

FOURTEENTH COURT OF APPEALS OF TEXAS

John Emmanuel d/b/a First Americo Auto Sale & Repair v. Abigail Izoukumor

Emmanuel · No. Nos. 14-19-00361-CV & 14-19-00362-CV · Decided October 15, 2020

SUMMARY

The Texas Fourteenth Court of Appeals affirmed two trial-court judgments arising from a dispute over an \$1,800 deposit for a Honda Accord and related vehicle-repair claims. The court held that the appellant failed to preserve his complaint concerning notice of summary judgment, failed to challenge all grounds supporting dismissal of his separate lawsuit, and could not invoke double jeopardy to halt the civil proceedings because double jeopardy applies only to criminal cases.

CASE DETAILS

COURT	Fourteenth Court of Appeals of Texas
WRITING FOR THE COURT	Charles A. Spain; Chief Justice Frost; Justice Jewell; Justice Spain
JURISDICTION	Texas
DECIDED	October 15, 2020
DOCKET	Nos. 14-19-00361-CV & 14-19-00362-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Consolidated appeals from a final judgment granting the appellee partial summary judgment and a separate final judgment dismissing the appellant's claims under Texas Rule of Civil Procedure 91a.
STANDARD OF REVIEW	The court applied preservation-of-error principles to the notice complaint and reviewed the Rule 91a dismissal by requiring the appellant to challenge every ground on which the trial court could have relied. The opinion also stated that denial of relief on the notice issue would be reviewed for abuse of discretion to the extent the complaint was construed as one of no notice.
PRECEDENTIAL VALUE	published and precedential
PARTIES	John Emmanuel d/b/a First Americo Auto Sale & Repair v. Abigail Izoukumor

TOPICS

summary judgment

preservation of error

motions to dismiss

consumer protection

appellate procedure

PRACTICE AREAS

civil procedure

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QUESTIONS PRESENTED

1. Whether Emmanuel preserved a complaint that he lacked timely notice of Izoukumor's summary-judgment motion or hearing.
2. Whether the monetary awards for DTPA damages and attorney's fees violated the Eighth and Fourteenth Amendments or the Texas Constitution.
3. Whether the trial court erred by dismissing Emmanuel's claims under Texas Rule of Civil Procedure 91a when he failed to challenge every ground supporting dismissal.
4. Whether the civil proceedings should have been abated or suspended until related criminal theft charges were resolved based on double jeopardy.

HOLDINGS

1. Emmanuel failed to preserve a complaint concerning timely notice of the summary-judgment motion or hearing because he did not make the required written, supported objection and did not obtain a ruling; participation in the hearing and a post-hearing motion did not preserve the complaint.
2. Emmanuel presented nothing for appellate review because he did not raise his constitutional challenge to the damages and attorney's-fee awards in the trial court and obtain a ruling.
3. The dismissal of Emmanuel's claims was affirmed because he did not challenge every ground on which the trial court could have granted Izoukumor's Rule 91a motion.
4. Double jeopardy did not require abatement or suspension of the civil proceedings because the Double Jeopardy Clause applies only to criminal cases.

KEY QUOTATIONS

"We conclude that Emmanuel has not preserved a complaint for appellate review on the issue of timely notice of the motion for summary judgment." (4)

"Since Emmanuel has not challenged every ground upon which the trial court could have relied when granting the motion to dismiss, we must affirm the trial court's decision." (6)

"Double jeopardy applies only to criminal cases." (7)

FACTUAL BACKGROUND

Izoukumor paid Emmanuel an \$1,800 deposit toward the purchase of a Honda Accord after Emmanuel repaired it, but the vehicle was not repaired and Emmanuel refused to return the deposit. Izoukumor obtained partial summary judgment on DTPA and breach-of-contract claims, receiving economic damages, additional DTPA damages, attorney's fees, costs, and post-judgment interest. Emmanuel later sued Izoukumor for \$3,600 in

alleged parking charges, and the trial court dismissed his claims with prejudice. Emmanuel also sought to delay the civil proceedings based on related criminal theft charges and asserted constitutional objections to the monetary awards.

PROCEDURAL HISTORY

Izoukumor sued Emmanuel asserting DTPA, breach-of-contract, and related claims arising from Emmanuel's failure to repair and deliver a vehicle after receiving an \$1,800 deposit. The trial court granted Izoukumor partial summary judgment, awarding economic damages, additional DTPA damages, attorney's fees, costs, and post-judgment interest, later denied Emmanuel's motion to reopen or for new trial, and dismissed Izoukumor's remaining claims with finality. In a separate action, Emmanuel sued Izoukumor for alleged parking charges; the trial court dismissed that action with prejudice under Rule 91a and res judicata grounds. The Fourteenth Court of Appeals affirmed both judgments.

DISPOSITION

affirmed

CASES CITED

- Buholtz v. Field, No. 03-17-00232-CV, 2018 WL 700058, at *2-*3 (Tex. App.—Austin Jan. 31, 2018, pet. denied) (mem. op.)
- Fertic v. Spencer, 247 S.W.3d 242, 248 & n.4 (Tex. App.—El Paso 2007, pet. denied)
- May v. Nacogdoches Mem'l Hosp., 61 S.W.3d 623, 626 (Tex. App.—Tyler 2001, no pet.)
- Negrini v. Beale, 822 S.W.2d 822, 823 (Tex. App.—Houston [14th Dist.] 1992, no writ)
- In re L.M.I., 119 S.W.3d 707, 711 (Tex. 2003)
- Shumway v. Whispering Hills of Comal Cty. Tex. Prop. Owners Ass'n, Inc., No. 03-15-00513-CV, 2016 WL 4429939, at *2 (Tex. App.—Austin Aug. 16, 2016, pet. denied) (mem. op.)
- Blizzard v. Select Portfolio Servicing, No. 03-13-00716-CV, 2015 WL 5096710, at *4 (Tex. App.—Austin Aug. 27, 2015, no pet.) (mem. op.)
- Ex parte Watkins, 73 S.W.3d 264, 267 (Tex. Crim. App. 2002)
- Kugle v. DaimlerChrysler Corp., 88 S.W.3d 355, 362 (Tex. App.—San Antonio 2002, pet. denied)
- McCann v. Spencer Plantation Invs., Ltd., No. 01-16-00098-CV, 2017 WL 769895, at *6 (Tex. App.—Houston [1st Dist.] Feb. 28, 2017, pet. denied) (mem. op.)
- Favaloro v. Comm'n for Lawyer Discipline, 994 S.W.2d 815, 822 (Tex. App.—Dallas 1999, pet. stricken)
- Underwood v. Bridewell, 931 S.W.2d 645, 647-48 (Tex. App.—Waco 1996, orig. proceeding)
- McInnis v. State, 618 S.W.2d 389, 392-93 (Tex. Civ. App.—Beaumont 1981, writ ref'd n.r.e.)