Opinion Summaries
April 8, 2022

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OPINIONS

ATTORNEYS
Fees

Sunchase IV Homewoners Association, Inc. and Board v. David Atkinson, —S.W.3d—, (Tex. Apr. 8, 2022) [20-0682]

The issue in this case is whether a defendant condominium association is entitled to attorney's fees after obtaining a take-nothing judgment on claims by a plaintiff unit owner.

David Atkinson, a unit owner, sued the homeowners association of Sunchase IV, a condominium complex in South Padre, Texas. Following hurricane damage, Atkinson alleged that Sunchase, among other things, created a fraudulent scheme to keep insurance monies from, and shift repair obligations to, individual owners. He also argued that Sunchase violated its governing documents by making changes to individual units, failing to repair common elements, and violating settlement terms involving preferential parking. Sunchase responded with a declaratory judgment counter claim and a request for attorney's fees under both section 82.161 of the Texas Property Code (the Uniform Condominium Act) and Section 37.009 of the Texas Civil Practice and Remedies Code (the Uniform Declaratory Judgments Act). The trial court granted Sunchase's motion for summary judgment on twelve declaratory issues and the jury found against Atkinson on his remaining claims. The jury also concluded that Sunchase was entitled to reasonable attorney's fees.

The court of appeals affirmed the trial court's take-nothing judgment but held that Sunchase was not entitled to attorney's fees under either ground argued at trial. As to Section 37.009, the court concluded that Sunchase did not state a claim for affirmative relief because its request for declaratory relief was a mirror image of Atkinson's claims. Regarding Section 82.161, the court of appeals concluded that Sunchase was not a prevailing party because (1) it was not adversely affected by a

violation of Chapter 82 or the condominium's declaration or bylaws, and (2) it did not seek affirmative relief.

Because the Court previously held that a party may qualify as a "prevailing party" by "successfully defending against a claim and securing a take-nothing judgment," *Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469, 486 (Tex. 2019), the Court held that Sunchase is entitled to attorney's fees as a prevailing party under Chapter 82. Contrary to the court of appeals' conclusion, Sunchase—a defendant—need not have shown that it was adversely affected by a violation of Chapter 82 or that it obtained affirmative relief. Under *Rohrmoos*, a party that successfully defends against a plaintiff's main issues and obtains a take nothing judgment qualifies as a prevailing party because it obtains actual and meaningful relief that materially alters the parties' legal relationship. Because Atkinson alleged that his damages were due to violations of Sunchase's governing documents, his suit was an "action to enforce" the condominium's declaration and bylaws, and Sunchase obtained a take-nothing judgment on all of Atkinson's claims, Sunchase is a prevailing party and entitled to attorney's fees under Chapter 82. The Court did not reach Sunchase's Declaratory Judgment Act ground.

Without hearing oral argument, TEX. R. APP. P. 59.1, the Court granted Sunchase's petition for review, reversed the court of appeals' judgment as to attorney's fees, and reinstated the trial court's judgment awarding fees to Sunchase.

Justice Lehrmann did not participate in the decision of the Court.

REAL ESTATE
Trespass-to-try-title

Stelly v. DeLoach, —S.W.3d—, (Tex. Apr. 8, 2022) [21-0065]

We decided *Brumley v. McDuff*, 616 S.W.3d 826 (Tex. 2021) after the court of appeals made its decision in this case. In *Brumley*, we held that the Brumleys pleaded the elements of a trespass-to-try title claim even though they did not title the claim that way in their pleadings. Similarly, here, all parties knew that Stelly sought settled ownership of the land at issue, even though he brought a breach-of-contract claim. Under the standards in *Brumley*, we find that Stelly did accurately plead a trespass-to-try title claim and the four-year statute of limitations applicable to a breach of contract claim does not apply. We reverse the court of appeals on that issue and remand for further considerations.

GRANTS

TEXAS TIM COLE ACT
Governmental Immunity

Brown v. City of Houston, *certified question accepted*, — Tex. Sup. Ct. J. — (April 8, 2022) [22-0256]

This certified question from the U.S. Court of Appeals for the Fifth Circuit concerns the Tim Cole Act's immunity statute.

Alfred Brown was wrongfully convicted of two murders, for which he served over twelve years in state prison. He was released in 2017 and filed a § 1983 action in federal district court against the City of Houston, Harris County, and three individuals, based on his wrongful prosecution and conviction. While that case was pending, Brown sought and eventually obtained compensation under the Tim Cole Act for his wrongful imprisonment.

The Tim Cole Act provides, however:

> A person who receives compensation under this chapter may not *bring* any action involving the same subject matter, including an action involving the person's arrest, conviction, or length of confinement, against any governmental unit or an employee of any governmental unit.

TEX. CIV. PRAC. & REM. CODE § 103.153(b). Based on this statute, the federal district court granted summary judgment in favor of the defendants and dismissed Brown's § 1938 case with prejudice, concluding that the State's payment for wrongful conviction under the Tim Cole act "provides immunity to suits against state and local government entities and employees seeking additional payment for the same wrongful conviction." Brown appealed to the Fifth Circuit, contending that he may maintain his § 1983 suit because he filed it before he received compensation under the Tim Cole Act. He argued that the statute's plain language only proscribes bringing an action subsequent to receiving Tim Cole Act compensation.

After oral argument, the Fifth Circuit sua sponte certified this question to the Court:

> Does Section 103.153(b) of the Tim Cole Act bar maintenance of a lawsuit involving the same subject matter against any governmental units or employees that was filed before the claimant received compensation under that statute?

The Court accepted the certified question. Oral argument has not been set.