

COURT OF APPEALS FOR THE TENTH APPELLATE DISTRICT OF TEXAS

Cheyenne Partners, LLC and Jason Alan Kitts v. Rainbow International, LLC and The Grounds Guys, LLC

Cheyenne Partners · No. 10-24-00282-CV · Decided March 5, 2026

SUMMARY

The Court of Appeals for the Tenth Appellate District of Texas affirmed a judgment for Rainbow International, LLC and The Grounds Guys, LLC in a dispute involving Michigan franchise agreements. The court held that the appellants waived their choice-of-law argument, found sufficient evidence supporting breach of contract and termination, and held that the appellants waived review of their affirmative defenses and counterclaims because the relevant pleading was not included in the appellate record.

CASE DETAILS

COURT	Court of Appeals for the Tenth Appellate District of Texas
WRITING FOR THE COURT	Justice Steve Smith; Chief Justice Johnson; Justice Smith; Justice Harris
JURISDICTION	Court of Appeals for the Tenth Appellate District of Texas
DECIDED	March 5, 2026
DOCKET	10-24-00282-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appellants appealed a bench-trial judgment finding that they breached the Rainbow franchise agreement, abandoned the Grounds Guys franchise, and owed damages to Appellees.
STANDARD OF REVIEW	After a bench trial, findings of fact are reviewed under the same legal- and factual-sufficiency standards applicable to jury findings, while conclusions of law are reviewed de novo. For a legal-sufficiency challenge to an adverse finding on an issue on which the challenger did not bear the burden of proof, the challenger must show that no evidence supports the finding. For a factual-sufficiency challenge to an adverse finding on which the opposing party bore the burden of proof, the challenger must show that the finding is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

PRECEDENTIAL VALUE	published
PARTIES	Cheyenne Partners, LLC, Jason Alan Kitts v. Rainbow International, LLC, The Grounds Guys, LLC

TOPICS

breach of contract contracts preservation of error standard of review appellate procedure

PRACTICE AREAS

contracts commercial litigation civil procedure appellate procedure

QUESTIONS PRESENTED

1. Whether Appellants preserved and properly invoked the application of Michigan franchise law.
2. Whether the judgment was impermissibly based on commingled legally invalid breach theories under Crown Life Insurance Co. v. Casteel.
3. Whether legally and factually sufficient evidence supported the finding that Appellants breached the Rainbow franchise agreement and whether notice and an opportunity to cure were required.
4. Whether Appellants established their affirmative defenses of fraud, fraudulent nondisclosure, violation of Michigan law, and prior material breach.
5. Whether Appellants established their counterclaims for fraud, breach of contract, violations of the Texas Deceptive Trade Practices Act, and violations of Michigan's Franchise Investment Law.

HOLDINGS

1. Appellants waived their contention that Michigan law applied because they did not properly invoke foreign law in the trial court through the required request for judicial notice and request for application of foreign law, and did not otherwise timely and specifically present the choice-of-law issue for a ruling.
2. Even assuming some breach theories required notice and an opportunity to cure and could be considered legally invalid, any commingling with other theories did not warrant reversal because the record supported independent theories of liability and the commingling did not probably cause an improper judgment or prevent proper presentation of the appeal.
3. The evidence was legally and factually sufficient to support the finding that Appellants breached the Rainbow franchise agreement.
4. Appellants waived their complaints concerning the denial of their affirmative defenses and counterclaims because the appellate record did not contain the pleading filed in the district court that set forth those defenses and claims.

KEY QUOTATIONS

"We conclude that nothing in the record shows that Appellants asked the court to apply Michigan law. Accordingly, Appellants' contention that Michigan law applies has been waived." (5)

“There is more than a scintilla of evidence to show that Appellants breached the franchise agreement by failing to submit reports timely, failing to pay all fees due, failing to provide audited financial statements, and by impairing Rainbow’s goodwill.” (14)

“Without the pleading filed in the district court setting forth the affirmative defenses and counterclaims, we cannot properly review the issues relating to those affirmative defenses and counterclaims.” (15)

FACTUAL BACKGROUND

Jason Kitts acquired Rainbow franchises in Michigan in 2009 and 2014 and later acquired a Grounds Guys franchise, assigning the franchises to Cheyenne Partners while personally guaranteeing the agreements. Rainbow sent notices identifying defaults in September 2017 and finally terminated the franchise agreement in November 2017. The trial court found that Appellants failed to timely submit required reports, failed to pay all required fees, failed to provide audited financial statements, impaired Rainbow's goodwill, and abandoned the Grounds Guys franchise.

PROCEDURAL HISTORY

Appellees filed suit in the 170th District Court of McLennan County in September 2017. Appellants removed the case to the United States District Court for the Western District of Texas in April 2018, and that court remanded the case in December 2018. After a bench trial in June 2024, the trial court entered judgment for Appellees. The Texas Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Daugherty v. S. Pac. Transp. Co., 772 S.W.2d 81, 83 (Tex. 1989)
- Pittsburgh Corning Corp. v. Walters, 1 S.W.3d 759, 769-70 (Tex. App.—Corpus Christi-Edinburg 1999, pet. denied)
- Kubbernus v. ECAL Partners, Ltd., 574 S.W.3d 444, 473 (Tex. App.—Houston [14th Dist.] 2018, pet. denied)
- DaimlerChrysler Motors Co., LLC v. Manuel, 362 S.W.3d 160, 196-97 (Tex. App.—Fort Worth 2012, no pet.)
- Colvin v. Colvin, 291 S.W.3d 508, 514 (Tex. App.—Tyler 2009, no pet.)
- Crown Life Ins. Co. v. Casteel, 22 S.W.3d 378, 387-89 (Tex. 2000) (op. on reh'g)
- Horton v. Kansas City S. Ry. Co., 692 S.W.3d 112, 145-46 (Tex. 2024)
- Zaidi v. Shah, 502 S.W.3d 434, 440 (Tex. App.—Houston [14th Dist.] 2016, pet. denied)
- In re Doe, 19 S.W.3d 249, 253 (Tex. 2000)
- BMC Software Belg., N.V. v. Marchand, 83 S.W.3d 789, 794 (Tex. 2002)
- Exxon Corp. v. Emerald Oil & Gas Co., 348 S.W.3d 194, 215 (Tex. 2011)
- Haggard Clothing Co. v. Hernandez, 164 S.W.3d 386, 388 (Tex. 2005) (per curiam)

- Capps v. Nexion Health at Southwood, Inc., 349 S.W.3d 849, 855 (Tex. App.—Tyler 2011, no pet.)
- Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986) (per curiam)
- Mar. Overseas Corp. v. Ellis, 971 S.W.2d 402, 406-07 (Tex. App.—Corpus Christi-Edinburg 1998, no pet.)
- Golden Eagle Archery, Inc. v. Jackson, 116 S.W.3d 757, 761 (Tex. 2003)
- Ford v. Panhandle & Santa Fe Ry. Co., 252 S.W.2d 561, 563 (Tex. 1952)
- Caprock Inv. Corp. v. Montgomery, 321 S.W.3d 91, 99 (Tex. App.—Eastland 2010, pet. denied)
- Velvet Snout, LLC v. Sharp, 441 S.W.3d 448, 451 (Tex. App.—El Paso 2014, no pet.)
- Walker v. Horine, 695 S.W.2d 572, 579 (Tex. App.—Corpus Christi-Edinburg 1985, no writ) (per curiam) (op. on reh'g)

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