Case Summaries
October 15, 2021

4 GRANTED CASES:

NEGLIGENCE
Premises Liability

Barfield v. SandRidge Energy, Inc., 2020 WL 1492592 (Tex. App.—El Paso 2020), *pet. granted*, __ Tex. Sup. Ct. J. __ (Oct. 15, 2021) [20-0369]

The issues in this case, which is governed by Chapter 95 of the Civil Practice & Remedies Code, are: (1) whether a fact issue exists about whether a landowner retained "some control" over an independent contractor's employee's work; (2) whether the common-law open-and-obvious defense applies to Chapter 95 and eliminates the landowner's duty to warn the independent contractor's employee of a danger, and if so, whether the independent contractor's employee raised a fact issue on the necessary-use exception to this defense; and (3) if the independent contractor's employee's knowledge of the dangerous condition did not obviate the landowner's obligation to issue an adequate warning, whether a fact issue exists about whether the landowner issued an adequate warning.

SandRidge Energy, Inc. hired an independent contractor, OTI Electrical Services, LLC, to build and repair electrical lines that provide power to oil and gas operations on its premises. OTI dispatched John Barfield, a lineman, to install electrical lines. At the time, the electrical poles were energized. Barfield claimed that SandRidge declined OTI's request to de-energize the poles, contrary to federal law and SandRidge's safety policies. As he worked at the top of a pole, Barfield lost balance and fell onto a powerline. Barfield suffered severe electrical shock; as a result, both of his arms required amputation.

Barfield sued under Chapter 95. Both SandRidge and its agent, Jose Saenz, filed traditional and no-evidence summary-judgment motions. The trial court granted both parties' motions without explanation. Barfield appealed, but later abandoned his claim against Saenz.

A divided court of appeals affirmed summary judgment as to Saenz, but reversed summary judgment for SandRidge and remanded that part. The court of appeals held fact issues existed about SandRidge's control over Barfield's work based on evidence that SandRidge (1) required Barfield to work close to energized lines and (2) refused OTI's request to de-energize the lines in contravention of SandRidge's safety guidelines. The court of appeals further held that the common-law open-and-obvious defense did not apply to Chapter 95, so SandRidge had a duty to warn regardless of Barfield's knowledge of the dangerous condition. Finally, the court of appeals held that a fact issue existed about whether SandRidge's conduct was sufficient to provide adequate warning based on evidence that SandRidge did not (1) hold required safety meetings with OTI or (2) otherwise warn OTI and Barfield of the dangerous energized powerlines.

SandRidge petitioned for review, arguing the court of appeals erred by holding SandRidge's alleged refusal to de-energize the powerlines constituted evidence that SandRidge exercised some control over Barfield's work. SandRidge also argued the court erred in not applying the common-law open-and-obvious defense to Chapter 95 and in holding evidence of Barfield's knowledge of the energized powerlines irrelevant to determining whether SandRidge failed to adequately warn Barfield of the danger.

The Court granted the petition for review and set the case for oral argument on January 11, 2021.

MUNICIPAL LAW
Drainage Fees

Perez v. Turner, 2019 WL 5243107 (Tex. App.—Houston [1st Dist.] 2019), *pet. granted*, 65 Tex. Sup. Ct. J. — (Oct. 15, 2021) [20-0382]

This is a suit challenging a City of Houston drainage fee ordinance. In 2010, voter-initiated Proposition I was submitted to and approved by the voters. The proposition amended the City Charter to create a drainage and street fund receiving revenue from various sources including fees imposed on real property owners. Elizabeth Perez (a municipal voter and taxpayer) and others filed an election contest. This case reached the Supreme Court, which held that the proposition language misleadingly failed to mention drainage charges that would be imposed on property owners. *Dacus v. Parker*, 466 S.W.3d 820, 822 (Tex. 2015). On remand, the trial court held that Proposition I's amendment to the City Charter was void; that ruling was upheld on appeal. Meanwhile, in 2011, the City Council passed its own ordinance known as the Drainage Fee Ordinance, creating a utility that was allowed to collect and spend drainage fees. Following the Supreme Court's *Dacus* decision, Perez filed the pending suit against the City, its mayor, and its director of public works (collectively the City). Perez claimed she had paid fees under the Drainage Fee

Ordinance. She alleged the Drainage Fee Ordinance was void and had been assessed and collected under a void charter amendment. The suit sought reimbursement of allegedly illegal drainage fees and prospective injunctive relief against such fees.

The City filed a plea to the jurisdiction/motion for summary judgment. The trial court dismissed the suit, concluding that (1) Perez's claims relating to the charter amendment at issue in *Dacus* were not ripe for adjudication at the time the pending suit was filed; (2) Perez lacked standing to challenge the collection of drainage fees under the Drainage Fee Ordinance; and (3) governmental immunity barred her refund claim. On appeal, the court of appeals affirmed the dismissal of Perez's claims. The court of appeals held that (1) challenges based on the invalidity of the charter amendment were not ripe when Perez filed suit; (2) the Drainage Fee Ordinance was not invalidated by the rulings in the *Dacus* litigation; and (3) the challenges to the Drainage Fee Ordinance "in its own right" were ripe, but Perez had not shown that the Ordinance is illegal, and Perez lacked standing to challenge the Ordinance because standing only extends to illegal expenditures. The court of appeals did not reach other issues including those related to governmental immunity.

Perez filed a petition for review. The petition argues that (1) Perez's challenges to the charter amendment were ripe; (2) she has taxpayer standing to challenge the Drainage Fee Ordinance; and (3) she stated a viable ultra vires claim against City officials that is not subject to governmental immunity.

The Court granted the petition for review and has scheduled oral argument for January 12, 2022.

REAL PROPERTY
Eminent Domain

Miles v. Tex. Cen. R.R. & Infrastructure, Inc., 2020 WL 2213962 (Tex. App.—Corpus Christi–Edinburg 2020), *pet. granted*, _____ (Oct. 15, 2021) [20-0393].

At issue in this case is whether Texas Central qualifies as a "railroad company" or "interurban electric railway," and whether an entity must show reasonable probability of project completion to invoke eminent domain authority under *Texas Rice Land Partners, LTD. v. Denbury Green Pipeline-Texas, LLC*, 363 S.W.3d 192, 198, 202 (Tex. 2012). Texas Central intends to build, maintain, and operate a high-speed passenger railway between Houston and Dallas. Miles challenged Texas Central's eminent domain authority after the company attempted to survey Miles' property along the proposed route of the railway. Texas Central counterclaimed, seeking a declaratory judgment that the company was "railroad company" and "interurban electric railway" under the Texas Transportation Code. The trial court granted summary judgment for Miles. The court of appeals reversed, concluding that

Texas Central was "operating a railroad" and thus, a "railroad company" under the statute. Additionally, the court of appeals concluded that, because Texas Central was chartered for the purpose required under the Transportation Code, the company also qualified as an "interurban electric railway."

In a petition for review, Miles argues that Texas Central is not operating a railroad because it has not taken crucial steps toward operation, such as laying track or running cars. Likewise, Miles says that Texas Central is not an "interurban electric railway" because the Legislature did not intend to include large high-speed railways within the statutory definition. Finally, Miles argues that the *Denbury* decision requires entities show a reasonable probability that a project will be completed before obtaining eminent domain power.

The Supreme Court granted the petition for review and oral argument has been set for January 11, 2022.

CONTRACTS
Releases and Reliance Disclaimers

Petrobras Am., Inc., et al. v. Astra Oil Trading NV, et al., 2020 WL 4873226 (Tex. App.—Houston [14th Dist.] 2020), *pet. granted*, — Tex. Sup. Ct. J. — (October 14, 2021) [20-0932].

The primary issues in this case are whether (1) a release in the parties' settlement agreement bars claims that arose during the negotiation of the agreement; (2) a disclaimer of reliance in the same agreement is enforceable and bars omission-based fraud claims; and (3) the settlement agreement revoked a previous agreement's arbitration provision, despite the previous agreement's delegation of questions of arbitrability to an arbitration tribunal.

In 2006, Astra and Petrobras entered into a Stock Purchase and Sale Agreement (the SPSA). The SPSA contained a provision requiring arbitration of any claims arising out of the SPSA. Numerous disputes arose between the parties.
In 2012 the parties signed a Settlement Agreement (the SA) to put the disputes to rest. The SA contained a broad release with an exception for certain claims relating the to breach, enforcement, or interpretation of the SA; a disclaimer of reliance providing that neither party is relying on any statement or representation of the other party; an exclusive forum selection clause; and a merger and integration clause providing that the SA represents the entire agreement and supersedes all prior agreements.

After signing the SA, Petrobras learned that Astra had allegedly bribed Petrobras officials to enter the 2006 SPSA and subsequently offered bribes to settle the disputes that arose. Petrobras sued corporate Astra entities as well as individual Astra

officers, alleging that the defendants committed breaches of fiduciary duty and fraud by making the bribes and then failing to disclose them while negotiating the 2012 SA. The Astra defendants filed declaratory-judgment counterclaims and moved for summary judgment, asserting the release and disclaimer of reliance as defenses. Relying on the arbitration provision of the SPSA, Petrobras also initiated an arbitration proceeding focused on the bribes paid in connection to the SPSA.

The trial court granted summary judgment for Astra. It also declared that the 2012 SA (1) is valid and enforceable; and (2) preludes the arbitration initiated by Petrobras. The trial court awarded attorney's fees to Astra.

The court of appeals reversed in part and remanded. The court reversed the dismissal of all the fiduciary duty claims, determining that some of the claims fall within the release's exception. The court of appeals also reversed the dismissal of Petrobras' fraud claims against individual Astra officers, reasoning that Astra had not sufficiently explained why the provisions of the 2012 SA barred claims against the individual officers in their individual capacity. The court of appeals affirmed the trial court's declaration that the 2012 SA precludes Petrobras' arbitration claims. Finally, the court of appeals vacated and remanded the trial court's award of attorney's fees.

Both parties filed petitions for review in the Supreme Court. Petrobras argues that (1) the reliance disclaimer should not bar any fraud claims because it is unenforceable and does not apply to claims of fraud by omission; and (2) whether the 2012 SA bars the arbitration demands is a question for the arbitration tribunal, not a court. Astra argues that: (1) Petrobras' claims relate to the negotiation of the 2012 SA rather than the breach, enforcement, or interpretation of that agreement and therefore do not fall within the release's exception; and (2) the release and reliance disclaimer—which Astra raised as grounds for summary judgment—apply to the individual defendants in their individual capacities. Astra also seeks a reinstatement of the attorney's fees award if the trial court judgment is reinstated.

The Supreme Court granted the petitions for review and set the case for oral argument on January 12, 2022.