Case Summaries
June 7, 2024

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DECIDED CASES

REAL PROPERTY

Nuisance

Huynh v. Blanchard, ___ S.W.3d ___, 2024 WL ___ (Tex. June 7, 2024) [21-0676]

The issue in this case is the availability and appropriate scope of permanent injunctive relief to redress a temporary nuisance.

The Huynhs set up and operated two farms for raising chickens on the same property and upwind of residential properties. Because the Huynhs' submissions to state regulators misrepresented the scale and geographic isolation of their proposed operations, the Huynhs avoided triggering more stringent regulatory requirements. The farms routinely housed twice the number of chickens that the TCEQ has deemed likely to create a persistent nuisance. Shortly after the farms began receiving chickens, the TCEQ started to receive complaints about offensive odors from nearby residents. The TCEQ investigated, issued multiple notices of violation to the farms, and required the farms to implement odor-control plans. Nonetheless, the farms continued to operate in largely the same manner and generate a similar volume of complaints.

Some of the farms' neighbors sued for nuisance, and, following a trial, the jury found that the farms caused nuisance-level odors of such a character that any anticipated future injury could not be estimated with reasonable certainty. The trial court rendered an agreed take-nothing judgment on damages and granted the neighbors a permanent injunction which required a complete shutdown of the two farms. The court of appeals affirmed the trial court's judgment.

The Supreme Court reversed in part and remanded for the trial court to modify the scope of injunctive relief. In an opinion by Justice Busby, the Court held that the jury's finding did not preclude the trial court from concluding the farms posed an imminent harm. The Court also held that monetary damages would not afford complete relief for the nuisance, the recurring nature of which would necessitate multiple suits, and was therefore an inadequate remedy. Finally, the Court held that the trial court abused its discretion in determining the scope of injunctive relief because the shutdown of the two farms imposed broader relief than was necessary to abate nuisance-level odors.

Justice Huddle filed an opinion concurring in the judgment. While the concurrence also would have held that the record supported the trial court's finding of imminent harm and inadequate remedy at law, it asserted that the Court did not give

proper deference to the jury's factual finding of a temporary nuisance and gave insufficient consideration to the Legislature's and TCEQ's regulatory authority in instructing the trial court to craft an injunction as narrowly as possible.

INTEREST

Simple or Compound

Samson Expl., LLC v. Bordages, ___ S.W.3d ___, 2024 WL ___ (Tex. June 7, 2024) [22-0215]

The issues in this case are collateral estoppel and whether a late-charge provision in a mineral lease calls for simple or compound interest.

Samson Exploration holds oil-and-gas leases on properties owned by the Bordages. Each lease has an identical late-charge provision that provides for interest on unpaid royalties at a rate of 18%. A late charge is "due and payable on the last day of each month" in which a royalty payment was not made. After the Bordages sued to recover unpaid royalties and interest, Samson paid the unpaid royalties and the amount of interest it believed to be due, which Samson calculated by applying 18% simple interest to the unpaid royalties.

The parties continued to dispute whether the late-charge provision provides for simple or compound interest. On cross-motions for summary judgment, the trial court determined that the provision calls for compound interest and ordered Samson to pay another $13 million in compounded late charges. The court of appeals affirmed.

The Supreme Court reversed and remanded for further proceedings. The Court addressed first the Bordages' argument that Samson is collaterally estopped from relitigating the interpretation of the late-charge provision. In another case involving a different landowner, the court of appeals concluded that an identical late-charge provision called for compound interest, and the Supreme Court denied Samson's petition for review. The Court held that nonmutual collateral estoppel will not prevent a party from relitigating an issue of law in the Supreme Court when the Court has not previously addressed the issue, and the Court deems the issue to be important to the jurisprudence of the State. Those conditions are present here.

The Court turned next to interpreting the late-charge provision. The Court surveyed the history of laws and legal opinions addressing simple versus compound interest. Those authorities demonstrate a modern-day general rule that compound interest will not be imposed absent clear and specific contractual or statutory authorization. Texas follows the general rule, the Court clarified. Because Texas law disfavors compound interest, an agreement for interest on unpaid amounts is an agreement for simple interest absent an express, clear, and specific provision for compound interest. The Court explained that temporal references such as "per annum", "annually", or "monthly", standing alone, are insufficient to sustain the assessment of compound interest. The court of appeals thus erred by construing the language making a late charge "due and payable on the last day of each month" as providing for compound interest, the Court held.

CONSTITUTIONAL LAW

Free Speech

Tex. Dep't of Ins. v. Stonewater Roofing, Ltd., ___ S.W.3d ___, 2024 WL ___ (Tex. June 7, 2024) [22-0427]

The issues in this challenge to Texas's regulatory scheme for public insurance adjusters are whether professional licensing and conflict-of-interest constraints (1) restrict speech protected by the First Amendment and (2) are void for vagueness under the Fourteenth Amendment.

Stonewater offers professional roofing services but is not a licensed public insurance adjuster. A dissatisfied commercial customer claimed that Stonewater was illegally advertising and engaging in insurance-adjusting services. To avoid statutory penalties, Stonewater sued the Texas Department of Insurance, seeking a declaration that two Insurance Code provisions violate the U.S. Constitution. The first requires a license to act or hold oneself out as a public insurance adjuster. The second prohibits a contractor, whether licensed as an adjuster or not, from (1) serving as both a contractor and adjuster on the same insurance claim and (2) advertising dual-capacity services. TDI filed a Rule 91a motion to dismiss, which the trial court granted but the court of appeals reversed.

The Supreme Court reversed and dismissed the suit, holding that Stonewater's pleadings fail to state cognizable First and Fourteenth Amendment claims. Properly construed, the challenged statutes are conventional licensing regulations triggered by the role a person plays in a nonexpressive commercial transaction, not what any person may or may not say. Neither the regulated relationship (acting "on behalf of" the insured customer) nor the defined profession's commercial objective ("settlement of an insurance claim") is speech. False advertising about prohibited activities is not protected speech, and any incidental speech constraints are insufficient to invite First Amendment scrutiny. Additionally, Stonewater's as-applied and facial vagueness claims are foreclosed because the company's alleged conduct clearly violates the statutes.

Justice Blacklock concurred, concluding that no speech is implicated because only representative, or agency, capacity is regulated.

Justice Young's concurrence emphasized two points. First, in his view, regulating agency capacity is nearly irrelevant to the First Amendment's applicability; what is determinative here is that the challenged statutes, at their core, regulate nonexpressive conduct. Second, extant First Amendment jurisprudence is poorly equipped to address legitimate public-licensing regulation that affects speech or expressive conduct more than incidentally.

TAXES

Property Tax

Bexar Appraisal Dist. v. Johnson, ___ S.W.3d ___, 2024 WL ___ (Tex. June 7, 2024) [22-0485]

The primary issue in this case is whether a residence homestead tax exemption for disabled veterans can be claimed by two disabled veterans who are married but live separately.

Yvondia and Gregory Johnson are both 100% disabled U.S. military veterans. Mr. Johnson applied for and received a residence homestead exemption under the Tax Code for the couple's jointly owned home in San Antonio. After the couple bought

another home in Converse, they separated. Ms. Johnson moved into the Converse home, and she applied for the same exemption for that home. Bexar Appraisal District refused her application. After her protest was denied, Ms. Johnson sued. The trial court granted summary judgment for the appraisal district. The court of appeals reversed, holding that the Tax Code did not preclude Ms. Johnson from receiving the exemption even though her husband received the same exemption on a different home.

The Supreme Court affirmed. In an opinion by Justice Huddle, the Court held that the statute's plain text entitles Ms. Johnson to the claimed exemption. As authorized by the Constitution, the Tax Code gives a disabled veteran with a service-connected disability rating of 100% an exemption from taxation for "the veteran's residence homestead." The appraisal district conceded that the Converse home qualifies as Ms. Johnson's residence homestead under the Tax Code's definition. The Court first rejected the appraisal district's argument that the word "homestead" has a historical meaning that imposes a one-per-family limit on the residence homestead exemption. Noting that the Constitution expressly authorizes the Legislature to define "residence homestead," the Court concluded that the disabled-veteran exemption does not incorporate the one-per-family limit found elsewhere. The Court next concluded that the Legislature deliberately placed the disabled-veteran exemption outside the reach of statutory limitations on other residence homestead exemptions. Finally, the Court noted that its holding would not expand the availability of other residence homestead exemptions.

Justice Young filed a dissenting opinion. He would have held that a one-per-couple limit inheres in the historical meaning of "homestead" and that nothing in the Constitution or the Tax Code displaces that meaning. He also would have held that allowing Ms. Johnson to receive the exemption is contrary to the rule that tax exemptions can only be sustained if authorized with unmistakable clarity and that any doubt about the scope of the text requires rejecting a claimed exemption.

TAXES

Tax Protests

J-W Power Co. v. Sterling Cnty. Appraisal Dist. and *J-W Power Co. v. Irion Cnty. Appraisal Dist.*, ___ S.W.3d ___, 2024 WL ___ (Tex. June 7, 2024) [22-0974, 22-0975]

The issue is whether an unsuccessful ad valorem tax protest under Section 41.41 of the Tax Code precludes a subsequent motion to correct the appraisal role under Section 25.25(c) with respect to the same property.

J-W Power Company leases natural gas compressors to neighboring counties. The compressors at issue here were maintained in Ector County and leased to customers in Sterling and Irion Counties. Between 2013 and 2016, the Sterling and Irion County Appraisal Districts appraised J-W Power's leased compressors as conventional business-personal property. This was despite the fact that the Legislature amended the Tax Code in 2011 so that leased heavy equipment like J-W Power's compressors would be taxed in the county where it is stored by the dealer when not in use.

J-W Power filed protests in Sterling and Irion Counties under Section 41.41 of the Tax Code, arguing that its compressors should be taxed elsewhere, but the protests were denied by the counties' appraisal review boards. J-W Power did not seek judicial review. After the Supreme Court clarified in 2018 that leased heavy equipment should be taxed in the county of origin, J-W Power filed motions under Section 25.25 to correct

the appraisal rolls for the relevant years. After the appraisal review boards again denied J-W Power's motions, J-W Power sought judicial review.

The trial court granted summary judgment for the districts. The court of appeals affirmed, holding that the denial of J-W Power's Section 41.41 protests precluded subsequent motions to correct because of the doctrine of res judicata.

The Supreme Court reversed. Without deciding whether the elements of res judicata had been met, the Court held that Section 25.25(l), which allows a Section 25.25(c) motion to be filed "regardless of whether" the property owner protested under Chapter 41, eliminates any preclusive effect a prior protest may have had. The Court remanded the case to the court of appeals for further proceedings.

PRODUCTS LIABILITY

Statute of Repose

Ford Motor Co. v. Parks, ___ S.W.3d ___, 2024 WL ___ (June 7, 2024) [23-0048]

This case addresses a defendant's burden of proof to obtain summary judgment under the statute of repose for a products-liability action. The statute requires a claimant to sue the manufacturer or seller "before the end of 15 years after the date of the sale of the product by the defendant."

Samuel Gama was injured when his 2001 Ford Explorer Sport rolled over on a highway. On May 17, 2016, Gama's wife, Jennifer Parks, brought products-liability claims against Ford. The trial court granted Ford's motion for summary judgment based on the statute of repose, but the court of appeals reversed. Ford's uncontroverted evidence established that Ford released and shipped the Explorer to a dealer in May 2000, more than 15 years before Parks' May 2016 suit. But the court of appeals accepted Parks' argument that Ford was required to conclusively prove the exact date that the dealer paid for the Explorer in full, and the court held Ford had not done so.

The Supreme Court reversed and rendered judgment for Ford. The Court explained that the premise underlying the court of appeals' analysis—that money must change hands before a sale is completed—is contrary to law. Chapter 2 of the Uniform Commercial Code sets a default rule that a sale is complete when the seller performs by physically delivering the goods, even if the buyer has not made full payment. This timing rule is consistent with blackletter contract law and the Court's caselaw, both of which recognize that a promise to pay is sufficient consideration for a sale. The court of appeals therefore erred by imposing on Ford the burden of proving the date that the dealership paid Ford for the Explorer. The Court emphasized that the way a buyer finances a purchase is irrelevant to whether a sale occurred.

The Court also clarified that a defendant need not prove an exact sales date to be entitled to judgment under the statute of repose. One purpose of a statute of repose is to relieve defendants of the burden of defending claims where evidence may be lost or destroyed due to the passage of time. It is enough for a defendant to prove that the sale, whatever the date, must have occurred outside the statutory period.

PROCEDURE—APPELLATE

Interlocutory Appeal Jurisdiction

Bienati v. Cloister Holdings, LLC, ___ S.W.3d ___, 2024 WL ___ (Tex. June 7, 2024) (per curiam) [23-0223]

The issue in this case is whether delay of a trial pending the appellate review of a temporary injunction deprives the court of appeals of jurisdiction to hear the appeal.

Cloister Holdings is part-owner of Holy Kombucha, Inc., a beverage company. Following a dispute about the company's management and finances, Cloister sued several members of Holy Kombucha's board of directors. The trial court granted Cloister's request for a temporary injunction, enjoining the board members from making certain amendments to the company's shareholders' agreement, and the board members appealed. While the appeal was pending, the trial court abated the underlying case, postponing trial to await the court of appeals' ruling on the temporary injunction.

The court of appeals then dismissed the appeal. It held that the trial court's delay of trial was an effort to obtain an advisory opinion from the court of appeals. It also held that such a delay violated Texas Rule of Civil Procedure 683, which provides that the appeal of a temporary injunction "shall constitute no cause for delay of the trial." The enjoined board members petitioned for review.

The Supreme Court reversed. In a per curiam opinion, it held that although parties ordinarily should proceed to trial pending an appeal from a temporary injunction, failure to do so does not deprive the court of appeals of jurisdiction. The Court explained that an interim appellate decision resolves a current controversy and governs the parties until final judgment; therefore, any decision is not advisory, even if it decides a question of law that is also presented on the merits of the dispute. The Court also held that Rule 683 is not a basis for dismissing the appeal. Parties have a statutory right to an interlocutory appeal from a temporary injunction, and the rule does not provide that the remedy for the failure to proceed to trial is dismissal.