Opinion Summaries
March 18, 2022

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Opinions

CONTRACTS
Formation

Cadence Bank, N.A. v. Roy J. Elizondo III, ___ S.W.3d ___, 2022 WL (Tex. Mar. 18, 2022) [20-0273]

The issue in this breach of contract dispute is whether a bank's wire transfer request form created a contractual duty on behalf of the bank to "verify" funds before completing the wire transfer as requested by a banking customer.

Petitioner Cadence Bank, N.A., is a regional banking franchise. Respondent, Roy J. Elizondo III, is a Houston-based lawyer. In 2014, Elizondo was scammed. The scammer sought Elizondo's representation in a debt-collection action. Once Elizondo agreed to the representation, the scammer informed Elizondo that the debtor had agreed to settle and would mail Elizondo a cashier's check in the amount of the settlement. The scammer instructed Elizondo to deposit the check into his IOLTA account—which he held with Cadence Bank—and then wire a portion of the funds to a third party in Japan. After receiving a cashier's check that appeared to be drawn from an account at Chase Bank, Elizondo deposited the check into his account. After contacting Cadence to execute the wire transfer, a Cadence Bank employee emailed Elizondo a one-page form titled International Outgoing Wire Transfer Request. The form contains, among other fields, a listed transfer fee of $55 and blanks for administrative information to be filled in by Cadence after receiving Elizondo's signature and before initiating the transfer. It also contains this preprinted admonishment to any Cadence employee who handles a wire transfer: "Before signing off, be sure you 'know your customer' and have verified the collected balance and documented any exception approvals." Pursuant to Elizondo's instructions, Cadence

wired a large portion of the deposited funds to the Japanese bank account Elizondo had identified on the form. Chase dishonored the cashier's check the very next day and returned it to Cadence unpaid. Cadence notified Elizondo that the check was returned, charged the provisionally deposited amount back to this account, and demanded that he pay the overdrawn funds. Elizondo refused.

Cadence sued Elizondo for breach of the deposit agreement, breach of warranty under Section 4.207 of the Uniform Commercial Code (UCC), and common-law torts. Elizondo raised various defenses and counter-claimed for breach of contract, fraud, and negligent misrepresentation. Cadence moved for summary judgment on its affirmative claims, and Elizondo filed a counter motion for summary judgment on his breach-of-contract claim. The trial court denied Cadence's motion, granted Elizondo's, and signed a final judgment that each party take nothing. A split panel of the court of appeals affirmed.

Elizondo claims that Cadence's damages were caused by its breach of a superseding contractual duty as expressed in the wire transfer request form. Elizondo argues that by signing the top part of the wire-transfer form and emailing it back to a Cadence employee, Elizondo made an offer to pay Cadence $55 to transfer money from the "collected balance" of his account, which, according to Elizondo, is the remaining balance once provisionally credited funds are excluded. That the transfer only be made from Elizondo's "collected balance" was a material term of the agreement established by the administrative field with that phrasing in the bottom half of the form. Cadence accepted Elizondo's offer by completing the form and initiating the transfer. If Cadence had fulfilled its duty to ensure that Elizondo's "collected balance" was sufficient before making the transfer, then Cadence would have seen that Elizondo's collected balance was insufficient, it would not have made the transfer, and it would not have any damages.

The Supreme Court disagreed with Elizondo's argument, holding that the wire-transfer form fails to create an enforceable contract at all. The Court reasoned that the form's title is "International Outgoing Transfer *Request*," and the form has all the indicia of a form whose purpose is to facilitate Cadence's internal processing of the wire transfer. Contrary to Elizondo's view, the mere presence of the phrases "Collected Balance/Cash" and "Employee Who Verified Collected Balance" on a form created by Cadence cannot have the effect of implicitly imposing on Cadence a contractual duty that superseded its rights under the UCC and the deposit agreement. Were that the case, a bank's routine administrative forms could potentially override the UCC's default rules. Thus, the Court reversed the court of appeals' judgment, remanding the case to the trial court to consider Elizondo's remaining claims and defenses.

NEGLIGENCE
Premises Liability

SandRidge Energy, Inc. v. Barfield, __ S.W.3d __ (Tex. March 18, 2022) [20-0369]

The issue in this case is whether a property owner owes a duty to warn contractors of open and obvious hazards under Chapter 95 of the Civil Practice and Remedies Code.

SandRidge Energy hired OTI Energy Services to modify electrical distribution lines connected to its oil and gas operations in Andrews County. John Barfield worked as an OTI lineman on a crew responsible for adding a neutral line to existing electric poles that carried energized overhead lines. As part of his work, Barfield de-energized the lower portion of the poles using a specialized tool. Because SandRidge did not de-energize the overhead lines, Barfield worked within about four feet of the energized lines. After performing this work "hundreds of times," Barfield encountered a stuck hot tap. When he attempted to loosen it, he sustained severe electrical shock injuries.

Barfield sued SandRidge under Chapter 95, claiming that SandRidge had failed to adequately warn him of the danger. SandRidge moved for summary judgment, arguing that it owed no duty to warn because Barfield knew of the open and obvious danger of the energized overhead lines. The trial court granted summary judgment, but the court of appeals reversed, holding that the open-and-obvious doctrine does not apply to Chapter 95 cases.

The Court reversed the court of appeals, holding that the requirement that a landowner "adequately warn" of a dangerous condition in Chapter 95 incorporates its common law understanding. The common law does not require a property owner to warn invitees of open and obvious hazards because such a warning does not improve an invitee's knowledge and appreciation of the danger. Because Barfield was fully aware of the danger the overhead line posed, Chapter 95 did not require SandRidge to warn Barfield of it.

The Court next addressed Barfield's argument that the necessary-use exception applies. The necessary-use exception requires a property owner to make the premises safe when a condition is so unreasonably dangerous that no warning can be adequate. The Court expressed doubt in *General Electric v. Moritz*, 257 S.W.3d 211, 215 (Tex. 2008), that the exception applies to independent contractors, who are expected to account for open and obvious hazards in performing their work. The Court did not resolve the question, however, because in this case Barfield had specialized training and equipment to minimize the risk posed by the overhead lines and had performed the work safely hundreds of times. Though SandRidge had safety policies cautioning against performing work near energized lines, the policies also allowed that such work could be safely done by qualified personnel.

ARBITRATION
Interpretation and Enforceability of Agreements

Baby Dolls Topless Saloons, Inc. v. Sotero, ___ S.W.3d ___, 2022 WL (Tex. Mar. 18, 2022) (per curiam) [20-0782]

At issue in this case is whether three terms in a written contract—"relationship," "license," and "this agreement"—are so unclear as to render the contract and the arbitration agreement contained therein unenforceable. And further, if the contract is valid and enforceable, whether arbitration is appropriate.

This dispute arose from the tragic death of Stephanie Sotero Hernandez. Hernandez was killed in a high-speed crash while riding in a car driven by Mayra Naomi Salazar in the early morning hours after the two adult entertainers had left work at Baby Dolls Topless Saloons (the Club). Hernandez's family sued the Club for wrongful death and survival damages, alleging that the Club served Salazar alcohol after knowing she was clearly intoxicated. Almost two years prior to the accident, Hernandez and the Club had signed a 12-page contract—referred to throughout the written contract as "this Agreement"—giving Hernandez a "revocable license (the License) and non-exclusive right to use and occupy the designated portions of the [Club's premises]" for "the performing of live erotic dance entertainment and related activities." The contract contained a broad arbitration provision "pursuant to the Federal Arbitration Act[.]" Once the Family sued the Club, the Club moved to compel arbitration. A divided court of appeals affirmed the trial court's denial of the Club's motion to compel arbitration. The court of appeals held that "the parties' minds could not have met regarding the contract's subject matter and all its essential terms such that the contract is not an enforceable agreement."

In a per curiam opinion, the Supreme Court reversed and directed the trial court to grant the Club's motion to compel arbitration. The Court resolved the contract's alleged ambiguities using well-established principles of contract construction. Additionally, because the contract's arbitration provision clearly and unmistakably delegated threshold arbitrability questions to an arbitrator, the Court compelled arbitration for the arbitrator to decide any gateway issues the parties had agreed to arbitrate. Finally, addressing the Family's alternative argument—that even if a valid contract existed at some point, it had expired by the time of Hernandez's accident—the Court held that, based on the separability doctrine, such a question is for an arbitrator to decide because it does not call the contract's formation or validity into question.

ELECTIONS
Candidates

In re Anthony, __ S.W.3d __, 2022 (Tex. Mar. 18, 2022)(per curiam) [22-0193]

The issue in this application for mandamus relief is whether a city secretary correctly rejected a candidate's application to be on the ballot because the candidate left the blank to supply her occupation blank. Relator Linda Anthony serves as the current Mayor of West Lake Hills, but is otherwise retired. On her 2022 application to appear on the ballot, she did not fill in an answer in the box labeled "Occupation (Do not leave blank)." Anthony's opponent, Jeffrey Taylor, objected to her application for failing to include an occupation, as required by Texas Election Code Section 141.031(4)(B). The city secretary rejected Anthony's application, and the court of appeals denied Anthony's petition for writ of mandamus.

Anthony argued that because she is retired, she has no occupation to include on her application, and therefore her application does not violate the Election Code. Taylor argued that the Legislature requires an occupation from every candidate, and that therefore the city secretary had no discretion to accept the application.

The Court granted Anthony mandamus relief. The ordinary meaning of the word "occupation" encompasses compensated work, and as a retired, uncompensated mayor, Anthony has no occupation. Because Anthony cannot include on her application what she does not have, her application did not violate the Election Code. The city secretary's review of the application was limited to Taylor's challenge and to Anthony's response, which demonstrated that her application was not deficient. Taylor did not dispute the factual truth of Anthony's occupational status, only the legal effect of the blank box.