

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

Adrienne Marco v. Kurt Kirkman

No. 03-24-00133-CV · No. No. 03-24-00133-CV · Decided June 26, 2026

SUMMARY

The Texas Court of Appeals, Third District, reviews a judgment holding landlord Adrienne Marco liable for bad-faith retention of former tenant Kurt Kirkman’s security deposit under Texas Property Code section 92.109. The court affirms the judgment in part, modifies the award of appellate attorney’s fees, and reverses and remands the portion concerning attorney’s fees for non-attorney staff. The appeal addresses the statutory bad-faith presumption, sufficiency of the evidence regarding property-damage deductions, and attorney’s fees.

CASE DETAILS

COURT	Texas Court of Appeals, Third District, at Austin
WRITING FOR THE COURT	Gisela D. Triana, Justice; Chief Justice Byrne; Justice Gisela D. Triana; Justice Kelly
JURISDICTION	Texas Court of Appeals, Third District, at Austin
DECIDED	June 26, 2026
DOCKET	No. 03-24-00133-CV
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Landlord appealed from a county court at law judgment entered after a bench trial finding that she had acted in bad faith by retaining a former tenant's security deposit and awarding statutory damages and attorney's fees.
STANDARD OF REVIEW	The court reviewed conclusions of law de novo and findings of fact for legal and factual sufficiency. It reviewed the attorney's-fee award for abuse of discretion, while ensuring that sufficient evidence supported the award.
PRECEDENTIAL VALUE	Published memorandum opinion
PARTIES	Adrienne Marco v. Kurt Kirkman

TOPICS

- landlord tenant
- real estate
- remedies
- appellate procedure
- standard of review

PRACTICE AREAS

landlord-tenant law

real estate law

contract law

remedies

appellate procedure

QUESTIONS PRESENTED

1. Whether a tenant must establish the statutory presumption of bad faith under Texas Property Code section 92.109(d) to prevail on a bad-faith-retention claim under section 92.109(a).
2. Whether the evidence was legally and factually sufficient to support the finding that Marco acted in bad faith.
3. Whether the evidence was legally and factually sufficient to support the finding that Marco failed to prove that retention of the security deposit was reasonable.
4. Whether the evidence was legally sufficient to support the award of attorney's fees for non-attorney staff.
5. Whether the evidence supported the award of appellate attorney's fees and whether that award had to be expressly conditioned on Kirkman's success on appeal.

HOLDINGS

1. A tenant may prevail on a claim for bad-faith retention of a security deposit under Texas Property Code section 92.109(a) without establishing the statutory presumption in section 92.109(d). The presumption is one means of proving bad faith, but it is not the exclusive means.
2. The evidence was legally and factually sufficient to support the finding that Marco acted in bad faith by intending to deprive Kirkman of a lawfully due refund.
3. The evidence was legally and factually sufficient to support the finding that Marco failed to prove that retention of any portion of the security deposit was reasonable.
4. The evidence was legally insufficient to support the award of attorney's fees for non-attorney staff because Kirkman presented no evidence of the staff members' qualifications or that they performed substantive legal work under an attorney's direction and supervision.
5. The evidence sufficiently supported the amount of appellate attorney's fees, but the award had to be expressly conditioned on Kirkman's ultimate success on appeal.

KEY QUOTATIONS

"Thus, although evidence giving rise to the statutory presumption is one way that bad faith may be established, it is not the only way." (22)

"Thus, when a trial court finds that a landlord acted with intent to deprive the tenant of a refund that is lawfully due, as the trial court did here, that finding is sufficient to support its determination that the landlord acted in bad faith under Subsection 92.109(a)." (23)

"Consequently, we must conclude that the evidence is legally insufficient to support that portion of the attorney's fees award and that the trial court abused its discretion by awarding it." (31)

"Because an unconditional award of appellate attorney's fees is improper, the trial court must make the award of attorney's fees to an appellee contingent upon the appellant's unsuccessful appeal." (32)

FACTUAL BACKGROUND

Kurt Kirkman leased a residential house from Adrienne Marco under a lease requiring a \$2,400 security deposit and a \$350 pet deposit. After Kirkman surrendered the property in 2022, Marco sent an itemized list deducting \$7,925 for alleged repairs and charges, including substantial amounts for flooring, painting, blinds, and other work, but did not initially provide supporting receipts or documentation. Kirkman disputed the deductions, and after a bench trial the court found that Marco intended to deprive him of a lawfully due refund and had not shown that retaining any portion of the deposit was reasonable.

PROCEDURAL HISTORY

Kirkman sued Marco under Texas Property Code section 92.109 for bad-faith retention of a residential security deposit. Marco filed a general denial, counterclaimed for breach of contract, and unsuccessfully moved for no-evidence and traditional summary judgment. After a bench trial, the trial court awarded Kirkman \$8,350 in statutory damages, prejudgment interest, and attorney's fees and rendered a take-nothing judgment on Marco's counterclaim. The court of appeals modified the award of appellate attorney's fees to make it conditional, affirmed the judgment as modified in part, and reversed and remanded the portion awarding fees for non-attorney staff.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for a new hearing limited to attorney's fees for non-attorney staff. The appellate attorney's-fee award must be expressly conditioned on Kirkman's ultimate success on appeal.

CASES CITED

- Hegar v. American Multi-Cinema, Inc., 605 S.W.3d 35, 40 (Tex. 2020)
- Texas Outfitters Ltd. v. Nicholson, 572 S.W.3d 647, 653 (Tex. 2019)
- City of Keller v. Wilson, 168 S.W.3d 802, 822, 827 (Tex. 2005)
- Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986)
- Golden Eagle Archery, Inc. v. Jackson, 116 S.W.3d 757, 761 (Tex. 2003)
- Pulley v. Milberger, 198 S.W.3d 418, 428-29, 432 (Tex. App.—Dallas 2006, pet. denied)
- Schneider v. Whatley, 535 S.W.3d 236, 241-42 (Tex. App.—El Paso 2017, no pet.)
- Johnson v. Waters at Elm Creek, L.L.C., 416 S.W.3d 42, 47 (Tex. App.—San Antonio 2013, pet. denied)
- Southmark Mgmt. Corp. v. Vick, 692 S.W.2d 157, 160 (Tex. App.—Houston [1st Dist.] 1985, writ ref'd n.r.e.)
- Miro v. Garner, 52 S.W.3d 407, 411 (Tex. App.—Corpus Christi-Edinburg 2001, pet. denied)
- Grace v. Thompson, No. 03-12-00729-CV, 2014 WL 3055958, at *3-5 (Tex. App.—Austin July 3, 2014, pet. denied) (mem. op.)

- Hamaker v. Newman, No. 02-19-00405-CV, 2022 WL 714554, at *15 (Tex. App.—Fort Worth Mar. 10, 2022, no pet.) (mem. op.)
- A-TX Prop. Mgmt. v. Rodriguez, No. 03-11-00655-CV, 2013 WL 5853670, at *3 (Tex. App.—Austin Oct. 17, 2013, no pet.) (mem. op.)
- Wilson v. O'Connor, 555 S.W.2d 776, 780 (Tex. App.—Dallas 1977, writ dismissed)
- Shields Ltd. P'ship v. Bradberry, 526 S.W.3d 471, 480 (Tex. 2017)
- Lion Copolymer Holdings, LLC v. Lion Polymers, LLC, 614 S.W.3d 729, 733 (Tex. 2020)
- Dow Chem. Co. v. Francis, 46 S.W.3d 237, 242 (Tex. 2001) (per curiam)
- Travelers Indem. Co. of Conn. v. Mayfield, 923 S.W.2d 590, 593 (Tex. 1996) (orig. proceeding)
- Fort Worth Transp. Auth. v. Rodriguez, 547 S.W.3d 830, 850 (Tex. 2018)
- In re State Farm Mut. Auto. Ins., 629 S.W.3d 866, 872 (Tex. 2021) (orig. proceeding)
- In re Nationwide Ins. Co. of Am., 494 S.W.3d 708, 712 (Tex. 2016) (orig. proceeding)
- Yowell v. Granite Operating Co., 620 S.W.3d 335, 354-55 (Tex. 2021)
- Rohrmoos Venture v. UTSW DVA Healthcare, LLP, 578 S.W.3d 469, 505 (Tex. 2019)
- El Apple I, Ltd. v. Olivas, 370 S.W.3d 757, 763-64 (Tex. 2012)
- All Seasons Window & Door Mfg., Inc. v. Red Dot Corp., 181 S.W.3d 490, 504 (Tex. App.—Texarkana 2005, no pet.)
- Ventling v. Johnson, 466 S.W.3d 143, 156 (Tex. 2015)
- Houston Livestock Show & Rodeo, Inc. v. Hamrick, 125 S.W.3d 555, 586 (Tex. App.—Austin 2003, no pet.)