



## Case Summaries April 26, 2024

Case summaries are prepared by court staff as a courtesy. They are not a substitute for the actual opinions.

### DECIDED CASES

#### DAMAGES

##### Settlement Credits

*Shumate v. Berry Contracting, L.P.*, \_\_\_ S.W.3d \_\_\_, 2024 WL \_\_\_ (Tex. Apr. 26, 2024) (per curiam) [[21-0955](#)]

The primary issue in this case is whether the defendant is entitled to a settlement credit under the one-satisfaction rule.

Berry Contracting d/b/a Bay, Ltd. obtained a jury verdict against Frank Thomas Shumate for conspiring with a Bay employee to use Bay's materials and labor for their personal benefit. Shumate sought a settlement credit based on an agreement between Bay and its employee that incorporated an agreed judgment in a separate lawsuit. The trial court refused to apply a credit, and the court of appeals affirmed, concluding that the agreement was not a settlement.

In a per curiam opinion, the Supreme Court granted Shumate's petition and reversed in light of its opinion in *Bay, Ltd v. Mulvey*, \_\_\_ S.W.3d \_\_\_ (Tex. Mar. 1, 2024), which construed the same agreement and concluded that it was a settlement. The Court held that Shumate was entitled to a settlement credit based on that agreement. The Court remanded to the trial court to apply the credit and consider the parties' arguments regarding what effect, if any, the credit would have on the relief sought by Bay.

#### ATTORNEYS

##### Admission Pro Hac Vice

*In re AutoZoners, LLC*, \_\_\_ S.W.3d \_\_\_, 2024 WL \_\_\_ (Tex. Apr. 26, 2024) (per curiam) [[22-0719](#)]

In this case, the Court addressed motions by out-of-state attorneys seeking to appear pro hac vice. Velasquez sued his employer, AutoZoners, for age discrimination. A Texas attorney, Koehler, filed an answer for AutoZoners. The signature block included the electronic signature of Koehler. Below this signature, the signature block included the names of two out-of-state attorneys, Riley and Kern, with statements that an "application for pro hac vice admission will be forthcoming." Shortly thereafter, Riley and Kern filed motions to appear pro hac vice. Velasquez objected to their admission.

At a hearing, Riley and Kern testified that they had reviewed the answer and

provided input but denied preparing and filing the answer. The trial court denied their motions to appear pro hac vice on the sole ground that Riley and Kern were “signing

documents before being admitted.” AutoZoners sought mandamus relief from the order denying the motions.

The court of appeals denied mandamus relief. The Supreme Court granted mandamus relief. The Court held that Riley and Kern had not signed any pleadings, and the trial court abused its discretion in denying the motions to appear pro hac vice on that ground. The Court also rejected alternative grounds for denial of the motions that were proposed by the court of appeals. The Court concluded that Riley and Kern had not engaged in the unauthorized practice of law and had not appeared on a frequent basis in Texas courts and that Kern’s conduct in a federal case was not grounds for denying her motion. The Court concluded that mandamus relief was available to remedy the trial court’s abuse of discretion.

## **PROCEDURE—PRETRIAL**

### **Summary Judgment**

*Gill v. Hill*, \_\_\_ S.W.3d \_\_\_, 2024 WL \_\_\_ (Tex. Apr. 26, 2024) [[22-0913](#)]

This case concerns the burden of proof at the summary-judgment stage when a plaintiff asserts that a void judgment prohibits limitations from barring its suit.

In 1999, several taxing entities obtained a judgment foreclosing on the properties of more than 250 defendants, including James Gill. The following month, David Hill purchased Gill’s former mineral interests, and Hill recorded the sheriff’s deed with the county. Twenty years later, Gill’s successors sued Hill to declare the foreclosure judgment and resulting deed void for lack of due process and to quiet title to the mineral interests in their names. They argued that the 1999 judgment was void because Gill was never properly served. Hill moved for summary judgment under a statute that requires suits against purchasers of property at a tax sale to be brought within one year after the deed is filed of record, and he attached a copy of the sheriff’s deed to his motion. The trial court granted summary judgment for Hill, and a divided court of appeals affirmed.

The Supreme Court held that the trial court correctly granted summary judgment. The Court concluded that Hill satisfied his summary-judgment burden by conclusively showing that the statute of limitations expired before the suit was filed. Gill’s successors conceded that limitations had expired but asserted that their suit was not barred because the foreclosure judgment and deed were void for lack of due process. Gill’s successors therefore had the burden to raise a genuine issue of material fact that the foreclosure judgment was void, and they failed to present any such evidence.

The Court concluded, however, that the case should be remanded to the trial court because the summary-judgment proceedings took place without the benefit of two recent decisions from the Court: *Draughon v. Johnson*, 631 S.W.3d 81 (Tex. 2021), which addressed the burdens of proof for summary judgments based on limitations, and *Mitchell v. MAP Resources, Inc.*, 649 S.W.3d 180 (Tex. 2022), which clarified the types of evidence that can be used to support a collateral attack on a judgment such as that asserted by Gill’s successors. The Court thus vacated the lower courts’ judgments and remanded to the trial court for further proceedings.

## **PROCEDURE—PRETRIAL**

### **Forum Non Conveniens**

*In re Weatherford Int'l, LLC*, \_\_\_ S.W.3d \_\_\_ (Tex. Apr. 26, 2024) (per curiam) [[22-1014](#)]

The issue is whether the trial court abused its discretion by denying a motion to dismiss for forum non conveniens.

Kevin Milne was working for a Houston-based affiliate of the Weatherford company when he accepted an international assignment to work for a Weatherford affiliate in Egypt. Pursuant to Weatherford Houston's policy, Milne was required to undergo medical exams before commencing the assignment and then every two years for its duration. Milne's first exam was facilitated by Weatherford Egypt and conducted at a medical center there, and it cleared him to visit offshore rigs in Egypt and Tunisia. Shortly thereafter, a second exam was conducted by a different organization in South Africa. The second exam provided the clearance required by Weatherford Houston. Unbeknownst to Milne, the first exam revealed a renal mass around his left kidney, and the report recommended further assessment. Milne first learned of the mass and follow-up recommendation a year later when he requested his medical records from Weatherford Egypt. By that point, the mass had already metastasized, and Milne passed away shortly after.

Milne's widow and children, all non-U.S. citizens, filed wrongful-death claims against Weatherford Houston in Texas. Weatherford Houston moved to dismiss them for forum non conveniens and identified Egypt as an appropriate forum. The trial court denied Weatherford Houston's motion, and the court of appeals denied mandamus relief.

Weatherford Houston filed a petition for writ of mandamus in the Supreme Court, which the Court granted. The Court concluded that all six statutory forum non conveniens factors favor dismissal and that Egypt is a more appropriate forum for the family's claims because, among other reasons, Weatherford Egypt's policies and practices governed the handling of Milne's medical information.

## **Constitutional Law**

### **Retroactivity**

*Hogan v. S. Methodist Univ.*, \_\_\_ S.W.3d \_\_\_, 2024 WL \_\_\_ (Tex. Apr. 26, 2024) [[23-0565](#)]

The issue in this certified question is whether the Pandemic Liability Protection Act—a statute shielding universities from damages for cancellation of in-person education due to the pandemic—is unconstitutionally retroactive as applied to a breach-of-contract claim.

Southern Methodist University ended in-person classes and services during the spring 2020 semester due to the pandemic. Graduate student Luke Hogan completed his degree online and graduated. He then brought a breach-of-contract claim against SMU for allegedly violating the Student Agreement, seeking to recover part of the tuition and fees he paid expecting in-person education. While the suit was pending, the Texas Legislature passed the PLPA, which shields educational institutions from monetary damages for changes to their operations due to the pandemic.

A federal district court dismissed Hogan's breach-of-contract claim. On appeal, the U.S. Court of Appeals for the Fifth Circuit certified to the Supreme Court the question whether the PLPA violates the retroactivity clause in Article I, Section 16 of the Texas Constitution as applied to Hogan's breach-of-contract claim.

The Supreme Court answered No. It reasoned that “retroactive” in the constitution has never been construed literally and is not subject to a bright-line test. Rather, the core of Article I, Section 16’s bar on retroactive laws is to protect “settled expectations.” Hogan did not have a reasonable and settled expectation to recover from SMU, mainly because the common-law impossibility doctrine would have barred the heart of his claim, regardless of the PLPA. Whatever remains of his claim after the impossibility doctrine did its work was novel, untested, and unsettled. The Student Agreement permitted SMU to modify its terms, and, at any rate, Hogan accepted SMU’s modified performance by finishing his degree online. Thus, the Court reasoned, whatever portion of Hogan’s claim the PLPA removed was too slight and tenuous to render the PLPA unconstitutionally retroactive.