

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

Hubert “Bud” Kott v. Brian T. Miller and MK Developers L.C.

No. 03-23-00749-CV (Tex. App.—Austin Nov. 21, 2025) · No. 03-23-00749-CV · Decided November 21, 2025

SUMMARY

The Texas Court of Appeals, Third District, affirmed a trial court judgment declaring void a \$350,000 promissory note executed by Hubert Kott in favor of MK Developers L.C. The court held that Kott lacked authority to unilaterally execute the note, that the note was not ratified, and that Kott failed to prove the self-dealing transaction was fair to the company under Texas Business Organizations Code section 101.255. The opinion addresses fiduciary duties, ratification, and the validity of transactions between a limited liability company and its member.

CASE DETAILS

COURT	Texas Court of Appeals, Third District, at Austin
WRITING FOR THE COURT	Maggie Ellis; Chief Justice Byrne; Justice Theofanis; Justice Ellis
JURISDICTION	Texas Court of Appeals, Third District, at Austin
DECIDED	November 21, 2025
DOCKET	03-23-00749-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a final judgment entered after a bench trial declaring a \$350,000 promissory note void and without legal effect.
STANDARD OF REVIEW	The court reviewed the validity of the self-dealing transaction under legal- and factual-sufficiency standards. For legal sufficiency, it considered whether the evidence would enable reasonable and fair-minded people to reach the verdict. For factual sufficiency, it would reverse only if the great weight and preponderance of the evidence made the judgment manifestly unjust. The trial court remained the sole judge of witness credibility and the weight of testimony.
PRECEDENTIAL VALUE	Published memorandum opinion; precedential status is identified as published in the supplied metadata.
PARTIES	Hubert “Bud” Kott v. Brian T. Miller, MK Developers L.C.

TOPICS

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breach of fiduciary duty

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QUESTIONS PRESENTED

1. Whether Kott had authority under MK Developers' regulations to unilaterally execute a promissory note advancing funds to the company and sign Miller's name without Miller's consent.
2. Whether Miller or MK Developers ratified the \$350,000 promissory note under the safe-harbor provisions of Texas Business Organizations Code section 101.255(b)(1).
3. Whether Kott established that the self-dealing transaction was fair to MK Developers under Texas Business Organizations Code section 101.255(b)(2).

HOLDINGS

1. Kott lacked authority to unilaterally execute the note because MK Developers' specific regulation governing member advances required the members' consent, and the evidence showed that Kott had neither Miller's authority nor consent to sign Miller's name.
2. Kott failed to establish ratification because Miller did not know all material facts of the transaction, including the note's material terms, until after he sued to prevent enforcement.
3. Kott failed to prove that the \$350,000 self-dealing promissory note was fair to MK Developers; therefore, the section 101.255(b)(2) safe harbor did not apply and the trial court properly declared the note void.

KEY QUOTATIONS

"An otherwise valid and enforceable contract or transaction described by Subsection (a) is valid and enforceable, and is not void or voidable, notwithstanding any relationship or interest described by Subsection (a), if any one of the following conditions is satisfied:" (at 5-6)

"Accordingly, we conclude that Kott did not have the authority to unilaterally execute the \$350,000 promissory note." (at 9)

"Given the lack of adequate consideration and the elements of fraud underpinning the transaction, we conclude that the evidence was sufficient to support the trial court's implied finding that the \$350,000 note was unfair to MK Developers." (at 13)

FACTUAL BACKGROUND

MK Developers L.C. was a Texas limited liability company formed by Kott and Miller, who each initially held a 50% interest. While Miller was recovering from a stroke, Kott unilaterally executed a \$350,000 promissory note from MK Developers to himself, purportedly signing Miller's name and securing the note with a future interest

in the company's Pet Hotel property. Kott later claimed that the note balanced the members' capital contributions, but evidence showed that he had falsely recorded unpaid invoices as contributions and that Miller did not know of the note or its material terms when it was executed. Miller learned of the note years later and sought to have it declared void.

PROCEDURAL HISTORY

Kott and the appellees sought adjudication in the district court concerning the validity of a \$350,000 promissory note executed by Kott in favor of himself and purportedly on behalf of MK Developers. After a bench trial, the district court concluded that the note was void and had no legal effect. Kott appealed, arguing that he had authority to execute the note unilaterally and that Miller or MK Developers ratified it.

DISPOSITION

affirmed

CASES CITED

- Bertucci v. Watkins, 709 S.W.3d 534, 545 (Tex. 2025)
- Dunster Live, LLC v. LoneStar Logos Mgmt. Co., No. 03-22-00014-CV, 2024 WL 291403, at *8 (Tex. App.—Austin Jan. 26, 2024, no pet.) (mem. op.)
- Ritchie v. Rupe, 443 S.W.3d 856, 890 n.62 (Tex. 2014)
- Wolf v. Ramirez, 622 S.W.3d 126, 142 (Tex. App.—El Paso 2020, no pet.)
- Dandachli v. Active Motorwerks, Inc., No. 03-19-00494-CV, 2021 WL 3118437, at *5 (Tex. App.—Austin July 23, 2021, no pet.) (mem. op.)
- Meru v. Huerta, 136 S.W.3d 383, 390 (Tex. App.—Corpus Christi–Edinburg 2004, no pet.)
- Naumann v. Johnson, No. 03-19-00380-CV, 2021 WL 2212725, at *3 (Tex. App.—Austin June 1, 2021, no pet.) (mem. op.)
- Cluck v. Mecom, 401 S.W.3d 110, 114 (Tex. App.—Houston [14th Dist.] 2011, pet. denied)
- In re Estate of Poe, 648 S.W.3d 277, 290 (Tex. 2022)
- Twenty First Century Holdings, Inc. v. Precision Geothermal Drilling, L.L.C., No. 03-13-0081-CV, 2015 WL 1882267, at *3-*4 (Tex. App.—Austin Apr. 23, 2015, no pet.) (mem. op.)
- In re Estate of Miller, 446 S.W.3d 445, 452 (Tex. App.—Tyler 2014, no pet.)
- General Dynamics v. Torres, 915 S.W.2d 45, 49 (Tex. App.—El Paso 1995, writ denied)
- W & T Offshore, Inc. v. Fredieu, 610 S.W.3d 884, 898 (Tex. 2020)
- Windrum v. Kareh, 581 S.W.3d 761, 781 (Tex. 2019)
- Chicago Title Ins. Co. v. Cochran Invs. Inc., 602 S.W.3d 895, 899 n.2 (Tex. 2020)
- Roberson v. Robinson, 768 S.W.2d 280, 281 (Tex. 1989) (per curiam)
- McGalliard v. Kuhlmann, 722 S.W.2d 694, 696 (Tex. 1986)
- Potter v. GMP, L.L.C., 141 S.W.3d 698, 700 (Tex. App.—San Antonio 2004, pet. dism'd)
- Wal-Mart Stores, Inc. v. Xerox State & Loc. Sols., Inc., 663 S.W.3d 569, 587 (Tex. App. 2023)

- BPX Operating Co. v. Strickhausen, 629 S.W.3d 189, 196-200 (Tex. 2021)
- Wise v. Pena, 552 S.W.2d 196, 199 (Tex. App.—Corpus Christi—Edinburg 1977, writ diss’d)
- Motel Enters., Inc. v. Nobani, 784 S.W.2d 545, 547 (Tex. App.—Houston [1st Dist.] 1990, no writ)
- T.O. Stanley Boot Co. v. Bank of El Paso, 847 S.W.2d 218, 221 (Tex. 1992)
- Land Title Co. of Dall., Inc. v. F.M. Stigler, Inc., 609 S.W.2d 754, 757 (Tex. 1980)
- Adam v. Marcos, 620 S.W.3d 488, 505-06 (Tex. App.—Houston [14th Dist.] 2021, pet. denied)
- Marchiani v. Shadle, No. 03-22-00484-CV, 2024 WL 3586022, at *4 (Tex. App.—Austin July 31, 2024, no pet.) (mem. op.)

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