

FOURTH COURT OF APPEALS OF TEXAS, SAN ANTONIO

Frank Thomas Shumate, Jr. v. Wildlife Partners, LLC

Shumate · No. 04-24-00500-CV · Decided November 26, 2025

SUMMARY

The Texas Fourth Court of Appeals reviews a judgment awarding Wildlife Partners, LLC damages, exemplary damages, statutory damages, and attorney’s fees against Frank Thomas Shumate, Jr. arising from the sale and delivery of four female kudu, two of which died. The court addresses the statute of frauds, the sufficiency of evidence supporting claims under the Texas Theft Liability Act and for fraud, damages, and attorney’s fees. The opinion affirms in part and reverses and remands in part.

CASE DETAILS

COURT	Fourth Court of Appeals of Texas, San Antonio
WRITING FOR THE COURT	Rebeca C. Martinez, Chief Justice; H. Todd McCray, Justice; Velia J. Meza, Justice
JURISDICTION	Texas Court of Appeals, Fourth District, San Antonio
DECIDED	November 26, 2025
DOCKET	04-24-00500-CV
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Shumate appealed a final judgment entered after a jury found in Wildlife's favor on multiple claims, including violations of the Texas Theft Liability Act and fraud. The judgment awarded Wildlife \$72,000 in actual TTLA damages, \$1,000 in statutory damages, \$200,000 in exemplary damages, and \$365,000 in attorney's fees.
STANDARD OF REVIEW	Legal sufficiency is reviewed by considering whether the trial evidence would enable a reasonable and fair-minded factfinder to reach the verdict, viewing the evidence and reasonable inferences in the light most favorable to the verdict. A factual-sufficiency challenge to a finding on which the appellant did not bear the burden of proof is sustained only when the finding is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Jury credibility determinations and weight of testimony are generally left to the factfinder. Legal sufficiency of attorney's-fee evidence is reviewed under the requirements of the lodestar framework articulated in Rohrmoos Venture v. UTSW DVA Healthcare, LLP.

PRECEDENTIAL VALUE	published opinion
PARTIES	Frank Thomas Shumate, Jr. v. Wildlife Partners, LLC

TOPICS

statute of frauds uniform commercial code commercial litigation damages appellate procedure

PRACTICE AREAS

Texas contract law commercial litigation Texas Theft Liability Act fraud damages attorney's fees
appellate procedure

QUESTIONS PRESENTED

1. Whether the statute of frauds barred Wildlife's claims concerning the sale of the kudu.
2. Whether legally and factually sufficient evidence supported the jury's finding that Shumate committed theft under the Texas Theft Liability Act.
3. Whether legally and factually sufficient evidence supported the jury's fraud finding, including material misrepresentation and justifiable reliance.
4. Whether the awards of actual and exemplary damages were legally or factually unsupported or otherwise constitutionally defective.
5. Whether Wildlife presented legally sufficient evidence to support the attorney's-fee awards through trial and on appeal.

HOLDINGS

1. The statute of frauds did not bar Wildlife's claims because the parties stipulated that Shumate received full payment for the four kudu before delivery, bringing the transaction within the payment-and-acceptance exception in Texas Business and Commerce Code section 2.201(c)(3).
2. Legally and factually sufficient evidence supported the jury's finding that Shumate committed theft under the Texas Theft Liability Act.
3. Legally and factually sufficient evidence supported the jury's fraud finding based on material misrepresentation.
4. The \$72,000 actual-damages award and \$200,000 exemplary-damages award were not shown to be improper. The exemplary-damages award did not violate federal due process.
5. Wildlife presented legally insufficient evidence to support the attorney's-fee awards through trial and on appeal. The fee awards were reversed and Wildlife's request for attorney's fees was remanded for further proceedings.

KEY QUOTATIONS

“We hold that Shumate’s refusal to refund the \$72,000, coupled with the four pieces of evidence discussed above indicating Shumate’s intent, is legally and factually sufficient evidence to support the jury’s verdict on Wildlife’s TTLA claim.” (at 16)

“We reverse the final judgment’s award of attorney’s fees and remand Wildlife’s request for these attorney’s fees for further proceedings consistent with this opinion. We affirm the remaining portions of the final judgment.” (at 33)

FACTUAL BACKGROUND

Wildlife agreed to purchase four female kudu from Shumate for \$144,000, with payment required before delivery, and wired the full amount to Shumate's account. When the animals arrived, one was dead, another appeared ill and died within forty-eight hours, and two appeared healthy. Wildlife sought a refund for the two deceased animals, but Shumate refused and made statements that the parties disputed as to whether he had warranted delivery of healthy kudu. The jury found Shumate liable under the TTLA and for fraud, and awarded damages and attorney's fees.

PROCEDURAL HISTORY

Wildlife sued Shumate after two of four kudu purchased for \$144,000 died during or shortly after delivery. The jury found for Wildlife on its claims against Shumate, and Wildlife elected to recover under the TTLA. The trial court entered judgment consistent with the verdict. Shumate's motions for judgment notwithstanding the verdict and for new trial were denied by operation of law, and he timely appealed. The court of appeals affirmed the substantive portions of the judgment but reversed the attorney's-fee awards and remanded for a new hearing on fees.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the final judgment's awards of attorney's fees and remand Wildlife's request for attorney's fees for further proceedings consistent with the opinion, including a new hearing on the amount of fees. Affirm all remaining portions of the final judgment.

CASES CITED

- *Dynegy, Inc. v. Yates*, 422 S.W.3d 638, 642 (Tex. 2013)
- *Mendoza v. Fid. & Guar. Ins. Underwriters, Inc.*, 606 S.W.2d 692, 694 (Tex. 1980)
- *Bakke Dev. Corp. v. Albin*, No. 04-15-00008-CV, 2016 WL 6088980, at *2 (Tex. App.—San Antonio Oct. 19, 2016, no pet.) (mem. op.)
- *Gunn v. McCoy*, 554 S.W.3d 645, 658 (Tex. 2018)
- *City of Keller v. Wilson*, 168 S.W.3d 802, 819, 827 (Tex. 2005)
- *King Ranch, Inc. v. Chapman*, 118 S.W.3d 742, 751 (Tex. 2003)

- Bustamante v. Ponte, 529 S.W.3d 447, 456 (Tex. 2017)
- 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. 1998)
- Dow Chem. Co. v. Francis, 46 S.W.3d 237, 242 (Tex. 2001)
- Seger v. Yorkshire Ins. Co., 503 S.W.3d 388, 407 (Tex. 2016)
- Lowry v. Tarbox, 537 S.W.3d 599, 617 (Tex. App.—San Antonio 2017, pet. denied)
- Peterson v. State, 645 S.W.2d 807, 811 (Tex. Crim. App. 1983) (op. on reh'g)
- Perez v. State, 437 S.W.3d 610, 618 (Tex. App.—San Antonio 2014, no pet.)
- Nobel Leaf Holdings LLC v. First United Bank, No. 07-24-00176-CV, 2025 WL 2406110, at *5 (Tex. App.—Amarillo Aug. 19, 2025, no pet.) (mem. op.)
- Torres v. State, No. 04-12-00752-CR, 2013 WL 5942605, at *3 (Tex. App.—San Antonio Nov. 6, 2013, pet. ref'd) (mem. op., not designated for publication)
- In re I.L., 389 S.W.3d 445, 456 (Tex. App.—El Paso 2012, no pet.)
- Hesbrook v. State, 194 S.W.2d 260, 261-62 (Tex. Crim. App. 1946)
- Glenn v. State, No. 01-07-00445-CR, 2008 WL 2548810, at *5-6 (Tex. App.—Houston [1st Dist.] June 26, 2008, no pet.) (mem. op., not designated for publication)
- JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C., 546 S.W.3d 648, 653, 659-60 (Tex. 2018)
- Mercedes-Benz USA, LLC v. Carduco, Inc., 583 S.W.3d 553, 558 (Tex. 2019)
- Butler v. Collins, 714 S.W.3d 562, 565 n.2 (Tex. 2025)
- Equistar Chems., L.P. v. Dresser-Rand Co., 240 S.W.3d 864, 868 (Tex. 2007)
- Wirth v. State, 361 S.W.3d 694, 697 (Tex. Crim. App. 2012)
- Oscar Renda Contracting, Inc. v. Bruce, 689 S.W.3d 305, 311, 313 (Tex. 2024)
- J & C Drilling Co. v. Salaiz, 866 S.W.2d 632, 640-41 (Tex. App.—San Antonio 1993, no writ)
- PPG Indus., Inc. v. JMB/Houston Centers Partners Ltd. P'ship, 146 S.W.3d 79, 89 (Tex. 2004)
- Qwest Intern. Comm'ns., Inc. v. AT & T Corp., 167 S.W.3d 324, 326 (Tex. 2005)
- Exxon Shipping Co. v. Baker, 554 U.S. 471, 513 (2008)
- Tony Gullo Motors I, L.P. v. Chapa, 212 S.W.3d 299, 308 (Tex. 2006)
- State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 418, 425 (2003)
- Rohrmoos Venture v. UTSW DVA Healthcare, LLP, 578 S.W.3d 469, 498, 502, 505 (Tex. 2019)
- El Apple I, Ltd. v. Olivas, 370 S.W.3d 757, 760 (Tex. 2012)
- Intertek USA, Inc. v. Trical Commercial Investments, LLC, No. 14-23-00475-CV, 2025 WL 2496264, at *11 (Tex. App.—Houston [14th Dist.] Aug. 29, 2025, no pet. h.) (substituted mem. op.)
- Westheimer v. Ziemer, 702 S.W.3d 621, 632 (Tex. App.—Houston [1st Dist.] 2024, no pet.)
- Eason v. Deering Constr., Inc., No. 02-19-00310-CV, 2020 WL 7062687, at *8 (Tex. App.—Fort Worth Dec. 3, 2020, no pet.) (mem. op.)
- Yowell v. Granite Operating Co., 620 S.W.3d 335, 355 (Tex. 2020)
- Ventling v. Johnson, 466 S.W.3d 143, 156 (Tex. 2015)

- Muniz v. Dugi, No. 04-20-00528-CV, 2022 WL 1479052, at *9 (Tex. App.—San Antonio May 11, 2022, no pet.) (mem. op.)
- Porter v. Porter, No. 04-20-00229-CV, 2021 WL 2117923, at *5 (Tex. App.—San Antonio May 26, 2021, no pet.) (mem. op.)

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