



Case Summaries October 18, 2024

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GRANTED CASES

CONTRACTS

Interpretation

Am. Midstream (Ala. Intrastate), LLC v. Rainbow Energy Mktg. Corp., 667 S.W.3d 837 (Tex. App.—Houston [1st Dist.] 2023), *pet. granted* (Oct. 18, 2024) [[23-0384](#)]

This case involves contract interpretation and repudiation, lost-profits damages, and the election-of-remedies doctrine.

American Midstream owns the Magnolia natural gas pipeline. Rainbow, a natural gas trading company, contracted with American Midstream to transport natural gas on the Magnolia. The parties' contract required American Midstream to provide "firm" transportation and balancing services absent certain contractual exemptions. American Midstream limited its balancing services on various occasions and claims that it was excused from performing under the contract. The parties' representatives spoke on a conference call in which Rainbow claims American Midstream repudiated the contract. A month later, after continuing to ship gas under the contract, Rainbow terminated the contract, citing American Midstream's breach and repudiation.

Rainbow sued American Midstream for breach of contract and related claims. After a bench trial, the trial court found for Rainbow on all its claims, and Rainbow elected to recover on its breach-of-contract claim. The trial court awarded Rainbow more than \$6 million in lost-profit damages. In a divided opinion, the court of appeals affirmed. It held that the trial court properly interpreted the contract and sufficient evidence supports the trial court's findings of breach and its award of lost profits.

American Midstream petitioned the Supreme Court for review. It argues that (1) the trial court's erroneous interpretation of the contract led it to find that American Midstream breached when the contract excused its performance; (2) the trial court erred in awarding Rainbow speculative lost profits; and (3) the court of appeals erred in creating an exception to the election-of-remedies doctrine for contracts "performed as discrete transactions conducted on an on-going basis." The Court granted the petition.

CORPORATIONS

Nonprofit Corporations

S. Cent. Jurisdictional Conf. of the United Methodist Church v. S. Methodist Univ., 674 S.W.3d 334 (Tex. App.—Dallas 2023), *pet. granted* (Oct. 18, 2024) [[23-0703](#)]

At issue in this case is whether a nonmember nonprofit corporation may amend its articles of incorporation when those articles provided that no amendments shall be made without the prior approval of a religious conference.

Southern Methodist University is a nonprofit corporation founded by a predecessor-in-interest to the South Central Jurisdictional Conference of the United Methodist Church. Since its founding, the University's articles of incorporation stated that it was to be owned, maintained, and controlled by the Conference and that the Conference possessed the right to approve all amendments. In 2019, without the Conference's approval, the University's board of trustees amended its articles to remove these provisions and filed a sworn certificate of amendment with the secretary of state. The Conference sued the University, seeking declaratory relief and asserting breach of contract, promissory estoppel, breach of fiduciary duty, and a statutory claim alleging that the University filed a materially false amendment certificate.

The trial court dismissed some of the Conference's claims before granting summary judgment for the University on the remaining claims. The court of appeals affirmed in part and reversed in part, holding that the Conference was authorized to challenge the University's amendments under the Business Organizations Code, that both statements of opinion and fact could be actionable as materially false filings, and that plaintiffs can recover damages for nonpecuniary losses caused by those filings.

The University petitioned for review. It argues that the Conference is barred from bringing its breach-of-contract claim, that the University's articles cannot constitute a contract with the Conference, that the complained-of statements in the University's amendment certificate were good-faith legal opinions that cannot be materially false, and that the Conference could not have suffered the damages requisite for its statutory claim. The Supreme Court granted the petition.

JURISDICTION

Political Questions

Elliott v. City of College Station, 674 S.W.3d 653 (Tex. App.—Texarkana 2023), *pet. granted* (October 18, 2024) [[23-0767](#)]

At issue is whether claims under the Texas Constitution's "republican form of government" clause present a nonjusticiable political question.

Shana Elliott and Lawrence Kalke live in the City of College Station's extraterritorial jurisdiction. They cannot vote in City elections, but City codes regulate their property. Elliott and Kalke seek to place portable signs on their property and build a driveway for a mother-in-law suite. City ordinances prohibit portable signs and require a permit to build a driveway.

Elliott and Kalke sued the City and its officials, alleging that the ordinances facially violate the Texas Bill of Rights' "republican form of government" clause by regulating them despite their inability to vote in City elections. The City argued that the claims are not ripe because the ordinances have not been enforced against the plaintiffs. The City also argued that claims under the "republican form of government" clause present a nonjusticiable political question. The trial court agreed and granted the City's plea to the jurisdiction. The court of appeals affirmed.

The plaintiffs filed a petition for review. They argue that they have standing and that their claims are ripe and justiciable. The Supreme Court granted the petition.