

SEVENTH COURT OF APPEALS OF TEXAS AT AMARILLO

**Robbyn Elizabeth Coy Arriola, Joey Arriola, Jack Henry Lawson,
and Raven Jonae Pritchett v. Tommy Kutscherousky, Sr., d/b/a
Kutscherousky Farms**

Arriola v. Kutscherousky · No. 07-15-00004-CV · Decided May 1, 2015

SUMMARY

This document is an appellants' brief in a Texas intermediate appellate court appeal concerning a dispute over a farm lease. The appellants challenge a money judgment arising from alleged breaches involving hunting or trapping feral hogs, nonpayment of rent, fence maintenance, lease termination, and the authority or ratification of co-owners. They also raise issues concerning the jury verdict, the parol evidence rule, and the sufficiency of the evidence.

CASE DETAILS

COURT	Seventh Court of Appeals of Texas at Amarillo
JURISDICTION	Texas
DECIDED	May 1, 2015
DOCKET	07-15-00004-CV
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from a jury verdict and October 31, 2014 final judgment awarding the Kutscherouskys damages and attorney's fees in a dispute concerning a farm lease.
STANDARD OF REVIEW	The brief invokes legal- and factual-sufficiency review, de novo review of unambiguous contract construction, abuse-of-discretion review for jury instructions, and review of agency and ratification findings under the applicable sufficiency standards.
PRECEDENTIAL VALUE	none shown; source is an appellate brief rather than a court opinion
PARTIES	Robbyn Elizabeth Coy Arriola, Joey Arriola, Jack Henry Lawson, Raven Jonae Pritchett v. Tommy Kutscherousky, Sr., Tommy Kutscherousky, Jr., Eric Kutscherousky, Kutscherousky Farms

TOPICS

breach of contract

landlord tenant

parol evidence rule

appellate procedure

evidence

PRACTICE AREAS

contract law real property appellate procedure evidence

QUESTIONS PRESENTED

1. Whether the jury's verdict supported the judgment when it did not determine essential lease terms.
2. Whether Joey or Robbyn Arriola had actual or apparent authority to bind co-tenants Jack Lawson and Raven Pritchett to the lease.
3. Whether Jack Lawson and Raven Pritchett ratified the lease.
4. Whether the July 6, 2011 written lease was the parties' integrated agreement and whether the parol evidence rule barred reliance on the May 26, 2011 document and alleged prior oral agreement.
5. Whether trapping feral hogs constituted hunting prohibited by the lease.
6. Whether the lessees breached the lease by failing to pay rent and maintain the fence line.
7. Whether the appellants breached the lease by terminating it.

KEY QUOTATIONS

"Texas has defined the term "hunt" as "capture, trap, take, or kill, or an attempt to capture, trap, take, or kill."" (at 32)

FACTUAL BACKGROUND

The dispute concerns a 205-acre family farm leased to the Kutscherouskys for farming. The July 6, 2011 written lease provided for rent, fence maintenance, a five-year term, and no hunting of any kind; the brief alleges that the lessees trapped feral hogs, failed to pay 2011 rent, and failed to maintain the fences. The lessors later issued notices terminating the lease and vacating the property. The jury returned findings supporting a money judgment for the lessees, which the four appellants challenged.

PROCEDURAL HISTORY

The case was tried to a jury on October 13-15, 2014. The jury found for the Kutscherouskys on submitted questions concerning formation, authority, ratification, lease terms, material breach, termination, lease duration, damages, and attorney's fees. On October 31, 2014, the trial court entered judgment for \$262,113.54, plus appellate attorney's fees and interest. The source is the appellants' brief requesting reversal and rendition or, alternatively, a new trial; it does not contain an appellate disposition.

DISPOSITION

other

CASES CITED

- Allegiance Hillview, L.P. v. Range Texas Production LLC, 347 S.W.3d 855 (Tex. App.—Fort Worth 2011, no pet.)

- Bockelmann v. Marynick, 788 S.W.2d 569 (Tex. 1990)
- Cameron County v. Velasquez, 668 S.W.2d 776 (Tex. App.—Corpus Christi 1984, writ ref'd n.r.e.)
- Cent. Ready Mix Concrete Co. v. Islas, 228 S.W.3d 649 (Tex. 2007)
- Chastain v. Cooper & Reed, 152 S.W.2d 422 (Tex. 1953)
- City of Keller v. Wilson, 168 S.W.3d 802 (Tex. 2005)
- City of The Colony v. N. Tex. Mun. Water Dist., 272 S.W.3d 699 (Tex. App.—Fort Worth 2008, pet. denied)
- DeClaire v. G & B McIntosh Family Limited Partnership, 260 S.W.3d 34 (Tex. App.—Houston [1st Dist.] 2008, no pet.)
- Dow Chemicals v. Francis, 46 S.W.3d 237 (Tex. 2001)
- Dyer v. Cotton, 333 S.W.3d 703 (Tex. App.—Houston [1st Dist.] 2010, no pet.)
- Edascio, L.L.C. v. NextiraOne L.L.C., 264 S.W.3d 786 (Tex. App.—Houston [1st Dist.] 2008, pet. filed)
- First Valley Bank of Los Fresnos v. Martin, 144 S.W.3d 466 (Tex. 2004)
- Gaines v. Kelly, 235 S.W.3d 179 (Tex. 2007)
- Garner v. Fidelity Bank, N.A., 244 S.W.3d 855 (Tex. App.—Dallas 2008, no pet.)
- Gary E. Patterson & Associates, P.C. v. Holub, 264 S.W.3d 180 (Tex. App.—Houston [1st Dist.] 2008, pet. denied)
- Hancock v. Variyam, 2013 WL 2150468 (Tex. 2013)
- Hester Int'l Corp. v. Fed. Republic of Nig., 879 F.2d 170 (5th Cir. 1989)
- Horlock v. Horlock, 614 S.W.2d 478 (Tex. Civ. App.—Houston [14th Dist.] 1981, writ ref'd n.r.e.)
- In re Green Tree Servicing LLC, 275 S.W.3d 592 (Tex. App.—Texarkana 2008, no pet.)
- In re Lyon Financial Services, Inc., 257 S.W.3d 228 (Tex. 2008)
- Kindred v. Con/Chem, Inc., 650 S.W.2d 61 (Tex. 1983)
- Lenape Resources Corp. v. Tennessee Gas Pipeline Co., 925 S.W.2d 565 (Tex. 1996)
- Magee v. Hambleton, No. 2-08-441-CV, 2009 Tex. App. LEXIS 6778 (Tex. App.—Fort Worth Aug. 25, 2009, pet. denied)
- Minyard Food Stores v. Goodman, 80 S.W.3d 573 (Tex. 2002)
- Pinehurst v. Spooner Addition Water Co., 432 S.W.2d 515 (Tex. 1968)
- Plas-Tex, Inc. v. U.S. Steel Corp., 772 S.W.2d 442 (Tex. 1989)
- Puckett v. U.S. Fire Ins. Co., 678 S.W.2d 936 (Tex. 1984)
- Rao v. Rodriguez, 923 S.W.2d 176 (Tex. App.—Beaumont 1996, no pet.)
- Rourke v. Garza, 530 S.W.2d 794 (Tex. 1975)
- Shrieve v. Texas Parks & Wildlife Department, No. 03-04-00640-CV, 2005 Tex. App. LEXIS 3406 (Tex. App.—Austin May 5, 2005, no pet.)
- Star Enterprise v. Marze, 61 S.W.3d 449 (Tex. App.—San Antonio 2001, pet. denied)
- Sterner v. Marathon Oil Co., 767 S.W.2d 686 (Tex. 1989)
- T.O. Stanley Boot Co. v. Bank of El Paso, 847 S.W.2d 218 (Tex. 1992)
- Tawes v. Barnes, 340 S.W.3d 419 (Tex. 2011)

- Thota v. Young, 366 S.W.3d 678 (Tex. 2012)
- Union Pacific Railroad Co. v. Williams, 85 S.W.3d 162 (Tex. 2002)
- Valence Operating Co. v. Dorsett, 164 S.W.3d 656 (Tex. 2005)
- Verizon Corporate Services Corp. v. Kan-Pak Systems, Inc., 290 S.W.3d 899 (Tex. App.—Amarillo 2009, no pet.)
- Willson v. Superior Oil Co., 274 S.W.2d 947 (Tex. App.—Texarkana 1954, no writ)
- Winegar v. Martin, 304 S.W.3d 661 (Tex. App.—Fort Worth 2010, no pet.)

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