Case Summaries
May 12, 2023

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OPINIONS

PROCEDURE—TRIAL AND POST-TRIAL

Batson Challenge

United Rentals N. Am., Inc. v. Evans, ___ S.W.3d ___, 2023 WL ___ (Tex. May 12, 2023) [20-0737]

The issues in this case are (1) whether a new trial is required because of *Batson* violations during jury selection, (2) whether United Rentals owed a duty to the decedent, and (3) whether United Rentals is entitled to rendition of judgment on the plaintiffs' survival claim. Texas caselaw prohibits counsel from stating a racial preference in open court and exercising peremptory strikes in concert with that preference. The Texas common law establishes a duty to avoid negligently creating dangerous situations. To recover survival damages, there must be evidence, beyond mere speculation, that would allow a reasonable juror to find that suffering occurred.

United Rentals is an equipment rental company that outsourced the transport of two pieces of equipment: a boom lift and a forklift. United Rentals mistakenly released the boom lift to the driver who was supposed to transport the forklift, resulting in an oversized load. The load struck an overpass, two beams fell onto the road, and one beam landed on Clark Davis's pickup truck, crushing Davis to death. Davis's mother and son brought wrongful death claims; his mother also filed a survival claim on behalf of his estate. After a jury verdict for the plaintiffs, the district court rendered a substantial money judgment, which the court of appeals affirmed. United Rentals petitioned the Supreme Court for review, and the Court granted the petition.

The Court held that a new trial is required under *Batson* because plaintiffs' counsel announced on the record that the plaintiffs had a racial preference in jury selection, and all of the plaintiffs' peremptory strikes were consistent with the stated preference. The Court also held that United Rentals owed a common law duty to Davis to avoid negligently creating dangerous road conditions. Finally, the Court held that United Rentals was entitled to rendition of judgment on the plaintiffs' survival claim. The plaintiffs sought only pain-and-suffering damages for this claim, and there was no evidence at trial that would allow a reasonable juror to find that suffering occurred. The Court reversed the court of appeals' judgment on the survival claim and rendered a take nothing judgment on that claim. The Court remanded the case to the district court for a new trial on the remaining claims.

OIL AND GAS

Release Provisions

Finley Res., Inc. v. Headington Royalty, Inc., ___ S.W.3d ___, 2023 WL ___ (Tex. May 12, 2023) [21-0509]

At issue was the scope of a release provision in an acreage-swap agreement between two oil-and-gas lessees. The parties disputed whether contract language releasing claims against a corporate entity's "predecessors" referred only to entity-related predecessors or more broadly encompassed an unnamed and unrelated entity as a "predecessor in title" under a different mineral lease for the same property.

Finley owned development rights for the Loving County Tract's shallow zones under the Arrington Lease. Headington owned the deep rights under the same lease. Petro secured the right to develop all depths on the property under a top lease (the WIRC Lease) that would become effective only when the Arrington Lease terminated. When questions arose about whether that event had occurred, Petro and Headington made separate demands to Finley for production information. Petro and Finley later settled the matter by entering an agreement in which (1) Finley assigned its Arrington Lease interests, if any, to Petro via a Quitclaim Assignment; (2) Finley certified there had been no production or well operations for at least eight months; and (3) Petro assumed all liabilities and obligations under the Arrington Lease and agreed to indemnify Finley for claims and damages arising from the same.

Contemporaneously, Headington negotiated with Petro to acquire the WIRC Lease in exchange for the deep rights in a different tract. Headington was informed about Finley's lease assignment, and not long after, Headington and Petro consummated an acreage-swap agreement that included mutual releases of liability limited to the Loving County Tract. The agreement did not name Finley or mention the Arrington Lease, and the releases expressly excluded, and assigned to Petro, liability for plugging and restoring Finley's wells. Petro, its affiliates, and their "predecessors" were otherwise released from all claims and liabilities "related in any way to the Loving County Tract." A few months later, Headington sued Finley, alleging it lost its mineral rights under the Arrington Lease due to nonproduction from Finley's wells and Finley's failure to provide well information warning Headington about the same. Finley and Petro (as an intervenor) asserted that Headington had released its claims against Finley as Petro's predecessor-in-title, predecessor-in-interest, and predecessor well operator.

The trial court rendered summary judgment for Finley and Petro that "predecessors" broadly includes a predecessor-in-title to the subject property interest. A divided court of appeals reversed, holding that "predecessors," as used in the release, unambiguously referred only to Petro's corporate predecessors.

The Supreme Court affirmed. The court first corrected the lower court's mischaracterization of releases as effecting a "forfeiture," explaining that releases involve a voluntary relinquishment, while forfeiture connotes a penalty. The Court then cited the rule that categorical releases are construed "narrowly" and will only release an unnamed party described with such particularity that "a stranger could readily identify the released party." Even so, the outcome did not turn on a narrow construction or the absence of "descriptive particularity" but, rather, on the plain meaning of the contract language construed in context. Although "predecessors" has a potentially broad meaning, the grammatical and syntactic structure in which it was used limited the term to corporate predecessors. The Court also explored the limits on "surrounding

circumstances" as an interpretive aid, noting that it was "not an invitation to backdoor parol evidence of subjective intent" and could not be used to impose a broader meaning than the text of the contract, construed as whole, allowed.

In a concurring opinion, Justice Boyd concluded that the meaning of "predecessors" was ambiguous and Finley's identity as a release party was therefore in doubt. Because precedent holds that a release is only effective as to unnamed parties described with sufficient particularity, the existence of an ambiguity made the release ineffective as to Finley.

ARBITRATION

Arbitrability

Lennar Homes of Tex. Land & Constr., Ltd. v. Whiteley, ___ S.W.3d ___, 2023 WL ___ (Tex. May 12, 2023) [21-0783]

The issue in this case is whether a subsequent purchaser of a home was required to arbitrate her claims against the builder for alleged construction defects.

Cody Isaacson purchased a house from its builder, Lennar Homes. The applicable purchase-and-sale agreement and the home's warranty, which the purchase-and-sale agreement incorporated by reference, each included substantially similar arbitration clauses. A similar arbitration provision was also attached and incorporated by reference in the special warranty deed that Lennar recorded in the county records. Isaacson later sold the home to Kara Whiteley.

Shortly after purchasing the home, Whiteley sued Lennar for negligent construction and breach of the implied warranties of good workmanship and habitability, alleging that construction defects caused a serious mold problem in the home. The trial court initially stayed the case for arbitration over Whiteley's objection. The arbitrator denied Whiteley all relief and awarded Lennar attorney's fees and costs on its counterclaim for breach of contract. Lennar and Whiteley then filed cross-motions to confirm and to vacate the award, disputing whether the subsequent purchaser was bound by the arbitration clauses. The trial court granted Whiteley's motion and vacated the award against Whiteley.

The court of appeals affirmed, holding that the doctrine of direct-benefits estoppel did not require Whiteley to arbitrate her common-law claims. The court of appeals also rejected Lennar's alternative arguments in support of arbitration, holding that (1) Whiteley did not impliedly assume the purchase-and-sale agreement when she purchased the home; (2) Whiteley was not a third-party beneficiary of the warranty, (3) the arbitration provision attached to the deed was not a covenant running with the land, and (4) Whiteley did not waive her objections to arbitration during the course of those proceedings.

The Supreme Court granted the petition for review and reversed the court of appeals' judgment. The Court held that the trial court had erred in granting Whiteley's motion to vacate and denying Lennar's motion to confirm because a warranty which the law implies from the existence of a written contract is as much a part of the writing as the express terms of the contract. Moreover, although liability for Whiteley's claims arises in part from the general law, nonliability arises from the terms of any express warranties. Accordingly, Whiteley's claims were premised on the existence of the purchase-and-sale agreement and, as such, she was bound to arbitrate under the doctrine of direct-benefits estoppel. The Court therefore reversed the court of appeals' judgment, rendered judgment confirming the award against Whiteley, and remanded

to the trial court for further proceedings with respect to Lennar's request to confirm the remainder of the arbitrators' award against two of its subcontractors.

REAL PROPERTY

Subrogation

PNC Mortg. v. Howard, ___ S.W.3d ___, 2023 WL ___ (Tex. May 12, 2023) [21-0941]

The issue in this case is when a refinance lender's claim to foreclose on a lien acquired through equitable subrogation accrues.

John and Amy Howard refinanced their mortgage with a bank that later assigned its note and deed of trust to PNC. Then the Howards stopped paying. PNC accelerated the note in 2009 but did not assert a claim for foreclosure until 2015. PNC conceded in the trial court that the four-year statute of limitations had expired on a claim to foreclose on its own lien. But PNC asserted that it still could foreclose on the original lender's lien, which PNC's predecessor had acquired through equitable subrogation in the refinance transaction and assigned to PNC. The trial court rendered judgment for the Howards, and multiple appellate proceedings followed. Ultimately, the court of appeals concluded that PNC's claim to foreclose through equitable subrogation accrued in 2009 when PNC's claim to foreclose on its own lien accrued and that the equitable-subrogation claim is therefore time-barred. The court of appeals thus affirmed the trial court's judgment for the Howards.

The Supreme Court affirmed. PNC argued that subrogation gives a refinance lender an additional claim for foreclosure and that limitations should not begin to run on this additional claim until the maturity date of the note held by the original lender. The Court rejected PNC's view as incompatible with the dual nature of the note and the deed of trust under Texas law. The Court explained that what subrogation transfers to a refinance lender is the original lender's security interest, which gives the refinance lender an alternative lien if its own lien is later determined to be invalid. Subrogation thus provides a refinance lender with an alternative remedy, not an additional claim. Like the original lender, a refinance lender has only one foreclosure claim, which accrues when the note made in the refinance transaction is accelerated.

PROCEDURE—PRETRIAL

Compulsory Joinder

In re Kappmeyer, ___ S.W.3d ___, 2023 WL ___ (Tex. May 12, 2023) [21-1063]

The principal issue in this case is whether individual property owners are required to join a subdivision's 700 other owners to secure a declaration against the homeowners association regarding enforcement of amended restrictive covenants. The Kappmeyers, who own property in the Key Allegro Island Estates subdivision, sued the Key Allegro Canal and Property Owners Association for a declaratory judgment that the amended restrictions, including their imposition of mandatory annual assessments, could not be enforced against the Kappmeyers because the amendments had not been approved by the required vote of the subdivision's owners; instead, the Association's board of directors had unilaterally executed the amended restrictions without a vote of the owners. The Association filed a motion to abate and compel joinder of the other owners. The trial court granted the motion and ordered the Kappmeyers to join and serve all 700 owners within ninety days on pain of dismissal. The court of appeals summarily denied mandamus relief.

The Supreme Court conditionally granted the Kappmeyers' petition for writ of

mandamus and ordered the trial court to vacate its order. Rule 39(a)(2)(ii) of the Texas Rules of Civil Procedure requires joinder of a person who "claims an interest relating to the subject of the action" if disposition in the person's absence subjects any of the current parties "to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest." The Court explained that, while the absent homeowners *could* claim an interest in enforcing the amended restrictions against the Kappmeyers, no evidence indicates that any of them has *actually* claimed such an interest as required to compel their joinder. The fact that the declaration sought could affect the absent homeowners does not in itself satisfy Rule 39's joinder prerequisites. Thus, the trial court clearly abused its discretion in granting the Association's motion.

The Court further held that the Kappmeyers lack an adequate remedy by appeal, explaining that the underlying order, which requires them to bear the significant expense of joining and serving several hundred parties, puts them in danger of succumbing to the burden of litigation and abandoning the suit. Further, such orders all but ensure that this kind of litigation will never be pursued.