

BUSINESS COURT OF TEXAS, EIGHTH DIVISION

The Mark at Weatherford Owner, LLC v. German, Individually, and Darcorp Management Group, Inc. d/b/a Darwin German Real Estate

The Mark at Weatherford Owner, 2026 Tex. Bus. 22 (Business Court of Texas Eighth Division 2026) · No. 25-BC08B-0025 · Decided May 6, 2026

SUMMARY

The Texas Business Court grants the plaintiff’s traditional motion for summary judgment in a dispute arising from the sale of an apartment complex and related seller financing. The court holds that the Side Letter’s terms “default” and “payable” are unambiguous, concluding that defendants’ failure to remit property-related fees owed at closing constituted a contractual default and triggered the plaintiff’s put right. The court also holds that the plaintiff may seek declaratory relief concerning qualifying defaults under related agreements, while limiting the relevant fees and distributions to those arising from the property.

CASE DETAILS

COURT	Business Court of Texas, Eighth Division
WRITING FOR THE COURT	Brian Stagner
JURISDICTION	Business Court of Texas, Eighth Division
DECIDED	May 6, 2026
DOCKET	25-BC08B-0025
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved for traditional summary judgment on its contract claims arising from defendants' failure to remit Property-related fees and the resulting exercise of a contractual Put Right.
STANDARD OF REVIEW	On traditional summary judgment, the movant must conclusively establish all essential elements of its claim and demonstrate that no genuine dispute of material fact exists. The court takes evidence favorable to the nonmovant as true, indulges reasonable inferences in the nonmovant's favor, resolves doubts against the movant, and may not weigh evidence or resolve credibility disputes.
PRECEDENTIAL VALUE	published

TOPICS

summary judgment

breach of contract

contract interpretation

real estate

specific performance remedy

PRACTICE AREAS

contracts

real estate

commercial litigation

civil procedure

remedies

QUESTIONS PRESENTED

1. Whether Plaintiff could seek declaratory relief concerning defaults under related agreements when the contractual Put Right was contained in the Side Letter.
2. Whether the term "default" in the Side Letter's Automatic Trigger provision was ambiguous.
3. Whether the term "payable" referred only to amounts that the obligor had the present liquidity to pay or instead to amounts legally due or owed.
4. Whether the Side Letter's fee-redirection provision applied to fees and distributions arising from unrelated transactions.
5. Whether the record conclusively established a confidentiality breach.
6. Whether defendants' use of reasonable efforts to reacquire Plaintiff's interest could be resolved as a matter of law.
7. Whether defendants' failure to remit the One-Time Fee and Property Acquisition Fee constituted a default and triggered Plaintiff's Put Right.

HOLDINGS

1. Plaintiff may seek declaratory relief concerning whether a qualifying default occurred under a related agreement when that determination bears on Plaintiff's rights under the Side Letter's Put Right.
2. The term "default" is unambiguous and means the failure to perform a legal or contractual obligation; any such default under a qualifying agreement is sufficient to constitute an Automatic Trigger.
3. As used in the Side Letter, "payable" refers to amounts legally due or owed, regardless of the obligor's present ability or liquidity to pay.
4. The Side Letter's fee-redirection provision applies only to fees and distributions arising from the Property, not to income from unrelated properties or ventures.
5. Defendants' failure to remit the \$25,000 One-Time Fee and \$1,050,000 Property Acquisition Fee constituted a default under the Side Letter and an Automatic Trigger, thereby triggering Plaintiff's Put Right.
6. The record did not conclusively establish that German's public statements violated the Side Letter's confidentiality provision, so that theory could not independently support summary judgment.
7. Whether defendants used reasonable efforts to reacquire Plaintiff's interest presented a fact issue and could not be resolved on summary judgment.

KEY QUOTATIONS

“A contractual obligation does not evaporate simply because the obligor lacks liquidity.” (¶ 3)

“The Court therefore concludes that “payable,” as used in Section I.3, is unambiguous and refers to amounts that are legally due or owed, without regard to the obligor’s present ability to pay.” (¶ 37)

“The fees were contractual obligations that arose at closing. They were therefore “payable.” Section I.3 required that such amounts be paid to Plaintiff until its Interest was redeemed. And it is undisputed that Defendants did not remit those amounts.” (¶ 56)

FACTUAL BACKGROUND

Plaintiff sold an apartment complex in Weatherford, Texas, to defendants in a transaction that closed on September 5, 2023. Plaintiff provided \$4.7 million in seller financing and received membership units as collateral, while the parties executed a Side Letter giving Plaintiff a Put Right if an Automatic Trigger occurred. The closing documents made a \$25,000 One-Time Fee and a \$1,050,000 Property Acquisition Fee due at closing, but defendants did not remit those fees to Plaintiff and later refused to honor the Put Right.

PROCEDURAL HISTORY

Plaintiff sued after defendants disputed that any Automatic Trigger had occurred and refused to honor Plaintiff's Put Right. The Business Court considered Plaintiff's traditional motion for summary judgment and granted it, concluding that defendants' failure to remit two Property-related fees constituted a contractual default that triggered the Put Right.

DISPOSITION

other

CASES CITED

- ConocoPhillips Co. v. Koopmann, 547 S.W.3d 858, 865 (Tex. 2018)
- MMP, Ltd. v. Jones, 710 S.W.2d 59, 60 (Tex. 1986) (per curiam)
- Stanfield v. Neubaum, 494 S.W.3d 90, 96 (Tex. 2016)
- Huckabee v. Time Warner Ent. Co. L.P., 19 S.W.3d 413, 422-23 (Tex. 2000)
- Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am., 341 S.W.3d 323, 333-34 (Tex. 2011)
- J.M. Davidson, Inc. v. Webster, 128 S.W.3d 223, 229 (Tex. 2003)
- Coker v. Coker, 650 S.W.2d 391, 393 (Tex. 1983)
- McCalla v. Ski River Dev., Inc., 239 S.W.3d 374, 380 (Tex. App.—Waco 2007, no pet.)
- FPL Energy, LLC v. TXU Portfolio Mgmt. Co., L.P., 426 S.W.3d 59, 63 (Tex. 2014)
- TotalEnergies Petrochemicals & Refin. USA, Inc. v. Kinder Morgan Petcoke, LP, 658 S.W.3d 647, 663 (Tex. App.—Houston [14th Dist.] 2022, pet. denied)
- URI, Inc. v. Kleberg Cnty., 543 S.W.3d 755, 771 n.81 (Tex. 2018)
- Limestone Grp., Inc. v. Sai Thong, L.L.C., 107 S.W.3d 793, 797 (Tex. App.—Amarillo 2003, no pet.)
- Sundown Energy LP v. HJSA No. 3, Ltd. P'ship, 622 S.W.3d 884, 889 (Tex. 2021) (per curiam)

- Pharr-San Juan-Alamo Indep. Sch. Dist. v. Tex. Pol. Subdivisions Prop./Cas. Joint Self Ins. Fund, 642 S.W.3d 466, 474 (Tex. 2022)
- Black v. Vaughan, 7 S.W. 604, 604 (Tex. 1888)
- Patranella v. Smith, 102 S.W.2d 297, 298 (Tex. App.—Waco 1937, writ diss'd)
- Castro v. Castro, No. 14-11-01087-CV, 2013 WL 1928742, at *7 (Tex. App.—Houston [14th Dist.] May 9, 2013, no pet.) (mem. op.)
- ATC Indoor DAS LLC v. MM CCM 48M Leasing, LLC, No. 05-24-00769-CV, 2026 WL 265487, at *8-9 (Tex. App.—Dallas Jan. 29, 2026, no pet.) (mem. op.)
- Huffines v. Swor Sand & Gravel Co., 750 S.W.2d 38, 40 (Tex. App.—Fort Worth 1988, no writ)
- Alamo Clay Prods., Inc. v. Gunn Tile Co. of S.A., 597 S.W.2d 388, 392 (Tex. App.—San Antonio 1980, writ ref'd n.r.e.)
- Levy Plumbing Co. v. Standard Sanitary Mfg. Co., 68 S.W.2d 273, 274 (Tex. App.—Dallas 1933, writ ref'd)
- Krause v. Chen, No. 05-21-00470-CV, 2023 WL 2596073, at *3 (Tex. App.—Dallas Mar. 22, 2023, no pet.) (mem. op.)
- Joselevitz v. Roane, No. 14-18-00172-CV, 2020 WL 1528020, at *6 (Tex. App.—Houston [14th Dist.] Mar. 31, 2020, no pet.) (mem. op.)
- Nissan N. Am., Inc. v. Tex. Dep't of Motor Vehicles, 592 S.W.3d 480, 494 (Tex. App.—Texarkana 2019, no pet.)
- Frasier v. Schauweker, 915 S.W.2d 601, 604 (Tex. App.—Houston [14th Dist.] 1996, no writ)
- Fisch v. Transcon. Ins. Co., 356 S.W.2d 186, 192 (Tex. App.—Houston 1962, writ ref'd n.r.e.)
- In re State Bar of Tex., No. 13-23-00009-CV, 2023 WL 2534067, at *6 n.4 (Tex. App.—Corpus Christi-Edinburg Mar. 15, 2023, orig. proceeding) (mem. op.)
- Wolf Hollow I, L.P. v. El Paso Mktg., L.P., 472 S.W.3d 325, 335 (Tex. App.—Houston [14th Dist.] 2015, pet. denied)