

FOURTH COURT OF APPEALS OF TEXAS, SAN ANTONIO

George Michael Welch v. Felix Lopez and Summerlyn Lopez

No. 04-24-00366-CV (Tex. App.—San Antonio Apr. 15, 2026) · No. No. 04-24-00366-CV · Decided April 15, 2026

SUMMARY

The Texas Fourth Court of Appeals affirmed the trial court’s judgment in a dispute arising from an owner-financed commercial property agreement. The court held that the seller was not entitled to attorney’s fees under Texas Civil Practice and Remedies Code section 38.001 because he was not a prevailing party: the temporary injunction and payment required to reinstate the note did not materially alter the parties’ legal relationship. The court also upheld the trial court’s interpretation that foreclosure proceedings could not begin until the buyer was 91 days late and its finding that the seller unjustifiably refused the buyer’s tender of payment.

CASE DETAILS

COURT	Fourth Court of Appeals of Texas, San Antonio
WRITING FOR THE COURT	Adrian A. Spears II; Irene Rios; Lori Massey Brissette
JURISDICTION	Texas Court of Appeals, Fourth District, San Antonio
DECIDED	April 15, 2026
DOCKET	No. 04-24-00366-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Welch appealed after a bench trial in which the trial court reinstated the promissory note, denied both parties' requests for attorney's fees, and rejected Welch's request for contempt relief. Welch challenged only the denial of his attorney's-fee request.
STANDARD OF REVIEW	Contract construction is reviewed de novo. Findings of fact after a bench trial are reviewed under the standards applicable to jury findings; supported findings are entitled to deference, and the trial court's conclusions of law are reviewed de novo. For a legal-sufficiency challenge to an adverse finding on which the appellant did not bear the burden of proof, the appellant must show no evidence supports the finding. For a factual-sufficiency challenge on an issue on which the appellant did not bear the burden, the finding is set aside only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

PRECEDENTIAL VALUE

Published memorandum opinion

PARTIES

George Michael Welch v. Felix Lopez, Summerlyn Lopez

TOPICS

contracts

contract interpretation

foreclosure

remedies

appellate procedure

PRACTICE AREAS

contracts

real estate

remedies

appellate procedure

QUESTIONS PRESENTED

1. Whether Welch was entitled to attorney's fees under Texas Civil Practice and Remedies Code section 38.001 despite not obtaining monetary damages or other relief that materially altered the parties' legal relationship.
2. Whether obtaining a temporary injunction and recovering personal property before trial made Welch a prevailing party for purposes of section 38.001.
3. Whether the trial court's order requiring the Lopezes to pay \$22,221.92 as a condition of reinstating the promissory note made Welch a prevailing party.
4. Whether the trial court correctly interpreted the contract to prohibit Welch from initiating foreclosure proceedings before the Lopezes were 91 days late.
5. Whether legally and factually sufficient evidence supported the trial court's findings that Welch unjustifiably refused the Lopezes' tender and that his conduct was unfair and inequitable.

HOLDINGS

1. Welch was not entitled to attorney's fees because he failed to establish that he was the prevailing party on his contract claim.
2. Obtaining a temporary injunction cannot, by itself, form the basis for an award of attorney's fees under chapter 38.
3. The order requiring the Lopezes to pay \$22,221.92 as a condition of reinstating the note did not make Welch a prevailing party.
4. The contract prohibited Welch from initiating foreclosure proceedings until the Lopezes were 91 days late on a payment.
5. Legally and factually sufficient evidence supported the findings that Welch unjustifiably refused the Lopezes' payment and acted unfairly and inequitably.

KEY QUOTATIONS

"Whether a party prevails turns on whether the party prevails upon the court to award it something, either monetary or equitable." (5)

“A temporary injunction, however, is a preliminary matter, and the trial court’s ruling on a temporary injunction does not support the defense of res judicata.” (6-7)

“Thus, we conclude the award of \$22,221.92 does not materially alter the legal relationship between the parties.” (8)

“We agree with the trial court’s interpretation that the agreement provided the Grantor could not properly initiate foreclosure proceedings until the Grantee was 91 days late with a payment.” (11)

FACTUAL BACKGROUND

Welch and the Lopezes entered an owner-financed agreement for the sale of commercial property for \$200,000, payable through installments and a balloon payment. The agreement imposed late-payment consequences and stated that foreclosure procedures would begin if the grantee was 91 days late, while also preserving Welch's temporary access to remove equipment. After the Lopezes missed the May 1, 2023 installment, they attempted to tender payment, including late fees and interest, before the 91st day, but Welch rejected the tenders and filed suit seeking foreclosure-related relief. The trial court found that Welch prematurely initiated foreclosure proceedings, unjustifiably refused payment, and interfered with the Lopezes' interests, while the appellate court deferred to those factual findings.

PROCEDURAL HISTORY

Welch sued the Lopezes for breach of promissory note, breach of contract, and money had and received, seeking foreclosure-related relief and attorney's fees. The Lopezes answered, asserted defenses and contract-related counterclaims, and tendered a late payment before the contractual 91-day period expired. After granting temporary injunctive relief, the trial court found that Welch had prematurely initiated foreclosure proceedings, unjustifiably refused the Lopezes' tender, and was not the prevailing party; it ordered reinstatement of the note upon payment of \$22,221.92 and denied attorney's fees to both sides. The court of appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- 1/2 Price Checks Cashed v. United Auto. Ins. Co., 344 S.W.3d 378, 383 (Tex. 2011)
- Ventling v. Johnson, 466 S.W.3d 143, 154 (Tex. 2015)
- Dandachli v. Active Motorwerks, Inc., No. 03-19-00494-CV, 2021 WL 3118437, at *3 (Tex. App.—Austin July 23, 2021, no pet.)
- Intercontinental Grp. P'ship v. KB Home Lone Star L.P., 295 S.W.3d 650, 652, 654-55 (Tex. 2009)
- Farrar v. Hobby, 506 U.S. 103, 111 (1992)
- Veasay v. Abbott, 13 F.4th 362 (5th Cir. 2021)
- Allstate Ins. Co. v. Hallman, 159 S.W.3d 640, 643 (Tex. 2005)
- Camarena v. Tex. Emp. Comm'n, 754 S.W.2d 149, 151 (Tex. 1988)

- Hansen v. JP Morgan Chase Bank, N.A., 346 S.W.3d 769, 774-75 (Tex. App.—Dallas 2011, no pet.)
- Williams v. Houston Firemen’s Relief & Ret. Fund, 121 S.W.3d 415, 437 n.21 (Tex. App.—Houston [1st Dist.] 2003, no pet.)
- Epps v. Fowler, 351 S.W.3d 862, 868-69 (Tex. 2011)
- Glattly v. Air Starter Components, Inc., 332 S.W.3d 620, 638 (Tex. App.—Houston [1st Dist.] 2010, pet. denied)
- Butnaru v. Ford Motor Co., 84 S.W.3d 198, 204 (Tex. 2002)
- 183/620 Grp. Joint Venture v. SPF Joint Venture, 765 S.W.2d 901, 904 (Tex. App.—Austin 1989, writ dism’d w.o.j.)
- Norton v. Deer Creek Prop. Owners Ass’n, No. 03-09-00422-CV, 2010 WL 2867375, at *4-*9 (Tex. App.—Austin July 22, 2010, no pet.)
- Valence Operating Co. v. Dorsett, 164 S.W.3d 656, 662 (Tex. 2005)
- Willis v. Donnelly, 199 S.W.3d 262, 275 (Tex. 2006)
- J.M. Davidson, Inc. v. Webster, 128 S.W.3d 223, 229 (Tex. 2003)
- First Bank v. Brumitt, 519 S.W.3d 95, 109-10 (Tex. 2017)
- Bekins Van Lines, Inc. v. Kahn, 717 S.W.3d 86, 94 (Tex. App.—Austin 2025, pet. denied)
- Donias v. Old Am. Cnty. Mut. Fire Ins. Co., 649 S.W.3d 789, 793 (Tex. App.—El Paso 2022, no pet.)
- Croucher v. Croucher, 660 S.W.2d 55, 58 (Tex. 1983)
- Kazmi v. Kazmi, 693 S.W.3d 556, 566 (Tex. App.—Austin 2023, pet. denied)
- Benavides v. Alexander, 646 S.W.3d 14, 23 (Tex. App.—San Antonio 2021, pet. denied)
- Ritchey v. Crawford, 734 S.W.2d 85, 87 n.1 (Tex. App.—Houston [1st Dist.] 1987, no writ)
- Plas-Tex, Inc. v. U.S. Steel Corp., 772 S.W.2d 442, 445 (Tex. 1989)
- Star Enter. v. Marze, 61 S.W.3d 449, 462 (Tex. App.—San Antonio 2001, pet. denied)
- Henry v. Masson, 333 S.W.3d 825, 835 (Tex. App.—Houston [1st Dist.] 2010, no pet.)
- Case Corp. v. Hi-Class Bus. Sys. of Am., Inc., 184 S.W.3d 760, 769-70 (Tex. App.—Dallas 2005, pet. denied)
- Mustang Pipeline Co. v. Driver Pipeline Co., 134 S.W.3d 195, 196 (Tex. 2004)