

COURT OF APPEALS OF TEXAS, FOURTEENTH DISTRICT

Mohammad A. Behzadpour and AB Land Company v. Gloria Bonton
and Lawrence Bonton

No. 14-09-01014-CV (Tex. App.—Houston [14th Dist.] Jan. 27, 2011) · No. No. 14-09-01014-CV · Decided
January 27, 2011

SUMMARY

The Fourteenth Court of Appeals of Texas reversed and remanded a summary judgment enforcing an alleged settlement agreement involving the sale and reconveyance of real property. The court held that the summary-judgment evidence raised a material fact issue regarding whether Kamran Mashayekh had actual or apparent authority to bind Mohammad A. Behzadpour to the agreement. Because that issue required reversal, the court did not reach the appellants' remaining arguments concerning Rule 11, the statute of frauds, and attorney's fees.

CASE DETAILS

COURT	Court of Appeals of Texas, Fourteenth District
WRITING FOR THE COURT	William J. Boyce; Justice Brown; Justice Boyce; Justice Jamison
JURISDICTION	Texas
DECIDED	January 27, 2011
DOCKET	No. 14-09-01014-CV
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a summary judgment enforcing an alleged settlement agreement and awarding attorney's fees.
STANDARD OF REVIEW	Summary judgment is reviewed under the rules that the movant bears the burden to show no genuine issue of material fact and entitlement to judgment as a matter of law; evidence favorable to the nonmovant is taken as true, reasonable inferences are indulged in the nonmovant's favor, and doubts are resolved in the nonmovant's favor.
PRECEDENTIAL VALUE	Memorandum opinion; precedential status is not otherwise specified in the opinion text.
PARTIES	Mohammad A. Behzadpour, AB Land Company v. Gloria Bonton, Lawrence Bonton

TOPICS

summary judgment contracts real estate appellate procedure attorney fees

PRACTICE AREAS

Civil procedure Contracts Real estate Appellate procedure Remedies

QUESTIONS PRESENTED

1. Whether Behzadpour waived his argument that Mashayekh lacked authority to enter into the alleged settlement agreement because the argument was not expressly stated in the issues presented.
2. Whether a genuine issue of material fact remained regarding Mashayekh's actual or apparent authority to bind Behzadpour to a settlement agreement.
3. Whether the trial court properly granted summary judgment enforcing the alleged settlement agreement and awarding attorney's fees.

HOLDINGS

1. The argument was not waived because, although not stated precisely in the issues presented, it was developed in the body of Behzadpour's brief under headings challenging the existence and enforceability of the alleged settlement agreement.
2. Summary judgment enforcing the alleged settlement agreement was improper because the Bontons failed to establish conclusively that Mashayekh had actual or apparent authority to enter into a binding agreement on Behzadpour's behalf.

KEY QUOTATIONS

“Based on the summary judgment evidence, we conclude that a material fact issue remains as to whether Mashayekh possessed actual or apparent authority to enter into a binding settlement agreement.”

“We conclude that the Bontons failed to establish conclusively that Mashayekh had authority to enter into an agreement on behalf of Behzadpour, and we reverse the judgment of the trial court and remand for further proceedings consistent with this opinion.”

FACTUAL BACKGROUND

The Bontons agreed to sell a plot of land to Behzadpour, but alleged that he forged Mr. Bonton's name on a general warranty deed identifying a different Bonton-owned plot. During the litigation, attorney Kamran Mashayekh emailed the Bontons' attorney that his client offered to sell the property back to the Bontons for \$6,100; the Bontons' attorney later stated that he was authorized to accept the offer. Behzadpour denied authorizing Mashayekh to settle or sell the property and submitted an affidavit stating that no agreement had been reached.

PROCEDURAL HISTORY

The Bontons sued Behzadpour for fraud, statutory and common-law fraud, and negligent misrepresentation arising from an allegedly forged deed. They later amended their petition to plead breach and enforcement of an alleged settlement agreement, and the trial court reconsidered and granted their summary-judgment motion, enforcing the agreement and awarding attorney's fees. After the trial court denied Behzadpour's motion for new trial, Behzadpour appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded for further proceedings consistent with the opinion.

CASES CITED

- Padilla v. LaFrance, 907 S.W.2d 454, 462 (Tex. 1995)
- Perry v. Cohen, 272 S.W.3d 585, 587 (Tex. 2008) (per curiam)
- Verburt v. Dorner, 959 S.W.2d 615, 616–17 (Tex. 1997)
- Hagberg v. City of Pasadena, 224 S.W.3d 477, 480 (Tex. App.—Houston [1st Dist.] 2007, no pet.)
- Texas Department of Transportation v. City of Sunset Valley, 146 S.W.3d 637, 642 n.1 (Tex. 2004)
- Nixon v. Mr. Property Management Co., 690 S.W.2d 546, 548–49 (Tex. 1985)
- Triton Oil & Gas Corp. v. Marine Contractors & Supply, Inc., 644 S.W.2d 443, 446 (Tex. 1982)
- In re ADM Investor Services, Inc., 304 S.W.3d 371, 374 (Tex. 2010)
- Verizon Corporate Services Corp. v. Kan-Pak Systems, Inc., 290 S.W.3d 899, 904 (Tex. App.—Amarillo 2009, no pet.)
- Walker Insurance Services v. Bottle Rock Power Corp., 108 S.W.3d 538, 549–51 (Tex. App.—Houston [14th Dist.] 2003, no pet.)
- Gaines v. Kelly, 235 S.W.3d 179, 183–84 (Tex. 2007)
- NationsBank v. Dilling, 922 S.W.2d 950, 952–53 (Tex. 1996)
- City of Roanoke v. Town of Westlake, 111 S.W.3d 617, 629 (Tex. App.—Fort Worth 2003, pet. denied)