

SUPREME COURT OF TEXAS

Bartush-Schnitzius Foods Co. v. Cimco Refrigeration, Inc.

518 S.W.3d 432 (Tex. 2017) · No. 16-0054 · Decided April 28, 2017

SUMMARY

The Supreme Court of Texas held that a jury's findings that both parties breached a contract, that Cimco breached first, and that Bartush's breach was not excused required effect to both parties' damages claims. The court explained that a nonmaterial prior breach does not excuse subsequent performance, but a later material breach does not retroactively eliminate a claim for damages arising from the earlier breach. The court reversed the court of appeals' judgment and remanded for consideration of unresolved evidentiary and attorney's-fee issues.

CASE DETAILS

COURT	Supreme Court of Texas
JURISDICTION	Texas
DECIDED	April 28, 2017
DOCKET	16-0054
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Both parties petitioned for review of a judgment of the Court of Appeals for the Second District of Texas in a breach-of-contract dispute. The Texas Supreme Court granted both petitions, reversed the court of appeals, and remanded to that court without hearing oral argument.
STANDARD OF REVIEW	Whether a breach is material is generally a fact question for the jury and may be decided as a matter of law only when reasonable jurors could reach only one verdict. The court also addressed the effect of the jury's findings and remanded unresolved evidentiary and preservation issues to the court of appeals.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Texas; precedential.
PARTIES	Bartush-Schnitzius Foods Co., Cimco Refrigeration, Inc. v. Bartush-Schnitzius Foods Co., Cimco Refrigeration, Inc.

TOPICS

material breach

breach of contract

commercial litigation

standard of review

appellate procedure

PRACTICE AREAS

Contracts

Commercial litigation

Appellate procedure

QUESTIONS PRESENTED

1. Whether the jury's finding that Bartush's breach was not excused necessarily implied that Cimco's prior breach was nonmaterial.
2. Whether Cimco's alleged failure to provide a refrigeration system capable of maintaining thirty-five degrees was a material breach as a matter of law.
3. Whether Bartush's subsequent material or unexcused breach barred its claim for damages arising from Cimco's prior breach.
4. Whether the courts below properly effectuated the jury's awards to both parties.
5. Whether Cimco preserved error regarding the jury's failure to answer the attorney's-fees question.

HOLDINGS

1. Yes. Because the jury was instructed that Bartush's failure to comply would be excused if Cimco had previously failed to comply with a material obligation, the jury's finding that Bartush's breach was not excused necessarily implied that Cimco's prior breach was nonmaterial.
2. No. The evidence did not conclusively establish materiality, and reasonable jurors could disagree about whether Cimco breached a material obligation.
3. No. Bartush remained liable for its subsequent failure to comply, but its claim for damages caused by Cimco's prior breach remained viable. A subsequent material breach may excuse future performance but does not retroactively discharge a damages claim that had already arisen.
4. Neither the trial court nor the court of appeals properly effectuated the jury's verdict. The trial court improperly ignored the finding that Bartush's breach was not excused, while the court of appeals improperly ignored the finding that Cimco breached first.
5. The issue could not be resolved on the present record and was remanded to the court of appeals. Because the Supreme Court did not decide whether Question 3 was an invalid basis for liability, it could not determine whether Cimco's objection to Question 3 preserved error regarding Question 24.

KEY QUOTATIONS

"In other words, a material breach excuses future performance, not past performance." (518 S.W.3d at 437)

"The court of appeals turned the doctrine on its head, effectively holding that Bartush's nonpayment retroactively excused Cimco's prior breach." (518 S.W.3d at 438)

FACTUAL BACKGROUND

Bartush contracted with Cimco to install a refrigeration system capable of maintaining a temperature of thirty-five degrees for seafood-dip production. The system's defrost unit was not designed for operation at that temperature, causing ice formation, motor failures, and temperatures rising into the 50s and 60s. After paying

Cimco \$306,758, Bartush withheld the remaining \$113,400 and hired another company to install a warm-glycol defrost unit for \$168,079. The jury found both parties breached, found that Cimco breached first, found that Bartush's breach was not excused, and awarded damages to both parties.

PROCEDURAL HISTORY

Cimco sued Bartush for the unpaid balance of a refrigeration-installation contract, and Bartush counterclaimed for damages caused by Cimco's alleged breach. The jury found that both parties failed to comply, that Cimco breached first, that Bartush's breach was not excused, and awarded damages to both parties. The trial court entered judgment only for Bartush. The court of appeals reversed and remanded for judgment only for Cimco. The Texas Supreme Court held that neither judgment effectuated the jury's verdict, reversed, and remanded for consideration of unresolved issues.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded to the Court of Appeals for the Second District of Texas to consider Cimco's alternative argument that no evidence supported the jury's finding that Cimco failed to comply with the agreement, and to address whether Cimco preserved error regarding the jury's failure to answer the attorney's-fees question.

CASES CITED

- Mustang Pipeline Co. v. Driver Pipeline Co., 134 S.W.3d 195, 196 (Tex. 2004)
- Hernandez v. Gulf Grp. Lloyds, 875 S.W.2d 691, 692 (Tex. 1994)
- Levine v. Steve Scharn Custom Homes, Inc., 448 S.W.3d 637, 654 (Tex. App.—Houston [1st Dist.] 2014, pet. denied)
- Mays v. Pierce, 203 S.W.3d 564, 575 (Tex. App.—Houston [14th Dist.] 2006, pet. denied)
- Hudson v. Wakefield, 645 S.W.2d 427, 430 (Tex. 1983)
- City of Keller v. Wilson, 168 S.W.3d 802, 822 (Tex. 2005)
- Gilbert v. Fitz, No. 05-16-00218-CV, 2016 WL 7384167, at *6 (Tex. App.—Dallas Dec. 21, 2016, no pet.)
- Harris Cty. Util. Dist. No. 16 v. Harris Cty. Mun. Dist. No. 36, No. 01-10-00042-CV, 2011 WL 3359698, at *9 (Tex. App.—Houston [1st Dist.] Aug. 4, 2011, no pet.)
- Allied Capital Partners, LP v. Proceed Tech. Res., Inc., 313 S.W.3d 460, 465 (Tex. App.—Dallas 2010, no pet.)
- Vance v. My Apartment Steak House of San Antonio, Inc., 677 S.W.2d 480, 481-82 (Tex. 1984)
- McFarland v. Boisseau, 365 S.W.3d 449, 454-55 (Tex. App.—Houston [1st Dist.] 2011, no pet.)