratory relief. The case was tried to a jury.

Each side submitted proposed jury charges before trial. On the last day of trial, the court marked the cover page of both sides' charges "Refused" and signed, saying that doing so "protects your record that the Court refused your particular jury charges." The trial court prepared its own charge and held a charge conference later that day, during which Santander objected to Questions 8A and 8B of the court's charge. Question 8A asked whether Santander's breach was the result of gross negligence, bad faith, or willful misconduct and provided definitions of those three terms. Question 8B asked what sum would reasonably

compensate Enterprise for its damages, if any, and provided a single answer blank. It did not define "damages" or list any measures of damages for the jury to consider.

Santander objected on the basis that consequential damages could only be awarded upon a finding of gross negligence, bad faith, or willful misconduct under the Agreement and that the damages question "opens it up to an award of either direct or consequential" damages without that predicate finding. Santander also objected that Question 8B allowed the jury to award Enterprise lost profits from future contracts even though Enterprise's evidence was insufficient to support such an award, and it requested that the jury be instructed to consider only direct damages.

Enterprise responded that the parties "[d]o not agree what damages are what" and that the court's charge "allows the jury to make a finding that will allow the Court if necessary to revisit the damages number after trial." The trial court overruled Santander's objection to Questions 8A and 8B and concluded the charge conference after Santander confirmed that it had no objections to the other questions in the charge.

The jury found that both parties breached the Agreement, that Santander's breach occurred first and was material and not excused, and that Enterprise's breach was excused. It found that Enterprise suffered $5 million in damages and that Santander suffered $4.2 million. The jury failed to find that Santander's breach was the result of gross negligence, bad faith, or willful misconduct, but it found that Enterprise's breach was the result of such conduct.

Because the jury found that Enterprise's breach was excused, the trial court disregarded Santander's damages and signed a final judgment awarding Enterprise $5 million in damages as well as interest and attorney's fees. The trial court denied Santander's post-judgment motions.

Santander appealed, arguing (among other things) that the charge was erroneous and that insufficient evidence supported the damages award. The court of appeals concluded that none of Santander's three complaints about the charge was preserved. ___ S.W.3d ___, 2025 WL 1712081, at *7-10 (Tex. App.—Dallas June 18, 2025).

Santander's first charge complaint was that the broad-form submission of Question 1 concerning breach of contract by Santander allowed the jury to consider breach theories that were not pleaded or tried by consent. The court of appeals overruled that issue because Santander did not object to Question 1 and could not rely on the trial court's refusal of Santander's proposed jury charge to preserve error for appellate review. *Id.* at *7. For the same reason, the court of appeals concluded that Santander did not preserve its complaint that the charge—which submitted a general instruction on waiver in its question regarding Santander's defenses—should have included an additional question on a particular waiver defense concerning continued operations. *Id.* at *10.

Santander also complained on appeal that Question 8B permitted the jury to award lost profits, which were not recoverable under the Agreement without a finding that a party's breach was the result of bad

faith, gross negligence, or willful misconduct and were not supported by evidence. *Id.* at *7-9. The court of appeals determined that this complaint was not preserved for three reasons. First, it concluded that Santander's objection that Question 8B permits damages without the predicate finding in Question 8A did not sufficiently alert the trial court that one of the elements of damages in Question 8B should not be included in the charge. *Id.* at *9. Next, the court of appeals concluded that Santander's complaint that an instruction on gross negligence, bad faith, and wrongful conduct "should be given under the contract" was a complaint about the placement of Question 8A, not the elements of damages included in Question 8B. *Id.* at *9. Finally, the court of appeals determined that Santander's objection that "there should only be instructions for direct damages" in Question 8B based on Enterprise's failure to elicit evidence of lost profits did not alert the trial court that Question 8B impermissibly allowed the jury to find both direct damages and lost profits in a single answer. *Id.* at *9.

Santander separately complained that there was insufficient evidence to support the damages awarded to Enterprise under the charge as given. The court disagreed, concluding that the testimony of Enterprise's President and CEO that Enterprise suffered an out-of-pocket loss of $6 million and held back $1 million that should have been paid to Santander supported the $5 million award, and that the record included ample evidence that Enterprise's out-of-pocket losses were caused by Santander's refusal to agree to price increases for the program's policies. *Id.* at *12-13. The court of appeals affirmed the trial court's judgment, and Santander filed a petition for review.

II. ANALYSIS

In this Court, Santander argues that it preserved its jury-charge objections. We agree. First, Santander argues that it preserved an objection to Question 8B at the charge conference. "A party objecting to a charge must point out distinctly the objectionable matter and the grounds of the objection." TEX. R. CIV. P. 274. A party preserves a challenge to the broad-form submission of a question "by making timely and specific objections that there was no evidence to support . . . disputed items submitted in [a] broad-form charge." *Thota v. Young*, 366 S.W.3d 678, 691 (Tex. 2012).

Question 8B asked the jury to decide what damages, if any, Enterprise suffered because of any breach of contract by Santander. The charge did not identify what measures of damages the jury should consider or provide separate blanks for direct or consequential damages.

Santander objected to Questions 8A and 8B and argued:

> [T]he damages provision opens it up to an award of either direct or consequential without a first finding of . . . negligence, bad faith or similarly wrongful conduct and we likewise think that the gross negligence bad faith and wrongful conduct instruction should be given under the contract because of the contract and because [Enterprise has] *failed to elicit any evidence of los[t] profit* and therefore, they can't . . . meet their evidentiary burdens and *therefore there should only be instructions for direct damages*.

(Emphases added.) Santander thus made a "specific objection that there was no evidence to support" an award of lost profits and argued that Question 8B must be limited to direct damages only. *See id.* In doing so, Santander "pointed out distinctly the objectionable matter"—the

submission of a damages question that permitted an award of lost profits—and stated "the grounds of the objection"—that there was no evidence of lost profits. *See* TEX. R. CIV. P. 274.

Enterprise understood this objection: it responded that the "evidence does support" the submission of Question 8B, acknowledged that the parties disagree on what damages should be awarded, and argued that the question as submitted would permit the trial court to "revisit the damages number after trial."[1] This response confirms that Santander's objection was sufficiently plain to make the trial court aware of its complaint. *See State Dep't of Highways v. Payne*, 838 S.W.2d 235, 241 (Tex. 1992) (explaining that test for preserving error in charge for appellate review is simply "whether the party made the trial court aware of the complaint, timely and plainly, and obtained a ruling").

Yet the court of appeals concluded that Santander's no-evidence objection failed to alert the trial court to the error Santander was asserting on appeal. ___ S.W.3d ___, 2026 WL 1712081, at *9. According to the court of appeals, Santander failed to argue specifically that the question presented an improper amalgamation of lost profits and direct damages. In the court of appeals' view, Santander should have asked the trial court to include separate blanks for direct and consequential damages.

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[1] Enterprise was incorrect that the question would permit the trial court to revisit the damages after trial: the question gave only a single answer blank and provided no instructions regarding any measure of damages. In responding to Santander's objection, Enterprise chose not to request separate answer blanks for direct and consequential damages, which would have allowed the trial court to revisit Enterprise's entitlement to each measure of damages after trial.

We disagree. Santander did object that the question permitted an award of amalgamated lost profits and direct damages, arguing that the question "should only [have] instructions for direct damages" because Enterprise "failed to elicit any evidence of los[t] profit." Moreover, it would have been inconsistent for Santander to request a separate blank for consequential damages when it was objecting that they could not be submitted to the jury at all because there was no evidence of the sort of consequential damages Enterprise sought: lost profits on future contracts.

For these reasons, we hold Santander preserved its objection that Question 8B of the trial court's charge permitted an award of damages for lost profits unsupported by evidence. On remand, the court of appeals should consider in the first instance (1) whether overruling that objection was error because the record contains insufficient evidence of lost profits, and if so (2) whether the error was harmful.[2] *See Horton v. Kan. City S. Ry.*, 692 S.W.3d 112, 145-47 (Tex. 2024) (holding error not presumed harmful when question includes theory lacking legally sufficient evidentiary support).

Next, Santander presses error in the omission of limiting instructions from Question 1 of the charge regarding breach of contract and the omission of a separate question regarding its particular waiver

[2] In this Court, Enterprise argues that Santander did not present to the *court of appeals* its argument that the trial court erred in overruling its objection because there was insufficient evidence of lost profits. But the court of appeals' opinion recognizes that Santander argued "there was no evidence of lost profits" and that Enterprise responded "any error was harmless because the jury awarded [damages for] out-of-pocket net loss and not lost profits." ___ S.W.3d at ___ 2025 WL 1712081, at *8-9.

theory concerning continued operations. Santander did not object to the omissions at the charge conference, but it requested the limiting instructions and question in its pretrial proposed charge, which the trial court globally marked "Refused." The court of appeals held that Santander waived its complaints by not separately objecting after it received the trial court's proposed charge omitting the requested instructions and question. In the court of appeals' view, a global denial "based solely on the parties' pretrial submission of proposed jury charges does not preserve issues of charge error for appellate review" because "a proposed jury charge filed pretrial standing alone does not meet the preservation of error requirements of rules 272, 273, and 274." ___ S.W.3d at ___ 2025 WL 1712081, at *7 (emphasis omitted) (quoting *EYM Diner L.P. v. Yousef*, No. 05-19-00636-CV, 2020 WL 6883171, at *9 (Tex. App.—Dallas Nov. 24, 2020, pet. dism'd)).

In this case, at least, the pretrial proposed charge does not stand alone. The trial court assured Santander that it was aware each side had "made [its] proposals" and that although "[w]e'll also put some things on the record [at the charge conference] as well," the global refusal "protects your record that the Court refused your particular jury charges." The express refusal of the proposal—though global—coupled with the trial court's assurances of particular preservation and the quite short time between the refusal and the charge conference makes this scenario unlike that in *Cruz v. Andrews Restoration, Inc.*, 364 S.W.3d 817, 829-31 (Tex. 2012). In *Cruz*, we held that filing a pretrial charge failed to preserve error because the trial court had never refused to submit the requested questions and the complaining party never

objected to their omission despite "ample time to review the draft charge." *Id.* at 831. We observed that the trial court has no duty to "comb through the parties' pretrial filings to ensure that the [court's proposed charge] comports precisely with their requests—that is the parties' responsibility." *Id.* Importantly, the record in *Cruz* did not reveal whether the trial court had refused the question. *Id.*

Under the specific facts of this case, where a global refusal was accompanied by assurances that the trial court was aware of and the record protected as to particular charge requests, we hold that Santander preserved the refusal of those requests for appellate review. On remand, the court of appeals should consider whether each refusal was erroneous and, if so, whether the error was harmful.[3]

III. CONCLUSION

Having concluded that Santander preserved its complaints regarding Questions 1 and 8B of the jury charge and the omitted waiver question, and without hearing oral argument pursuant to Texas Rule of Appellate Procedure 59.1, we grant the petition for review, reverse the

[3] Santander also argues that even under the charge as given, there is legally insufficient evidence to support the damages awarded by the jury and the court of appeals erred in holding otherwise. Santander intentionally requests only a new trial due to this purported proof deficiency, not rendition of judgment in its favor. Resolving this issue may be unnecessary if the court of appeals concludes that the charge was erroneous and harmful in any of the respects just discussed (a matter on which we express no opinion), as the remedy for that error would likewise be a new trial. Accordingly, we decline to address Santander's sufficiency challenge.

court of appeals' judgment, and remand for the court of appeals to consider those complaints in the first instance.

OPINION DELIVERED: November 20, 2026