

COURT OF APPEALS OF TEXAS, THIRTEENTH DISTRICT, CORPUS
CHRISTI–EDINBURG

Nexus Series B, LLC v. Durham Trading Partners XII, LLC

No. 13-21-00333-CV (Tex. App.—Corpus Christi–Edinburg Dec. 1, 2022) · No. No. 13-21-00333-CV · Decided
December 1, 2022

SUMMARY

The Texas Thirteenth Court of Appeals affirmed summary judgment for Durham Trading Partners XII, LLC in a dispute over whether a deed-of-trust provision required assignment of Durham’s professional malpractice claim against a land surveyor. The court held that the malpractice claim sounded in tort rather than contract and therefore was not subject to the contractual assignment provision. The court also held that the trial court’s judgment was final and that Nexus’s pleadings limited its claim to assignment of the malpractice claim.

CASE DETAILS

COURT	Court of Appeals of Texas, Thirteenth District, Corpus Christi–Edinburg
WRITING FOR THE COURT	Gina M. Benavides; Chief Justice Contreras; Justice Benavides; Justice Tijerina
JURISDICTION	Texas
DECIDED	December 1, 2022
DOCKET	No. 13-21-00333-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Nexus appealed after the trial court granted Durham's traditional motion for summary judgment, denied Nexus's competing motion for summary judgment, and rendered a take-nothing final judgment against Nexus.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. For traditional summary judgment, the movant must establish that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. When both parties move for summary judgment, the appellate court reviews all summary-judgment evidence, determines all issues presented, and renders the judgment the trial court should have rendered. Evidence favorable to the nonmovant is taken as true, reasonable inferences are

	indulged in the nonmovant's favor, and doubts are resolved against the motion.
PRECEDENTIAL VALUE	published
PARTIES	Nexus Series B, LLC v. Durham Trading Partners XII, LLC

TOPICS

assignment and delegation summary judgment final judgment rule professional negligence
commercial litigation

PRACTICE AREAS

Contracts Commercial litigation Civil procedure Appellate procedure Professional negligence
Real estate finance

QUESTIONS PRESENTED

1. Whether the trial court's judgment was final and appealable despite Nexus's assertion that the judgment did not dispose of all of its claims.
2. Whether Durham's professional-malpractice claim against Waterloo was a contractual right subject to assignment under the deed of trust.
3. Whether Nexus was entitled to summary judgment on an asserted right to assignment of contractual rights under Durham's professional-services agreement with Waterloo, when Nexus's pleadings sought assignment of the malpractice claim.

HOLDINGS

1. A judgment containing a clear and unequivocal statement that it is final, disposes of all parties and claims, and is appealable is final and appealable, even if the judgment may grant more relief than a party was entitled to receive.
2. Durham's professional-malpractice claim against Waterloo sounded in tort, not contract, and therefore was not a contractual right subject to assignment under the deed-of-trust provision covering contractual rights and obligations related to the property.
3. Nexus was not entitled to summary judgment on a claim for assignment of contractual rights under the professional-services agreement because its pleadings limited its suit to assignment of Durham's malpractice claim and Nexus never amended its pleadings to enlarge the claim.

KEY QUOTATIONS

“Although no ‘magic language’ is required, a trial court may express its intent to render a final judgment by describing its action as (1) final, (2) a disposition of all claims and parties, and (3) appealable.” (at 6)

“Because Durham and Nexus only agreed to the assignment of “contractual rights and obligations related to the [p]roperty,” Durham’s professional malpractice claim against Waterloo is not subject to assignment” (at 8)

“a plaintiff’s summary-judgment argument based on a claim that was not raised by a cause of action actually pleaded is not reviewable on appeal.” (at 9)

FACTUAL BACKGROUND

Nexus loaned Durham \$625,000 to finance a commercial real-estate project, secured by a deed of trust containing an assignment provision covering contractual rights and obligations related to the property. After a certificate of occupancy and variance were denied, Durham sued Waterloo Surveying, Inc. for professional malpractice based on an allegedly inaccurate survey and later defaulted on the loan. Nexus demanded that Durham assign its rights and claims in the Waterloo litigation, but Durham refused. Nexus then sued to enforce the assignment provision, while Durham sought a declaration that its malpractice claim was a tort claim not covered by the provision.

PROCEDURAL HISTORY

Nexus sued to enforce a deed-of-trust provision requiring Durham to assign contractual rights and obligations related to the property. Durham counterclaimed for declaratory relief, asserting that its professional-malpractice claim against a land surveyor was a tort claim outside the assignment provision. Both parties moved for summary judgment. The trial court granted Durham’s motion, denied Nexus’s motion, rendered a final take-nothing judgment, and overruled Nexus’s motion for reconsideration. The appeal was transferred from the Third Court of Appeals to the Thirteenth Court of Appeals under a Texas Supreme Court docket-equalization order.

DISPOSITION

affirmed

CASES CITED

- KCM Fin. LLC v. Bradshaw, 457 S.W.3d 70, 79 (Tex. 2015)
- Mann Frankfort Stein & Lipp Advisors v. Fielding, 289 S.W.3d 844, 848 (Tex. 2009)
- Lightning Oil Co. v. Anadarko E&P Onshore, LLC, 520 S.W.3d 39, 45 (Tex. 2017)
- Merriman v. XTO Energy, Inc., 407 S.W.3d 244, 248 (Tex. 2013)
- City of Keller v. Wilson, 168 S.W.3d 802, 824 (Tex. 2005)
- IHS Cedars Treatment Ctr. of DeSoto, Tex., Inc. v. Mason, 143 S.W.3d 794, 798 (Tex. 2004)
- Hernandez v. Hernandez, 632 S.W.3d 92, 97 (Tex. App.—El Paso 2020, no pet.)
- Houle v. Casillas, 594 S.W.3d 524, 541 (Tex. App.—El Paso 2019, no pet.)
- Qwest Commc’ns Corp. v. AT&T Corp., 24 S.W.3d 334, 336 (Tex. 2000)
- Lehmann v. Har-Con Corp., 39 S.W.3d 191, 200, 205-06 (Tex. 2001)
- Bella Palma, LLC v. Young, 601 S.W.3d 799, 801 (Tex. 2020) (per curiam)

- In re R.R.K., 590 S.W.3d 535, 541, 543 (Tex. 2019)
- Young v. Hodde, 682 S.W.2d 236 (Tex. 1984) (per curiam)
- Jim Walter Homes, Inc. v. Reed, 711 S.W.2d 617, 618 (Tex. 1986)
- Montgomery Ward & Co. v. Scharrenbeck, 204 S.W.2d 508 (Tex. 1947)
- Sw. Bell Tel. Co. v. DeLanney, 809 S.W.2d 493, 494 & n.1 (Tex. 1991)
- Ling v. BDA&K Bus. Servs., Inc., 261 S.W.3d 341, 347 (Tex. App.—Dallas 2008, no pet.)
- Cosgrove v. Grimes, 774 S.W.2d 662, 664 (Tex. 1989)
- Dukes v. Philip Johnson/Alan Ritchie Architects, P.C., 252 S.W.3d 586, 594 (Tex. App.—Fort Worth 2008, pet. denied)
- Averitt v. PriceWaterhouseCoopers L.L.P., 89 S.W.3d 330, 334 (Tex. App.—Fort Worth 2002, no pet.)
- Pakal Enters., Inc. v. Lesak Enters. LLC, 369 S.W.3d 224, 226, 228 (Tex. App.—Houston [1st Dist.] 2011, pet. denied)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/texas-court-of-appeals-of-texas-thirteenth-district-corpus-christi-edinburg/2022/nexus-series-b-llc-v-durham-trading-partners-xii-llc-hw3v7ou0>