COURT OF APPEALS OF TEXAS, THIRD DISTRICT, AT AUSTIN

American Bank of Commerce v. Danny S. Davis

American Bank of Commerce v. Davis, No. 03-07-00264-CV (Tex. App.—Austin Dec. 31, 2008) · No. No. 03-07-00264-CV · Decided December 31, 2008

SUMMARY

The Texas Court of Appeals, Third District, affirmed a judgment holding that a mutual release agreement encompassed a $500,000 promissory note. The court concluded that legally and factually sufficient evidence supported the jury's finding that the parties intended the release to include the note, and it rejected the Bank's arguments concerning differing contractual meanings and lack of a meeting of the minds. The court also declined to disturb the award of attorney's fees.

CASE DETAILS

COURT	Court of Appeals of Texas, Third District, at Austin
WRITING FOR THE COURT	G. Alan Waldrop, Justice; Chief Justice Law; Justice Pemberton; Justice Waldrop
JURISDICTION	Texas
DECIDED	December 31, 2008
DOCKET	No. 03-07-00264-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a jury verdict and district-court judgment determining that a mutual release agreement included a $500,000 promissory note and awarding Davis costs and attorney's fees.
STANDARD OF REVIEW	For legal sufficiency, the court viewed the evidence in the light most favorable to the jury's finding and upheld the finding if more than a scintilla of evidence supported it. For factual sufficiency, the court considered and weighed all of the evidence and would reverse only if the finding was so contrary to the great weight and preponderance of the evidence as to be clearly wrong and unjust. The court reviewed the refusal to submit an additional jury question for reversible error under Texas Rule of Civil Procedure 278 and reviewed preservation of the attorney's-fee complaint under Texas Rule of Appellate Procedure 33.1.

PRECEDENTIAL VALUE	Memorandum opinion; precedential status is not otherwise stated in the opinion text.
PARTIES	American Bank of Commerce v. Danny S. Davis

TOPICS

contract interpretation · contracts · mutual assent · standard of review · appellate procedure

PRACTICE AREAS

contract law · commercial litigation · appellate procedure

QUESTIONS PRESENTED

1. Whether legally and factually sufficient evidence supported the jury's finding that the parties intended the mutual release to include the $500,000 promissory note.
2. Whether the Bank's asserted intent not to release the note, combined with Davis's alleged knowledge and silence, required application of Restatement (Second) of Contracts § 201(2) to reverse the verdict.
3. Whether the evidence conclusively established that the parties lacked a meeting of the minds concerning whether the release covered the $500,000 note.
4. Whether the trial court reversibly erred by refusing to submit a separate jury question on whether the parties reached a mutual agreement concerning the purpose and effect of the release.
5. Whether the Bank could challenge the attorney's-fee award on appeal when it had not objected to or challenged the trial court's finding that the award was agreed.

HOLDINGS

1. The evidence was legally and factually sufficient to support the jury's finding that the parties intended the Mutual Release Agreement to include the $500,000 promissory note.
2. Restatement (Second) of Contracts § 201(2) did not require reversal because the evidence did not conclusively establish both that the Bank did not intend to release the note and that Davis knew of that intent and remained silent.
3. The evidence did not conclusively establish that the Bank and Davis lacked a meeting of the minds concerning whether the release included the $500,000 note.
4. The trial court did not reversibly err by refusing to submit the Bank's separate jury question on meeting of the minds because the submitted question addressed the controlling issue and the proposed question concerned another phase or shade of the same issue.
5. The Bank could not overturn the attorney's-fee award on appeal because it did not challenge the trial court's finding that the award was agreed.

KEY QUOTATIONS

> *"Therefore, we conclude that the evidence is legally and factually sufficient to support the jury's finding that the parties intended the Release to include the $500,000 promissory note within its scope."* (4)

> *"The Bank cannot, on appeal, seek to overturn an award that the trial court expressly found to be agreed where there is no objection or challenge to the finding of an agreement."* (6)

FACTUAL BACKGROUND

American Bank of Commerce and Danny S. Davis were involved in several loans connected with the failed El Dorado Bar and Grill restaurant venture. After foreclosure and sale of the restaurant property, the parties executed a Mutual Release Agreement on September 5, 2003. The release expressly referred to certain notes and broadly discharged all liabilities and claims, but its recitals did not specifically identify Davis's $500,000 promissory note. Davis testified that he understood the release to include that note, while the Bank presented evidence that it intended to retain the note.

PROCEDURAL HISTORY

The district court initially granted summary judgment for the Bank, concluding as a matter of law that the $500,000 note was outside the release. On Davis's prior appeal, the court reversed, holding that the release was ambiguous and remanding for a determination of the parties' intent. After a jury found that the parties intended the release to include the note, the district court entered judgment for Davis on February 22, 2007. The Bank appealed, challenging the sufficiency of the evidence, the absence of a meeting of the minds, the jury submission, and the attorney's-fee award.

DISPOSITION

affirmed

CASES CITED

- Memorial Med. Ctr. v. Keszler, 943 S.W.2d 433, 434-35 (Tex. 1997)
- Davis v. American Bank of Commerce, No. 03-04-00482-CV, 2005 Tex. App. LEXIS 4902 (Tex. App.—Austin June 23, 2005, pet. denied) (mem. op.)
- Haggar Clothing Co. v. Hernandez, 164 S.W.3d 386, 388 (Tex. 2005)
- Dow Chem. Co. v. Francis, 46 S.W.3d 237, 242 (Tex. 2001)
- City of Keller v. Wilson, 168 S.W.3d 802, 819 (Tex. 2005)
- Angelou v. African Overseas Union, 33 S.W.3d 269, 278 (Tex. App.—Houston [14th Dist.] 2000, no pet.)