Vinson&Elkins

2026 Q3 Summaries

Texas Business Court Quarterly Update



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Beyond Jurisdiction:

How the Texas Business Court Is Shaping Governance and Fiduciary Law

In the third quarter of 2026, the Texas Business Court continued its progress on an ever-growing docket, issuing a number of opinions on both procedural matters and merits issues. Like prior quarters, some of the Court's opinions addressed threshold issues, such as the mechanics of proper removal, the scope of the Court's personal and subject matter jurisdiction, and questions of standing and immunity. Increasingly, however, the Court's merits decisions have developed the law on governance and the obligations that parties owe either by contract or as fiduciaries. For example, the Court:

- construed the governing documents of nonprofit religious organizations and the Texas Business Organizations Code's ("***TBOC***") applicability to them in *Sri Shirdi Sai Baba Temple of Austin v. Lam* and *Jeremiah Counsel Corp. v. Ben Young*;
- determined, as a matter of first impression, the applicability of the Texas Trust Code to a series of financing documents in *Preston Hollow Capital v. Truist Bank*; and
- identified the scope of a party's obligations under a constructive trust that held interests in the Texas Rangers in *Simpson v. Simpson*.

Vinson & Elkins, and its team of dedicated and experienced Texas litigators, are committed to keeping our clients up to date on the way these decisions may shape the legal landscape and affect client operations and decision-making. This *Texas Business Court Quarterly Update* series aims to deliver timely and valuable content to help our clients stay informed of emerging precedent from the Business Court.

Jurisdictional Issues

Personal Jurisdiction

CWK Mgmt., Inc. v. Maggi, 2026 Tex. Bus. 48 (1st Div. July 21, 2026)

CWK Management, Inc. ("***CWK***"), for itself and derivatively on behalf of CWKCWE Management, LLC ("***CWKCWE***"), and Vincent Carfora ("***Carfora***") (collectively, "***Plaintiffs***") sued Deno Maggi, Terrall Hill, Bill Poland ("***Poland***"), and several entities, alleging that BWE II, LLC ("***BWE***") sold its car wash businesses in 2025 for an insufficient price to entities principally owned by Maggi and Hill, in alleged violation of CWKCWE's Limited Liability Company Agreement (the "***LLCA***"). Plaintiffs asserted claims against Poland — a California resident shareholder and manager of BWE — for tortious interference and knowing participation in breach of fiduciary duty. Poland filed a verified special appearance challenging personal jurisdiction, and Plaintiffs asserted only specific jurisdiction. The Court granted the special appearance and dismissed all claims against Poland without prejudice, concluding that Plaintiffs failed to establish their claims against Poland arose from or related to his alleged conduct in Texas.

Specific jurisdiction requires a substantial connection between the defendant's Texas contacts and the operative facts of the litigation. Here, those operative facts were the 2025 sale of BWE's car wash businesses and the alleged violation of § 3.5(b) of the LLCA. The Court therefore held that Poland's pre-sale contacts — BWE's day-to-day operations, BWE's 2023 hiring of CWKCWE to manage its car washes, and the 2023 Texas meeting — predated the operative claims and could not support jurisdiction over Poland. The Court held that Plaintiffs' allegations that Poland, together with the other defendants, "concocted" or "orchestrated" the transaction constituted impermissible group pleading and were conclusory; each defendant's actions and contacts had to be tested separately. Poland testified without contradiction that his dealings with Plaintiffs were solely as BWE's manager. Because Plaintiffs did not allege that Poland personally committed a tortious act in Texas, the Court held that Plaintiffs could not impute BWE's contacts to him.

Finally, the Court rejected Plaintiffs' reliance on Poland's 2023 Texas meeting with Maggi, Hill, and Carfora to establish jurisdiction because Plaintiffs admitted it concerned a substantially different proposed management transaction, not the 2025 sale at issue. The Court also denied Plaintiffs' request for additional discovery because the parties had had an opportunity to take discovery as part of the special appearance.

Subject Matter Jurisdiction

Kampmann v. Smith, 2026 Tex. Bus. 42 (4th Div. July 8, 2026)

This case arose from the breakdown of a decade-long business partnership between Abigail G. Kampmann ("***Kampmann***") and Mark L. Smith ("***Smith***"). In 2014, the two formed Principle Auto Group, LLC ("***PAP GP***"), in which Kampmann holds a 50.5 percent interest and Smith holds 49.5 percent. PAG GP is the sole general partner of Principle Auto Management, Ltd. ("***PAM LP***"), a limited partnership formed to manage certain automobile dealerships. Both entities maintain their registered offices in Bexar County. Kampmann and Smith also co-own with a third partner, three related dealership entities (the "***MS Entities***"). Kampmann individually and derivatively on behalf of the entities (together, "***Plaintiffs***"), sued Smith for dissolution and wind-up of PAG GP and PAM LP under TBOC § 11.314, a declaration that Smith's offer to buy out Kampmann's interest in the MS Entities did not comply with the governing partnership agreements, breach of contract, and breach of fiduciary duty. Two related suits were already pending in Kendall County district court: Smith's claims against Kampmann concerning her alleged formation of a competing business and diversion of business opportunities (the "***Severed Suit***"), and a suit by Bavarian Imports, Ltd. ("***Bavarian***"), an entity owned by Kampmann, against Smith concerning alleged interference with shared-services employees (the "***Bavarian Suit***," and together with the Severed Suit, the "***Kendall County Suits***"). Smith challenged the Court's subject-matter jurisdiction, and

alternatively moved to transfer the case. The Court denied Smith's plea to the jurisdiction, plea in abatement, and motion to transfer.

Regarding jurisdiction, Smith argued that Plaintiffs had not adequately pleaded damages because the petition did not quantify specific dollar amounts of loss. The Court rejected that argument, reasoning that proving damages is a merits issue distinct from alleging a concrete, particularized injury for jurisdictional purposes. Plaintiffs alleged an amount in controversy exceeding $5 million, and Smith did not contend that figure was a sham. The Court found a justiciable controversy because the parties' competing constructions of the purchase-offer provisions created a real dispute and because allegations concerning the improper appointment of a platform manager and allocation of legal fees described concrete injuries.

Regarding the plea in abatement, the Court held that the Kendall County Suits were not inherently interrelated with this action: The present matter centered on dissolution of PAG GP and PAM LP, whereas the Bavarian Suit concerned employee interference and the Severed Suit concerned competitive diversion, and the three involved different facts, parties, rights, and remedies. The Court also reasoned that because TBOC § 11.314 vests authority to order wind-up in a district court in the county of the entity's registered office or principal place of business — in this case, Bexar County — the Kendall County district court could not have acquired dominant jurisdiction over the dissolution claims. The Court further held that it could not decline original subject-matter jurisdiction conferred by the Legislature.

The Court likewise denied transfer, determining that Kendall County was not a proper venue for all claims because TBOC § 11.314 required the winding-up claims to be litigated in Bexar County, where the entities' registered offices were located.

In re Radical Hoops, Ltd., 2026 Tex. Bus. 55 (1st Div. Aug. 5, 2026)

When Mark Cuban ("***Cuban"***) sold his majority interests in the Dallas Mavericks to members of the Adelson family ("***Adelsons***"), they also agreed to a partnership where Cuban could participate in certain business opportunities with the Adelsons. Later, the Adelsons sought to relocate the arena for the Dallas Mavericks, and, through Arena Development Intermediate, LLC ("***ADI***," collectively with Adelsons, "***Respondents***"), executed an option contract ("***Option***") to purchase a portion of the Valley View Mall — the location of the prospective new arena. But, the Adelsons never told Cuban about the Option.

Cuban, through Radical Hoops, LTD. and Radical Mavericks II, LLC (collectively "***Petitioners***"), filed a petition under Texas Rule of Civil Procedure 202 in Dallas County District Court seeking pre-suit discovery from Respondents to investigate anticipated tortious interference claims with existing and prospective contracts. Respondents removed to the Texas Business Court, First Division. Petitioners filed an emergency motion for remand, primarily arguing that the Texas Business Court's jurisdiction is limited to "actions" which, they argued, did not encompass Rule 202 proceedings. The Court disagreed, however, holding that because an "action" includes any proceeding where a party seeks to enforce a claimed right — and a Rule 202 proceeding ultimately seeks to enforce a party's claimed right to conduct pre-suit discovery — the Business Court's jurisdiction necessarily encompasses Rule 202 proceedings. The Court likewise held that it possessed subject matter jurisdiction over the Rule 202 petition because the anticipated lawsuit (1) involved two qualifying transactions — Cuban's sale of his majority interests in the Dallas Mavericks to the Adelsons, and the Adelsons' Option — that satisfied the amount in controversy requirement, and (2) the Court had the authority to grant the relief sought by the Rule 202 petition. Accordingly, the Court denied Petitioners' motion.



Removal

Dhannani v. Batool, 2026 Tex. Bus. 61 (11th Div. Sept. 11, 2026)

On April 3, 2026, Plaintiff Rashmin Dhannani filed an original petition ("***Original Petition***") in Harris County District Dourt ("***District Court***") against Syeda Misbah Batool, Syed Ali, and Regal Imports, LLC. The Original Petition sought a temporary restraining order, temporary injunction, and monetary damages up to $1,000,000 for the alleged wrongful removal, transfer, and seizure of company inventory and for creating a competing business. A few weeks later, Dhanni filed a First Amended Petition that added Select Novelties LLC as a plaintiff ("***Select***," and collectively with Dhannani, "***Plaintiffs***"), named Aslam Ajani as a defendant (collectively with Batool, Ali, and Regal Imports, LLC, "***Defendants***"), and increased the request for monetary relief to more than $1,000,000. Dhannani subsequently proceeded to file two more amended petitions, the third of which increased the requested monetary relief to more than $5,000,000.

On May 28, 2026, the District Court granted Dhannani's request for a temporary injunction. The next day, Dhannani filed a notice of removal ("***Notice of Removal***"), to the Texas Business Court, Eleventh Division, and Defendants subsequently filed a motion to remand. The Court denied the motion, concluding that Dhannani properly removed the action under the Texas Government Code § 25A because (1) Dhannani's Notice of Removal was timely since it was filed a day after the District Court granted the temporary injunction, which was well inside the 30-day deadline for removal after a temporary injunction is granted or denied, which is tolled while a temporary injunction application is pending; and (2) the amount-in-controversy threshold was satisfied because, under the well-established burden-shifting framework, Dhannani's pleadings expressly sought more than $5,000,000 in monetary damages, and Defendants failed to show the figure was wrongly asserted or clearly below the jurisdictional threshold.

The Bakery v. Naterra Int'l, 2026 Tex. Bus. 64 (3d Div. Sept. 15, 2026)

The Bakery LLC and Ken Media LLC (collectively, "***Plaintiffs***") sued Naterra International, Inc. ("***Defendant***") in Travis County District Court, alleging that Defendant owed approximately $1.35 million for services provided. Defendant filed counterclaims seeking more than $60 million. Within 30 days of Defendant filing its counterclaims, Plaintiffs removed the action to the Texas Business Court, Third Division, asserting that the action arose out of a qualified transaction pursuant to Chapter 25A of the Texas Government Code, the Court's jurisdictional statute. Defendant filed a motion to remand, arguing that Plaintiffs' removal was untimely because Plaintiffs removed the case well beyond 30 days after Plaintiffs received Defendant's response to a pre-suit demand threatening to file its counterclaims. The Court denied Defendant's motion, holding that the case became removable as soon as Defendant filed its counterclaims — not when Defendant threatened to do so. Since Plaintiffs removed the case within 30 days of Defendant filing its counterclaims, removal was timely.

Runner Runner v. BLPP Holdings, 2026 Tex. Bus. 67 (1st Div. Sept. 25, 2026)

Runner Runner LLC ("***Runner Runner***") sued FM 900, LLC (the "***Company***"), certain members of the Company, including Gregory Miller ("***Miller***"), and others in Dallas County District Court, seeking, among other things, the Company's dissolution and an accounting of the Company's finances. Miller removed the case to the Texas Business Court, First Division. Runner Runner filed a motion to remand, arguing that the case did not satisfy the Court's $5 million amount-in-controversy requirement under Chapter 25A of the Texas Government Code, the Court's jurisdiction-conferring statute. After applying the Court's well-established burden-shifting framework for the amount-in-controversy requirement, the Court granted Runner Runner's motion. Even though Miller met his initial burden of pleading a sufficient amount in controversy, primarily due to the $5 million estimated fair market value of the Company's ranch, Runner Runner submitted written testimony and other supporting documents showing that the ranch was encumbered by approximately $1.74 million of debt. By submitting this evidence, Runner Runner met its burden of establishing an insufficient amount in controversy, which Miller failed to rebut.

Abstention

Clean Hydrogen Works, LLC v. Denbury Carbon Sols., LLC, 2026 Tex. Bus. 58 (11th Div. Aug. 12, 2026)

Clean Hydrogen Works, LLC ("***Clean Hydrogen***") formed LA-1, LLC ("***LA-1***"), a Louisiana company to produce clean hydrogen and blue ammonia. In order to establish the necessary infrastructure to transport such byproducts from its facility, LA-1 executed service agreements ("***Agreements***"), with Denbury Carbon Solutions, LLC ("***Denbury***"), to construct and maintain a pipeline to do so. Later, Exxon Mobil Corporation ("***Exxon***") acquired Denbury. Once acquired, Denbury terminated the Agreements and stopped working on the pipeline, allegedly depriving LA-1 of the only available transportation option. Clean Hydrogen and LA-1 (collectively, "***Plaintiffs***"), brought claims under the Louisiana Monopoly Act ("***LMA***") against Denbury, and the Louisiana Unfair Trade Practices Act ("***LUTPA***") against Denbury, Exxon, and ExxonMobil Low Carbon Solutions Holding LLC (collectively "***Defendants***"). Defendants filed partial motions to dismiss under Texas Rule of Civil Procedure 91a, and the Texas Business Court, Eleventh Division granted the motions in part, dismissing Plaintiffs' LMA claims, but allowing the LUFTA claims to remain.

The Court's decision turned on application of the Texas Supreme Court's opinion in *Coca-Cola Co. v. Harmar Bottling Co.*, wherein the Texas Supreme Court established that Texas courts should not apply another State's antitrust laws. Because the present case involved a Louisiana pipeline, a Louisiana project, and a Louisiana competitive harm, the Court determined that resolving Plaintiffs' LMA claims would necessarily require it apply Louisiana antitrust laws in contravention of the abstention principle required by Coca-Cola Co. The LUTPA claims, however, didn't run afoul of this abstention doctrine because Coca-Cola Co. did not extend to unfair trade practice claims. Taking Plaintiffs' pleadings as true, the Court otherwise concluded that Plaintiffs sufficiently described deliberate misrepresentations, concealment, and deceptive inducement to support a LUTPA claim at the motion to dismiss stage.

Claim Preclusion & Release

CAM Indus. Sols. LLC v. Brown & Root Indus. Servs., LLC, 2026 Tex. Bus. 56 (11th Div. Aug. 10, 2026)

In 2023, ExxonMobil replaced its maintenance contractor, CAM Industrial Solutions LLC ("***CAM***"), with Brown & Root Industrial Services, LLC ("***Brown & Root***"). CAM alleges that Brown & Root was awarded the work after recruiting CAM personnel and misusing CAM's confidential information. CAM's allegations center on its former site manager ("***Manager***"). According to CAM, the Manager, while working for CAM, sent CAM's proprietary labor rate sheets to Brown & Root, which Brown & Root incorporated into its work proposal to ExxonMobil. The Manager later left CAM for Brown & Root.

In 2024, CAM sued Brown & Root and other individuals (not including the Manager) in Chambers County District Court (the "***District Court***"), alleging, in relevant part, trade-secrets claims, tortious interference, and that Brown & Root knowingly participated in the Manager's breach of fiduciary duty. At trial, CAM presented evidence of the proprietary labor rate-sheets that the Manager had sent to Brown & Root, and the signing bonus that the Manager received upon joining them. CAM asked the District Court to submit jury questions for the Manager's alleged breach of fiduciary duty and Brown & Root's alleged participation in the breach, but because the Manager was not a party to the lawsuit, the District Court declined to do so. The jury returned a verdict rejecting CAM's trade-secret claims, finding that Brown & Root did not interfere with CAM's ExxonMobil contract, and concluding that CAM's former employees had not breached their fiduciary duties. However, one day before the District Court entered final judgment on the verdict, CAM sued Brown & Root again (this time with the Manager) in Texas Business Court, Eleventh Division, asserting claims for breaches of contract and fiduciary duties against the Manager and a claim for knowing participation in the Manager's alleged breach against Brown & Root.

Brown & Root and the Manager separately filed motions for summary judgment arguing that CAM's claims were subject to claim preclusion due to the District Court's prior judgment. CAM, however, responded that the District Court had not rendered a prior judgment, because this lawsuit was filed a day before that judgment was entered. The Court rejected CAM's argument, noting that when two related actions proceed in parallel to each other, the first final judgment in one action binds the parties in the other. Further, because (1)

the knowing participation claim arose from the same set of operative facts as the prior lawsuit; (2) CAM, with reasonable diligence, had the opportunity to pursue the claim in that lawsuit and chose not to do so; and (3) the District Court did not reserve CAM's claim against Brown & Root, the Court concluded that the claim as asserted against Brown & Root was precluded. Conversely, however, the Court ruled that the Manager was not entitled to claim preclusion since (1) the Manager did not establish privity with any of the defendants in the prior lawsuit such that the Manager's legal interests were sufficiently represented, and (2) the jury had not actually resolved an issue that would preclude CAM's claims against the Manager.

Beard v. Perot, 2026 Tex. Bus. 65 (1st Div. Sept. 22, 2026)

Henry Ross Perot, Jr. ("***Perot***") and Anurag Jain ("***Jain***") created Perot Jain, L.P. ("***Perot Jain***"), a venture capital firm. In 2015, Perot Jain hired Joseph Beard ("***Beard***") as a partner. At Perot Jain, Beard's primary responsibility was to manage Access Healthcare, one of Perot Jain's portfolio companies, which Beard did successfully. Almost five years after joining Perot Jain, Beard left amicably. As part of his separation, Beard agreed to a "Separation Agreement and General Release" ("***Separation Agreement***"). Under the Separation Agreement, Beard would receive a three percent carried interest in a set of Perot Jain's portfolio companies, and release Perot, Jain, and Perot Jain "from any and all claims" "in any way related to Beard's employment by [Perot Jain] or separation from said employment." Notably, of the companies identified by the Separation Agreement for Beard's carried interest, Access Healthcare was not one. Beard questioned this. But Perot and Jain told him that they would pay him for Access Healthcare at some point. More than two years later, Beard and Perot Jain executed a release agreement ("***Release Agreement***") in which Perot Jain purchased Beard's interests in the companies identified in the Separation Agreement. Again, the parties confirmed that this did not impact Beard's Access Healthcare interests or the future payment.

In 2025, Access Healthcare sold in a multibillion-dollar deal. After the deal, Beard asked Perot and Jain for his Access Healthcare payment. They refused, denying that they would pay him for Access Healthcare, and arguing that Beard disclaimed his interest in Access Healthcare when he executed the Separation Agreement and the Release Agreement. Beard sued Perot, Jain, and Perot Jain (collectively, "***Defendants***") in the Dallas County District Court for fraudulent inducement, breaches of contract, and other equitable claims. Defendants removed the case to the Texas Business Court, First Division.

On Defendants' motion to dismiss under Texas Rule of Civil Procedure 91a, the Court dismissed all of Beard's claims with prejudice. First, after emphasizing that Beard agreed to release Defendants "from any and all claims and causes of action of whatever kind and character, arising out of or in any way related to Beard's employment by [Perot Jain] or separation from said employment," and promised to "not file or initiate any such claim in any local, state, or federal court" in the Separation Agreement, the Court concluded that Beard released all his claims against Defendants except for fraudulent inducement. Second, the Court concluded that the fraudulent inducement claim failed because (1) the Release Agreement and the Separation Agreement — the results of arm's-length negotiations between sophisticated parties — expressly included reliance disclaimers, and (2) any oral promises to pay Beard for Access Healthcare directly contradicted the Separation Agreement's unambiguous terms. Accordingly, Beard did not justifiably rely — a necessary element of a fraudulent inducement claim — on any of Defendants' purported misrepresentations to pay Beard for Access Healthcare.



Judicial Immunity

Fischer v. Fischer, 2026 Tex. Bus. 54 (8th Div. July 29, 2026)

Plaintiff and Defendant filed for, and received, a divorce decree in Dallas County District Court (the "***District Court***"). In dividing the couple's community property, the District Court ordered Defendant's company ("***Company***") and its related entities (collectively, "***Companies***") to be sold, with distributions from the sale split equally, and appointed the Receiver to conduct the sale. Plaintiff appealed the appointment and asked the District Court to stay the appointment pending appeal. The District Court declined to issue a stay. The Receiver, along with Fischer Seller and Fischer Purchaser, entities created to execute the sale (collectively, "***Receiver Parties***"), proceeded with and executed the sale. After the sale closed, the court of appeals reversed and vacated the District Court's receivership order. Plaintiff then filed suit in a Denton County District Court alleging, among other things, claims for declaratory relief, breaches of fiduciary duty and self-dealing, and fraud arising from the sale of the Companies against various defendants, including the Receiver Parties. The Receiver Parties removed to the Texas Business Court, Eighth Division and moved to dismiss all claims against them due to judicial immunity. The Court granted the Receiver's motion but allowed claims against Fischer Seller and Fischer Purchaser to proceed.

As to the Receiver, after applying well-established judicial immunity principles, which grant judges and court officers immunity from civil liability when acting within official capacities, the Court concluded that the Receiver was acting within his court-appointed capacity throughout the course of the sale of the Companies and was entitled to judicial immunity. Plaintiff, nevertheless, argued that the court of appeals' vacatur of the District Court's receivership order retroactively defeated the Receiver's judicial immunity. But because the District Court had properly possessed subject matter jurisdiction over both the underlying lawsuit and in appointing a receiver to sell property, the Court concluded that the subsequent vacatur of the receivership order did not retroactively dissolve the Receiver's immunity despite vacatur of the order appointing him. On the other hand, regarding Fischer Seller and Fischer Purchaser, the Court found that Plaintiffs' amended petition did not allege facts sufficient to show that either entity was appointed as a receiver, an extension of the receiver, or functioned as an arm of the court. Accordingly, the Court concluded that Fischer Seller and Fischer Purchaser failed to establish entitlement to judicial immunity.



Governance Issues

LLC Governance

Hinds v. Sandman Offshore, LLC, 2026 Tex. Bus. 63 (11th Div. Sept. 14, 2026)

Russell A. Hinds ("***Hinds***") and David Wegner ("***Wegner***") were co-managers and each held a 20 percent membership interest in Sandman Offshore, LLC ("***Sandman***" and, with Wegner, "***Defendants***"), an oil and gas company with five members. According to Hinds, he served as the day-to-day manager and devoted thousands of hours of service to Sandman and Wyotex Offshore, LLC ("***Wyotex***"), the assignee of one of Sandman's oil and gas leases. In March 2026, Sandman's members removed Hinds as co-manager, and the following month expelled him as a member — all, Hinds alleged, without notice or an opportunity to be heard. Sandman countered that Hinds's removal was prompted by self-dealing: Hinds had recommended that Wyotex hire his own drilling-services company, EnviroCore, Inc. ("***EnviroCore***"), without disclosing his ownership interest, and then allegedly prioritized Wyotex's payments to EnviroCore over its lease payments to Sandman.

Hinds sued Sandman and Wegner, asserting claims for breach of the Sandman LLC Agreement (the "***LLC Agreement***"), breach of fiduciary duty, breach of the implied covenant of good faith and fair dealing, fraud by nondisclosure, constructive fraud, conversion, and tortious interference with business relations. Defendants filed partial motions to dismiss under Texas Rule of Civil Procedure 91a. The Court granted the motions in substantial part, dismissing the majority of Hinds's claims while preserving his breach-of-fiduciary-duty claims to the extent they alleged willful misconduct and his breach-of-contract claim based on Sandman's refusal to hold a special meeting.

The Court's fiduciary-duty analysis turned on the Sandman LLC Agreement's limitation-of-liability clause. Under Texas law, LLC members do not owe fiduciary duties to fellow members merely by virtue of their co-membership, and the TBOC permits a company agreement to expand, restrict, or eliminate any duties — including fiduciary duties — owed by a member or manager. The Sandman LLC Agreement used that latitude to displace the default fiduciary duties a manager would otherwise owe, providing that "[e]xcept for such duties as may be expressly set forth in this Agreement, a Manager shall not be subject to any duties (including fiduciary duties) in the management of the Company." What remained, then, were not common-law fiduciary duties but only the duties the LLC Agreement itself spelled out — specifically, the duty not to manage the company through gross negligence, willful misconduct, or breach of the LLC Agreement. All parties conceded that this provision did not eliminate fiduciary duties altogether and that Sandman's managers owed some fiduciary duties, but they disagreed on their scope: Wegner contended that the only pertinent duty was the LLC Agreement's bar on a specific type of conflicted business activity, while the Court read the provision on its face to preserve liability for willful misconduct as well. Because Wegner was exposed only to "limited, express fiduciary duties in the Agreement," the Court held that Hinds's fiduciary-breach claims survived to the extent they alleged willful misconduct by Wegner in the management of Sandman, including usurpation of corporate opportunities and diversion of Hinds's royalty interest. The Court dismissed Hinds's fiduciary-breach claims to the extent they were based on his removal and expulsion, or on the lack of notice of those actions, because the LLC Agreement expressly permitted company action — including expulsion — "without a meeting, without prior notice, and without a vote" by written consent of the requisite majority. After all, as the Court noted, a fiduciary duty to provide notice that the LLC Agreement itself eliminated could not qualify as a duty "expressly set forth in this Agreement." The Court also rejected Hinds's attempt to establish an informal fiduciary relationship, holding that a longstanding, trusting business relationship between co-managers who chose to restrict their obligations in a written agreement "came nowhere close" to the standard set by the Texas Supreme Court in *Pitts v. Rivas*, under which an informal fiduciary duty arises only from a personal relationship of special trust and confidence — not from prior arm's-length transactions entered into for the parties' mutual benefit.

Second, the Court dismissed Hinds's breach-of-contract claims based on his expulsion and removal. Hinds argued that Sandman expelled him without valid "cause" as required by the LLC Agreement. The LLC Agreement, however, provided that "conflicting business activity, as determined by Majority Interest of the Members," "shall be cause" for expulsion — vesting the cause determination in the majority, not in any individual member or the court. The Court

concluded that Hinds's own pleading did not allege he was expelled without such a majority-interest determination, and his admission that the LLC Agreement permits removal of a manager "with or without cause" defeated his claim on that basis as well.

The Court likewise dismissed Hinds' claim for breach of the implied covenant of good faith and fair dealing. Under Texas law, parties to a contract owe no duty to act in good faith absent a special relationship. Hinds alleged that he and Wegner shared a special relationship of trust and confidence built over sixteen years as business associates, but his own pleading described the two as equal co-managers and co-members who had reduced their obligations to a written agreement — facts the Court held negated, rather than established, a special relationship. The Court did, however, sustain Hinds' contract claim based on Sandman's refusal to honor his demand for a special meeting under the LLC Agreement, finding that Hinds adequately pleaded compliance with the LLC Agreement's procedural requirements for calling a special meeting and that Sandman's refusal to hold it stated a viable breach.

Next, the Court dismissed all of Hinds' fraud claims against Wegner. Hinds alleged fraud by nondisclosure and constructive fraud based on Wegner's failure to disclose his plan to orchestrate Hinds' expulsion. Both theories require a duty to disclose, which the Court held did not exist here: The LLC Agreement expressly permitted action without notice, and the LLC Agreement restricted fiduciary duties to those expressly stated in the agreement. Because the LLC Agreement expressly eliminated a duty to provide advance notice of company action, Wegner was under no obligation to disclose his plans. The Court also declined to apply a partial-disclosure theory, finding it was not grounded in Hinds' pleading.

The Court also dismissed Hinds' conversion claim against both Defendants, holding that Hinds' LLC membership interest was uncertificated intangible property that fell outside the scope of Texas conversion law. Citing its own recent decision in *Carrington v. Corsi*, the Court reaffirmed that conversion claims in Texas generally require tangible personal property or an intangible right that has been "merged" into a physical document. Because neither the LLC Agreement nor the TBOC required certification of membership interests, the statutory presumption of uncertificated interests controlled, and the merger exception did not apply.

Finally, the Court dismissed Hinds's tortious-interference claim because both Hinds and Wegner were parties to the same business relationship with Sandman. Under settled Texas law, a party to a business relationship cannot tortiously interfere with its own relationship, and the Court declined to extend liability to a fellow member acting within the relationship.

Nonprofit Corporate Governance

Sri Shirdi Sai Baba Temple of Austin v. Lam, 2026 Tex. Bus. 45 (3rd Div. July 15, 2026)

Sri Shirdi Sai Baba Temple of Austin (the "***Temple***") is a Texas nonprofit corporation operating as a religious institution. The Temple's Certificate of Formation, filed in 2007, stated that it was board-managed and would have no members. In July 2025, the Temple's board of directors (the "***2024 Board***") adopted amended and restated bylaws (the "***2025 Bylaws***") purporting to create a General Body of Trustees ("***GBT***") as the Temple's managing membership body, with any devotee eligible to become a trustee-member by donating $20,000. The 2025 Bylaws stated that "[t]he overall governance of the Corporation is vested in GBT, which may delegate or withdraw powers from time to time to the [board of directors] as the representatives of the GBT." After legal counsel advised that the 2025 Bylaws conflicted with the Certificate, the 2024 Board revoked the 2025 Bylaws. Nevertheless, two members of a terminated election committee proceeded with an unauthorized election, prompting the purported new board (including individual Plaintiffs) to file an action seeking declaratory judgment that the 2025 Bylaws and the election were valid, that they were the Temple's rightful board, and that Defendants were required to recognize them. Plaintiffs also sought promissory-estoppel relief.

In resolving the cross-motions for summary judgment, the Court denied Plaintiffs' motion and granted Defendants' motion on Plaintiffs' declaratory-judgment and promissory-estoppel claims. First, under TBOC § 22.103(a), a certificate of formation controls over conflicting bylaw provisions. The Court therefore held that the 2025 Bylaws were subordinate to the Certificate because they purported to vest original management power in the GBT and designate trustees as corporate members, contrary to the Certificate's provisions for board management and no members. The Court rejected Plaintiffs' argument that the 2025 Bylaws merely delegated board authority to the GBT, explaining that the bylaws vested original governance power in the GBT and made

the board's authority revocable at the GBT's discretion. No amendment to the Certificate had been filed before the disputed election or this lawsuit. Therefore, the Certificate's board-managed, no-member structure remained controlling, so the 2025 Bylaws could not create a member-managed GBT or validate the disputed election.

Second, the Court rejected Plaintiffs' argument that TBOC § 22.103 created a "Catch 22" that made it impossible to convert from board-managed to member-managed status, explaining that a nonprofit corporation's board could approve and file new bylaws and an amended certificate of formation contemporaneously, or file the certificate amendment with a future effective date first and then amend the bylaws.

Third, the Court rejected Plaintiffs' invocation of the church autonomy doctrine, which generally bars civil courts from adjudicating internal religious disputes. The Court concluded the dispute concerned whether the 2025 Bylaws legally changed the Temple's corporate governance — not religious doctrine or ecclesiastical authority. Applying Texas's neutral-principles methodology, the Court held that the issue could be resolved under generally applicable corporate law; all parties agreed that the Temple should ultimately be member-managed, and the only question was whether the 2025 Bylaws accomplished that change or whether further statutory action was required.

The Court next rejected Plaintiffs' equity-based arguments. Although Plaintiffs invoked the doctrines of equitable estoppel, waiver, and ratification, the Court found that they failed to establish the elements of those doctrines or even properly plead them as affirmative claims. Plaintiffs instead sought to use general principles of equity to validate the unauthorized election despite the governing documents' deficiencies. The Court found no authority permitting general principles of equity to override the express statutory mandate in TBOC § 22.103(a) that a certificate of formation controls over conflicting bylaw provisions.

Finally, assuming without deciding that promissory estoppel could be asserted affirmatively, the Court nevertheless held that Plaintiffs' claim failed as a matter of law. The Court noted that promissory estoppel is limited to reliance-based restorative relief — putting the promisee in the position they would have been in had they not acted in reliance on the promise. The injunctive relief Plaintiffs sought — ordering Defendants to vacate the Temple's offices and turn over control to the purportedly elected board — was plainly designed to effectuate the rejected declaratory judgments and therefore did not constitute the kind of restorative relief available for promissory estoppel.

Jeremiah Counsel Corp. v. Young, 2026 Tex. Bus. 46 (11th Div. July 15, 2026)

Jeremiah Counsel Corporation ("***JCC***") is an association of current and former members of Second Baptist Church of Houston (the "***Church***"), a nearly 100-year-old Texas nonprofit with approximately 94,000 adherents. In April 2025, JCC sued the Church and four individuals — Ed Young, the Church's longtime Senior Pastor, his son and successor Ben Young, Associate Pastor Lee Maxcy; and the Church's outside counsel Dennis Brewer ("***Brewer***" and, collectively with the foregoing, the "***Young Group***") — to challenge amendments to the Church's Articles of Incorporation (the "***Articles***") and Bylaws adopted at a May 2023 meeting of the Church that abolished member voting rights and transferred governance to a self-perpetuating Ministry Leadership Team ("***MLT***") composed of the Senior Pastor and the members he appoints or nominates. Brewer advised the Church's leadership on the restructuring and later joined the MLT. JCC alleged that the Young Group orchestrated the amendments to consolidate control. JCC sought declaratory relief under TBOC § 22.512(b)(3)(A) to void the amended Articles and Bylaws; derivative damages claims on the Church's behalf for breach of fiduciary duty, ultra vires acts, fraud, tortious interference, and civil conspiracy; damages for conversion of The Winning Walk, a multimedia ministry platform that the MLT transferred to Ed Young; an accounting; and injunctive relief barring the MLT and Ben Young from exercising powers purportedly conferred by the amended Bylaws.

The parties later filed cross-motions for summary judgment. In evaluating those motions, the Court grappled with how corporate rules interact with the church autonomy doctrine, which generally bars civil courts from second-guessing a church's internal religious decision. In doing so, the Court applied the church autonomy doctrine claim by claim. It held that the validity of amendments to the Articles and Bylaws presented secular questions resolvable under neutral principles, while JCC's derivative claims for breach of fiduciary duty, ultra vires acts, fraud, tortious interference, civil conspiracy, and conversion of The Winning Walk were barred because they challenged core governance and property decisions that would require impermissible entanglement in religious matters. The Court also dismissed fraud theories based on whether the meeting notice's statement that the Church would "continue operating as a biblical church" was misleading, because evaluating that statement would require a doctrinal inquiry.

The Court also addressed whether the nonprofit members had statutory standing to challenge the church's actions in the first place. Under TBOC § 20.002(c), nonprofit members may bring derivative suits only for acts that are "beyond the scope" of the corporation's stated purposes as expressed in its certificate of formation or that are "inconsistent with a limitation on authority expressed in the certificate of formation." The Court held that neither prong was satisfied: The challenged actions fell within the Church's broad purpose of supporting public worship, and the Articles contained no express limitations on officer authority. That distinction left JCC with associational standing to seek declaratory relief but without derivative standing to pursue claims belonging to the Church.

Regarding the merits, the Court held that the amendment to the Articles was invalid because the Church did not give members the statutory written notice required for a proposed Articles amendment, because the notice addressed only the proposed Bylaws amendment. The Court held that the Bylaws amendment was valid because the TBOC exempts churches from the TBOC's written-notice requirements applicable to secular nonprofits. The Church's governing documents required only "reasonable advance public notice," which the Court found satisfied by newsletter announcements and oral announcements at six campuses over two weekends. The Court also found no conflict between the 1978 Articles and the 2023 amended Bylaws regarding voting rights because the Articles did not expressly assign voting rights to members. The accounting claim remained, while the Court dismissed the derivative claims and denied the remaining requested declaratory and injunctive relief except for declaring the Articles amendment invalid.

The Court dismissed claims against the Church's former outside counsel, Brewer, without prejudice to the extent they arose from conduct before his appointment to the MLT because the Business Court lacks jurisdiction over legal-malpractice claims under Texas Government Code § 25A.004(h)(3), and the anti-fracturing rule required dismissal of claims repackaged as other torts. Claims concerning Brewer's post-appointment conduct were dismissed for the same church-autonomy and derivative-standing reasons applicable to the other defendants.

Fiduciary Duty

Simpson v. Simpson, 2026 Tex. Bus. 52 (8th Div. July 29, 2026)

This case arose from a divorce decree dividing ownership interests in the Texas Rangers (the "***Rangers***") between Janice Simpson ("***Wife***") and her former husband, Bob Simpson ("***Husband***"). During their marriage, Husband acquired partial ownership of the Rangers, including Class A, B, and E units held individually and through Hardball Express LLC. Upon their divorce in September 2021, the Agreed Final Decree of Divorce (the "***Decree***") divided the interests but kept them in Husband's name because Major League Baseball would not approve Wife as an owner. As a workaround, the Decree established a constructive trust, with Husband as trustee and Wife as sole beneficiary.

Wife sued Husband and Hardball Express LLC (together, "***Defendants***") for breach of fiduciary duty, breach of contract, and fraud by nondisclosure, asserting principally that Husband diluted her interests by participating in capital calls from the Rangers without notice to her, and breached the Decree's tag-along provision by selling more than 50 percent of his original Rangers interest without giving her the opportunity to sell a pro rata share. Ruling on cross-motions for summary judgment, the Court denied Wife's motion for partial summary judgment and granted Defendants' motion on all claims.

Addressing Wife's claim for breach of the tag-along provision, the Court found the facts failed to establish a breach because Husband sold only 9 of his 36 Class B units — approximately 25 percent — which was well below the 50 percent threshold that would trigger tag-along rights under the Decree.

Regarding Wife's breach of fiduciary duty claim, the Court found that Husband did violate his duty to inform Wife of the March 2025 capital call, since the Decree required him to furnish all written or digital information regarding the trust interests within 24 hours of receipt, which he failed to do. This breached Husband's fiduciary duty as constructive trustee, because the Decree expressly required Husband to act in a fiduciary capacity and to owe Wife, as sole beneficiary, "the highest degree of loyalty and full disclosure." Notwithstanding the breach, the Court determined that Wife ultimately could not recover damages because Section D of the Decree — a provision drafted by her own attorneys —

permitted Husband, at his sole election and without liability, to make capital contributions from his separate property and receive additional units even if dilutive to the trust interests. The Court further found Wife's claimed damages from hypothetical participation in the capital call speculative and non-recoverable, and Wife did not seek equitable relief. The Court also rejected Wife's theory that Husband breached his fiduciary duty by voting to approve the capital calls, holding that the votes did not violate Section C of the Decree, which prohibited voting to dilute Wife's interests more than those of other same-class owners. Because the undisputed evidence showed the capital calls diluted all members proportionately, the Court concluded that Husband's votes did not single out Wife for disproportionate harm. Likewise, the Court noted Husband's votes were consistent with his fiduciary duties as a Rangers board member and that the Decree preserved his right to participate freely in capital calls.

Finally, the Court granted Defendants summary judgment on Wife's fraud-by-nondisclosure claims for the same reasons: Husband had no duty to disclose a sale that did not trigger the tag-along provision, and Section D foreclosed recoverable damages for the undisclosed capital call.

Discovery Issues

Synergy Thermogen v. Blackbrush Oil & Gas, 2026 Tex. Bus. 47 (1st Div. July 16, 2026)

Synergy Thermogen, Inc. and Synergy Automation LLC (together, "***Synergy***") — early-stage clean-energy technology developers — sued Blackbrush Oil & Gas, L.P. ("***Blackbrush***") and related parties, including Synergy NC Investment LLC ("***NC Investors***"), an investment entity Blackbrush formed to invest in Synergy, alleging breaches of contracts to develop and test oilfield technology. During the litigation, Todd Walker ("***Walker***"), a former Synergy employee, contacted a Blackbrush agent to discuss his issues with the lawsuit and later spoke by phone with three NC Investors representatives. At the direction of NC Investors' counsel, one of those representatives, John Ward ("***Ward***"), took notes of the call. Synergy sought production of the notes. NC Investors resisted, arguing that the notes were core work product because its counsel requested them in order to provide legal advice, or at a minimum noncore work product, and separately that litigation funding is not privileged and that Synergy had waived any such privilege. Synergy disputed the work-product designation and argued that it was entitled to the notes because Walker, as a former employee, had been privy to Synergy's confidential and privileged information, Synergy needed to learn what, if anything, he had disclosed, and it has no other way to obtain that information because the call participants it deposed could not recall the specifics.

After an in camera review of the notes, the Court sided with Synergy and ordered production under an "Attorneys' Eyes Only" designation. The Court determined that the notes were not "core work product" because they contained only a factual summary and no mental impressions, opinions, conclusions, or legal strategies. Although counsel directed that the notes be taken, the Court reasoned that (1) the non-lawyer note-taker — an NC Investors representative — was not an "attorney's representative" within the meaning of the work-product rule, which extends only to a person employed by the lawyer to assist in rendering legal services or an accountant reasonably necessary to the lawyer's rendition of professional legal services (Tex. R. Evid. 503(a)(4)), and (2) the notes read like traditional board-meeting minutes, which are typically not protected as work product.

The notes nevertheless qualified as noncore work product because they were prepared in anticipation of trial. Noncore work product is generally shielded from production absent substantial need and undue hardship, but the Court determined that Synergy had satisfied that threshold because Walker had access to Synergy's confidential information, three deposed call participants could not recall the specifics, and Synergy did not learn Ward's identity until after discovery closed. As a result, production of the notes or a deposition of NC Investors' counsel were the only remaining options. The Court also rejected NC Investors' litigation funding argument as beside the point, because Synergy had shown a substantial need to learn whether Walker disclosed its privileged information. The Court therefore ordered production subject to the "Attorneys' Eyes Only" designation.

Unimacts Global, LLC v. Ayr Energy Inc., 2026 Tex. Bus. 60 (11th Div. Aug. 17, 2026)

In a case claiming ongoing misappropriation of trade secrets case between Unimacts Global, LLC, Zetwerk Manufacturing US Inc., and Zetwerk Manufacturing Business Private Limited (collectively "***Plaintiffs***"), and Ayr Energy Inc. ("***Defendant***"), the parties disputed whether Plaintiffs' counsel of record could share the documents protected by the Court's protective order with attorneys at BTG Advaya, an India-based law firm that provided legal advice to Plaintiffs about the underlying lawsuit's implications for Plaintiffs' company in India and represented Plaintiffs in litigation matters but was not counsel of record in the case at hand. Plaintiffs argued that the protective order's reference to "Outside Counsel Working on this Lawsuit" encompassed any outside attorney working on behalf of Plaintiffs, regardless of whether they were counsel of record. The Court ordered the parties, pursuant to Rule 4(d) of the Business Court Local Rules, to submit letter briefing on the discovery dispute and later held a hearing.

The Court denied Plaintiffs' request to provide the attorneys at BTG Advaya with access to the protected documents. After finding that the protective order did not conclusively establish if the protected materials could be shared with attorneys at BTG Advaya, the Court applied a balancing test that weighed the risk of inadvertent disclosure or misuse of the protected documents against Plaintiffs' need to share the protected documents. The Court concluded that the factors weighed in favor of non-disclosure because, among other things:

- an attorney from BTG Advaya had already admitted to receiving protected documents and discussing some of them with a business executive;
- BTG Advaya represented Plaintiffs in another matter against a principal of Defendant, further increasing the risk of misuse;
- BTG Advaya was beyond the Eleventh Division's subpoena power due to being based in India; and
- the Plaintiffs failed to demonstrate a significant need, which requires showing that prohibition from sharing the documents would materially prejudice presentation of their case.



Other Substantive Issues

Conversion Claims

Stratton v. Hogan, 2026 Tex. Bus. 44 (4th Div. July 15, 2026)

This case arose from the breakdown of a business relationship between Brik Stratton ("***Stratton***") and Kenneth Hogan ("***Hogan***"), who jointly owned Stratton Hogan Clinics, Inc. ("***SH Inc.***"), a physical-therapy business, and Stratton Hogan Real Estate, LLC ("***SHRE***"), which held the business's real estate. After negotiations to separate their interests failed, Stratton sued seeking judicial dissolution of SH Inc. and SHRE, and the Court appointed a wind-up supervisor. The co-owners then traded claims for breach of fiduciary duty and breach of SH Inc.'s operating agreement. In a subsequent amended pleading within the same case, Stratton added the conversion and breach-of-contract counterclaims addressed in this opinion. Stratton Rehabilitation Clinic, Inc. ("***Stratton Rehab***"), an entity controlled by Stratton, was added as a party to assert the promissory-note claim against SHRE based on SHRE's failure to pay a $300,000 note. Hogan moved to dismiss the new claims under Texas Rule of Civil Procedure 91a. The Court dismissed the conversion claim but allowed the contract claim to proceed.

The Court granted dismissal of the conversion claim under Rule 91a because Stratton's petition lacked a basis in law. The reasoning centered on a standing problem: Stratton could not pursue the claim individually because the equipment belonged to SH Inc., not to Stratton personally, and Texas law requires suits for injuries to a corporation to be brought by the corporation or derivatively on its behalf. Stratton pleaded no derivative claim that the Court could treat as a direct action under TBOC § 21.563, and he did not allege a personal cause of action or personal injury. Moreover, Stratton's own pleadings negated present harm by recognizing that the equipment was being divided through the ongoing wind-up process and seeking recovery only "to the extent these items . . . are excluded from the true-up." The Court noted that dismissal did not excuse the wind-up supervisor from accounting for the equipment allocation in the final report.

Regarding the breach-of-contract claim, the Court rejected Hogan's argument that the claim should be dismissed because SHRE had not appeared as a defendant, noting that Hogan cited no authority permitting dismissal on that basis under Rule 91a.

Carrington v. Corsi, 2026 Tex. Bus. 57 (11th Div. Aug. 12, 2026)

Plaintiffs, two individuals, each acquired membership interests in Heady Brewing Company, LLC ("***Heady***"), in exchange for cash. Later, certain other individuals (the "***Individual Defendants***"), along with BCHC Merge, LLC, Bayou City Hemp Company, Inc. and BC Infinity, Inc. (collectively, "***Bayou City***"), and Heady entered into a Contribution and Exchange Agreement of Interests ("***Agreement***") involving Heady. Plaintiffs were not parties to the Agreement. Under the Agreement, the Individual Defendants received Bayou City shares, while Plaintiffs were allocated interests in a convertible promissory note. Plaintiffs together received approximately seven percent of the convertible promissory note that Bayou City later elected to turn into non-voting stock of Bayou City. Plaintiffs then sued the Individual Defendants and Bayou City (collectively, "***Defendants***") alleging that the Agreement grossly diluted the value of their Heady member interests and amounted to an unlawful conversion.

Addressing multiple motions to dismiss under Texas Rule of Civil Procedure 91a, the Court granted the motions and dismissed Plaintiffs' conversion claim with prejudice. Applying well-settled Texas precedent, the Court noted that even though conversion claims generally apply only to tangible personal property, conversion claims may also apply to intangible property that has been "merged" into a physical document that was later converted. Because the pleadings never alleged that Plaintiffs' membership interests in Heady were certificated, the Court determined that the membership interests remained intangible and could not have been converted. Likewise, the Court reasoned that the Plaintiffs' theory that their membership interests were "merged" into the Agreement and converted into the promissory notes also failed because it improperly conflated a transaction involving intangible interests with the physical embodiment of those interests.

Contract Enforceability

Cobalt Falcon, LLC v. AXS Invs., LLC, 2026 Tex. Bus. 43 (1st Div. July 14, 2026)

Cobalt Falcon, LLC ("***Cobalt Falcon***") sued AXS Investments, LLC ("***AXS***") for breach of a Transaction Agreement, as modified by the First Amendment (the "***Agreement***"), which obligated AXS to make perpetual minimum monthly payments of $74,062.45 to Cobalt Falcon in exchange for management and control over an investment fund (the "***Fund***"), alleging that AXS ceased making the required payments in December 2024. Cobalt Falcon moved for traditional summary judgment on liability and no-evidence summary judgment on AXS's remaining affirmative defenses.

The Court granted Cobalt Falcon's motion in its entirety. Applying Delaware law, the Court held that Cobalt Falcon conclusively established all elements of breach of contract as to liability — a valid contractual obligation (previously construed by the Court as imposing a continuing, perpetual payment obligation), breach (AXS's undisputed cessation of payments), and the existence of damages — with the amount of damages remaining for trial. AXS argued solely that each monthly payment constituted an installment, and that the absence of an acceleration clause limited its liability to payments accruing before June 11, 2025. The Court held that this argument went solely to the amount of damages, not their existence, and therefore did not defeat summary judgment on liability.

As to AXS's affirmative defenses, the Court determined, among other things, that:

- AXS argued that the perpetual payment obligation was unconscionable because it required AXS to pay $74,062.45 per month forever, even after the Fund closed, creating a gross disparity between the rights AXS acquired and its payment obligation. The Court rejected that argument, finding that the obligation was expressly stated — not veiled or obscured — and that AXS exchanged perpetual rights for perpetual payments. The Court further observed that such an exchange was not inherently absurd and that AXS neglected to factor in that closure of the Fund was entirely within its own hands.
- AXS's asserted unenforceable-penalty defense failed because Cobalt Falcon was not seeking liquidated damages (i.e., a fixed sum pre-determined at the time of contracting as an estimate of losses), but rather recovery of direct damages in the form of unpaid monthly payments that AXS was contractually bound to make.
- AXS failed to meet its burden on the mitigation defense, which requires identification of a "specific remedial action" the plaintiff could have taken and evidence quantifying the damages it failed to mitigate. AXS cited an indemnification provision and a document evidencing depreciation, but did not identify any specific action Cobalt Falcon failed to take or explain how those items related to mitigation of breach-of-contract damages — which the Court viewed as insufficient to survive summary judgment.

Village Crossing, LLC v. West Creek Invs., LLC, 2026 Tex. Bus. 49 (11th Div. July 22, 2026)

Village Crossing, LLC ("***Village Crossing***") contracted to sell approximately 11.56 acres of commercial property in Rosenberg, Texas to West Creek Investments, LLC ("***West Creek***") at a blended price of $11.75 per square foot (the "***Agreement***"). The Agreement treated the property — approximately 10.46 acres of interior land and approximately 1.1 acres of U.S. Highway 59 frontage — as a single "Land." However, Exhibit A to the Agreement depicted a 2.0644-acre frontage tract (nearly double the described acreage), supplied no definitive northern boundary for the interior portion, and acknowledged that the description might be legally insufficient, with a future survey to serve as the legal description. The Agreement's survey provision required West Creek to obtain a survey to compute the gross square footage of "the Land." West Creek's surveys depicted the entire 2.0644-acre frontage tract and 11.5047 acres of interior land, including portions of adjoining Reserve P and Reserve Q — totaling approximately 13.57 acres, approximately two acres more than contemplated. Village Crossing objected, West Creek refused to correct the surveys after notice of default and a three-day cure period, and Village Crossing terminated the Agreement.

After the Agreement was terminated, West Creek sued Village Crossing for breach of contract and specific performance. Village Crossing counterclaimed and moved for traditional summary judgment. The Court granted Village Crossing's motion.

West Creek argued that any defect in the property description was limited to the interior tract and that the Court could sever the frontage tract and specifically enforce its conveyance at the blended price. The Court rejected that argument, holding that the Agreement was a single, indivisible sale because it used singular terms for the Land, survey, price formula, earnest-money deposit, deed, closing, and default-and-cure procedure. The Court held the Agreement unenforceable for indefiniteness because it failed to identify the interior tract's northern boundary, Reserve P, or Reserve Q with sufficient certainty. It was independently void under the statute of frauds because the signed writing did not provide, within its four corners or by reference to an existing writing, the means to identify the land with reasonable certainty. The Court also rejected West Creek's selection-right theory because the survey provision directed a surveyor to compute square footage within the already defined Land; it did not authorize unilateral expansion. A future survey could measure a defined parcel but could not create or select the missing boundary.

Alternatively, even assuming enforceability, the Court held that West Creek materially breached the survey provision by submitting surveys exceeding the agreed acreage and refusing to correct them after notice. Because time was of the essence and West Creek failed to cure, Village Crossing was discharged from further performance and properly terminated the Agreement. A party that materially breaches cannot obtain specific performance.

The Court dismissed West Creek's counterclaims for breach of contract and specific performance with prejudice. Village Crossing's request for the $55,000 earnest money as liquidated damages and contractual/statutory attorney's fees was denied because those remedies depended on an enforceable contract. Declaratory Judgment Act attorney's fees remained pending.

Riverside Homebuilders, Ltd. v. FG Aledo Dev., LLC, 2026 Tex. Bus. 53 (8th Div. July 29, 2026)

Riverside Homebuilders, Ltd. ("***Riverside***") claimed the right to purchase 181 residential lots in the Morningstar Section 1-1 subdivision in Parker County under a contract dated October 1, 2024 (the "***Morningstar Contract***"). FG Aledo Development, LLC ("***FG Aledo***") owned and was developing approximately 358 lots in the subdivision and had already contracted to sell roughly half to another homebuilder, D.R. Horton. Rather than identifying the 181 lots by lot and block, metes and bounds, or recorded plat, the Morningstar Contract identified only the overarching 71.964-acre tract and outlined a contingent, multi-step mechanism for future lot division. Under Section 1.01(c), D.R. Horton was first required to divide all lots into two equal groups, after which Riverside would have fifteen days to select one group. Critically, D.R. Horton had unfettered discretion in making the initial division, and the contract provided no objective criteria governing the split. When FG Aledo refused to convey the lots, Riverside sued for breach of contract and related claims, and FG Aledo moved for summary judgment on several grounds, including that the Morningstar Contract was unenforceable under the statute of frauds.

The Court granted the motion for summary judgment on that ground and declared the Morningstar Contract unenforceable, holding that it failed the statute of frauds under Texas Business and Commerce Code Section 26.01 because it could not identify the land to be conveyed on the date it was signed. Surveying foundational Texas Supreme Court precedent — *Wilson v. Fisher, Morrow v. Shotwell, Williams v. Ellison*, and *Stekoll Petroleum Co. v. Hamilton* — the Court reaffirmed that a real-estate contract must furnish, within its four corners or by reference to another existing writing, the means to identify the specific land with reasonable certainty. Extrinsic evidence, the Court noted, may explain descriptive data already in the writing but cannot supply the "framework or skeleton" the contract lacks.

The Court rejected Riverside's argument that the Morningstar Contract was a permissible future-selection contract. Although such contracts can satisfy the statute of frauds under Stekoll, the Court explained, they do so only where the buyer has an absolute, unqualified right to select from a pool existing at signing. Here, Riverside's selection right was not unqualified — it arose only after D.R. Horton exercised unfettered discretion to divide the development into two groups and extended only to whichever group D.R. Horton created. Until D.R. Horton acted, the Court reasoned, the lots were not merely unidentified — they were "completely unknowable."

The Court further found that Section 1.01(d) confirmed the deficiency in the parties' own words, acknowledging an "insufficiency of the legal description" and providing that the parties would "obtain the legal description of the Lots pursuant to a Final Plat to be recorded at a later date." The Court characterized this as a "telltale admission" — the parties did not represent that the contract contained an adequate description but openly acknowledged its insufficiency and agreed to supply the missing description through a plat that did not yet exist. As the Court explained, Texas law does not permit parties to postpone compliance with the statute of frauds, and a later-created document cannot supply the descriptive nucleus the original writing lacks.

Miscellaneous

Thompson v. Anchor Cap. GP LLC, 2026 Tex. Bus. 41 (1st Div. July 1, 2026)

The Texas Business Court, First Division held as a matter of law that a privately negotiated, secured, and personally guaranteed loan between sophisticated parties was not a "security" under the Texas Securities Act ("***TSA***"), and granted partial summary judgment on the lender's TSA claim.

Jean Thompson and Thompson Petroleum Corporation ("***Plaintiffs***") sued Anchor Capital GP LLC ("***Anchor***") and its founder and CEO, Michael Mann ("***Mann***"), alleging breaches of duties under a promissory note (the "***Note***"), security agreement, and employment agreement. After Thompson began investing millions in Anchor-managed funds, Mann asked her to lend Anchor money to buy out one of its partners; the parties later amended the deal when Mann sought additional funds to buy out another partner. The Note had a four-year maturity, was secured by Anchor's assets and personally guaranteed by Mann, and carried a below-market interest rate and a borrower-friendly payment schedule.

Defendants moved for partial summary judgment on Plaintiffs' TSA and breach-of-guaranty claims. The Court had already held, in a June 18, 2026 order, that the guaranty did not require Mann to provide an audited personal financial statement, leaving only one question: Whether the Note was a security.

Although Defendants urged the "investment versus commercial" test, the Court applied the "family resemblance" test adopted by the U.S. Supreme Court in Reves v. Ernst & Young, 494 U.S. 56 (1990), and followed by Texas courts. Under that test, a note with a term of more than nine months is presumed to be a security, but the presumption is rebutted if the note falls within, or bears a strong family resemblance to, a judicially recognized category of non-security notes.

As a threshold matter, the Court rejected Defendants' argument that the Note fell within the exception for short-term notes secured by a lien on a small business or its assets. Although the Note was secured by Anchor's assets, neither the TSA nor its federal counterparts define "short-term," and the Court looked to related statutory provisions indicating that short-term notes are those maturing in nine months or less. The Note's four-year maturity placed it outside the exception.



The Court then weighed the four *Reves* factors. Plaintiffs conceded that the second factor — the plan of distribution — favored Defendants. On the first factor — the parties' motives — the Court found the motives mixed. Thompson's acceptance of a below-market rate and borrower-friendly terms suggested profit was not her primary motive, but Mann admitted he used the Note to raise capital without diluting Anchor's existing equity investor and to fund salaries and other business expenses. Because Mann's motives were clearly investment-oriented, this factor favored treating the Note as a security.

The remaining two factors weighed against security status. As to the investing public's reasonable expectations, the instrument was titled "Secured Promissory Note," did not refer to "investors" or "investments," was never advertised as an investment, and was entered into by sophisticated parties represented by sophisticated counsel. As to risk-reducing measures, the Note was collateralized and personally guaranteed by Mann, contained extensive representations, warranties, and covenants, and gave Thompson rights to inspect the collateral and obtain financial information — protections that reduced the need for securities law remedies. With three of the four factors weighing against security status, the Court held that the Note was not a security and granted Defendants' motion.

Fiberwave, Inc. v. AT&T Enters., LLC, 2026 Tex. Bus. 50 (1st Div. July 24, 2026)

Fiberwave, Inc. ("***Fiberwave***") sued AT&T Enterprises, LLC ("***AT&T***") concerning post-termination residual compensation under a 2022 Alliance Program Agreement and incorporated Solution Providers Guidebook (the "***Guidebook***"). According to Fiberwave, AT&T terminated the relationship for cause based on alleged kickbacks and withheld residual compensation. AT&T, in turn, asserted claims against Fiberwave, Chris Percy ("***Percy***"), and Faisal Chaudhry ("***Chaudhry***") for fraud, alleging concealment of kickbacks and misrepresentation of compliance with anticorruption laws. The parties filed cross motions for summary judgment. The Court ruled on cross-motions for summary judgment addressing contract construction and the parties' respective fraud claims.

Contract construction turned on whether the Guidebook's provision vesting a post-termination right to residual compensation for orders with "no more than 36 monthly payments remaining on an Order" measured the 36-month period from the order's start date, as AT&T argued, or from the date of termination, as Fiberwave argued. The Court found support for Fiberwave's reading in the words "remaining" and "no more than," which suggest unpaid payments existing at termination. The Court also construed neighboring provisions, which expressly measured periods from the date of termination, as supporting AT&T's reading that the drafters would have said so if they intended that start date. The Court held that the Guidebook was ambiguous because neither interpretation fully harmonized the relevant provisions, creating a fact issue for the jury and permitting extrinsic evidence. The Court therefore denied summary judgment on Fiberwave's contract claim regarding residual compensation.

The Court next considered Fiberwave's fraudulent-inducement claim and granted AT&T's combined traditional and no-evidence motion. Fiberwave argued that AT&T entered the 2022 Agreement without a present intent to honor its post-termination payment obligations, relying on AT&T's prior knowledge of alleged kickback reports in 2016 and 2018. The Court held that this evidence showed, at most, that AT&T might have known of conduct later used to deny compensation; it did not transcend speculation or raise more than a scintilla of evidence of precontract intent not to perform. The Court also held that reliance was independently unjustified because the Agreement's waiver provision disclaimed waiver based on course of dealing or failure to enforce terms, and its merger clause superseded prior and contemporaneous oral and written understandings.

The Court then addressed AT&T's fraud claims against Chaudhry and granted Chaudhry summary judgment on traditional and no-evidence grounds. AT&T argued that the alleged kickbacks violated anticorruption laws and that Chaudhry intended to induce reliance through representations of compliance. The Court held that AT&T identified no specific state or federal law that the alleged kickbacks violated and cited no evidence supporting Chaudhry's intent to induce reliance. The economic-loss rule independently barred the claim because the alleged duty and damages were subsumed in the contractual relationship and AT&T did not show an independent injury.

The Court also granted summary judgment on AT&T's fraud claims against Fiberwave and Percy. AT&T relied on contractual representations to claim that Fiberwave's alleged kickbacks violated applicable law, but the Court held that AT&T identified no particular law and therefore failed to establish that the representations were false. As to Percy, AT&T identified no affirmative representation and no legal or contractual duty requiring him to disclose payments he allegedly received. The Court further held that disgorgement was unavailable because it is an equitable remedy protecting fiduciary relationships and this was an arm's-length transaction. Rescission likewise failed because AT&T pleaded money damages rather than rescission and did not show that damages were inadequate.

Revere Tactical Opps. Fund IV, LP v. Lee-Wen, 2026 Tex. Bus. 51 (1st Div. July 28, 2026)

Revere Tactical Opportunities Fund IV, LP and Revere Tactical Opportunities REIT, LLC (collectively, "***Revere***") foreclosed on two properties securing a loan to Westside Flats Owner LLC ("***Westside***"), including one pledged by CG Sunset Land, LLC ("***CG Sunset***"). When Westside defaulted, Revere sent notices of intent to sell via email and UPS next-day delivery rather than by certified mail as required by Section 7.02 of both deeds of trust and Texas Property Code Section 51.002(b)(3). It was undisputed that Westside received the notices no later than it would have by certified mail. Westside and CG Sunset sued Revere, contending that the failure to use certified mail breached the deeds of trust and resulted in a wrongful foreclosure. Revere moved under Texas Rule of Civil Procedure 166(g) for a ruling that its notices were proper as a matter of law and, separately, for partial summary judgment on the ground that Westside failed to satisfy a condition precedent to suit.

The Court granted the Rule 166(g) motion, holding that Revere's UPS notices satisfied both the deeds of trust and the statute. Turning first to the deeds of trust, the Court held them unambiguous, finding Sections 7.02 and 8.03 did not conflict. Section 8.03 provided that all notices "required or permitted to be given" shall be "considered as properly given" if delivered by a third-party commercial delivery service for same- or next-day delivery with evidence of receipt. The Court reasoned that "all" means "all," and for Section 8.03 to serve any function, it must apply where a notice would otherwise be technically improper — meaning strict compliance with Section 7.02's certified-mail requirement was unnecessary when a commercial delivery service produced an equivalent result.

The Court reached the same result under the Property Code, relying on case law distinguishing between notices of an intent to sell and notices of a completed sale and holding that for the former, alternative service suffices if the debtor receives timely notice — as Westside undisputedly did.

The Court also rejected CG Sunset's contention that it received no proper notice because Revere's correspondence was addressed to Casoro Group, LLC ("***Casoro Group***") rather than to CG Sunset. The deed of trust designated Casoro Group and its address as CG Sunset's notice address. Applying the principle that notice to an agent is notice to the principal, the Court held CG Sunset received proper notice and the omission of its name from the address line was immaterial.

Finally, the Court denied without prejudice Revere's motion for partial summary judgment, concluding that its notice rulings obviated the need to reach the condition-precedent issue.

Preston Hollow Cap. v. Truist Bank, 2026 Tex. Bus. 59 (1st Div. Aug. 14, 2026)

Senior Care Living VI, LLC ("***Senior Care***") financed its senior living center with public bonds. Preston Hollow Capital, LLC and PHCC LLC (collectively, "***Preston Hollow***") purchased certain of the bonds, and Truist Bank ("***Truist***") served as trustee. The parties executed a collection of bond documents ("***Bond Documents***").[1] After Preston Hollow learned that Senior Care never deposited its gross revenues into the correct accounts, and a representative from Truist approved this, Preston Hollow sued Truist for, among other things, breaches of fiduciary duty, trust, and contract. On Truist's motion pursuant to Texas Rule of Civil Procedure 166(g), the Court addressed: (1) whether Title 9 of the Texas Property Code ("***Trust Code***") applied to the Bond Documents; (2) the scope of Truist's contractual duties as a trustee under the Bond Documents; and (3) whether Preston Hollow may plead breaches of fiduciary duty and trust simultaneously. The Court concluded that the Trust Code did not apply to the Bond Documents, the Bond Documents imposed two levels of contractual duties that depended on whether Truist had written notice of Senior Care's breach, and dismissed Preston Hollow's breach of trust claim as moot.

As a threshold matter, the Court held that the Trust Code was inapplicable to the Bond Documents. The Court explained that, in order for the Trust Code to apply to the Bond Documents, the Bond Documents must create an express trust — which requires, among other things, (1) a transfer of the legal title of the estate to the trustee, and (2) a manifested intent to create a fiduciary relationship between the trustee and beneficiaries. Considering the language of the Bond Documents and applying a set of factors that distinguish a trust from a security instrument, the Court found that the Bond Documents neither transferred legal title to Truist nor reflected an intent to create a fiduciary relationship between Truist and the bondholders, and therefore did not create an express trust. In particular, the Court emphasized that the Bond Documents stated that the bonds "will be secured by a mortgage lien" by the property "granted to the Trustee," assigned the trust estate "to have and to hold, in trust, with power of sale" to the trustee, and "grant[ed] a security interest to the Bond Trustee," all of

[1] See Vinson & Elkins' Q4 2025 and Q1 2026 summaries for a fuller discussion of the background.

which supported that the Bond Documents were a security instrument and not a trust. Turning to Truist's duties under the Bond Documents, the Court concluded that the Bond Documents imposed two levels of duties, pre- and post-default, and the heightened post-default duties are only triggered once Truist receives written notice of Senior Care's default. Even if Truist has actual knowledge of Senior Care's breach, written notice is necessary. Finally, the Court ruled that the third issue was moot since the breach of trust claim arises under the Trust Code and dismissed it with prejudice.

Southwest Airlines Pilots Assoc. v. The Boeing Co., 2026 Tex. Bus. 68 (1st Div. Sept. 28, 2026)

The Texas Business Court, First Division, granted The Boeing Company's ("***Boeing***") renewed motion for summary judgment as to the consequential damages pleaded by the Southwest Airlines Pilots Association ("***SWAPA***"), but held that the motion — which challenged only proximate cause — could not reach any direct damages SWAPA may seek. After Boeing's allegedly rushed rollout of its 737 MAX aircraft, SWAPA sued Boeing for fraudulent and negligent misrepresentation, tortious interference, negligence, and fraud by nondisclosure. Its claims fell into two categories: (1) claims arising from allegations that the rollout led to two crashes, the grounding of the fleet, and federal investigations; and (2) claims arising from allegations that Boeing's misrepresentations, omissions, and interference in SWAPA's collective bargaining negotiations with Southwest Airlines induced SWAPA to enter into a disadvantageous collective bargaining agreement. For the first category of claims, SWAPA sought damages for lost wages, lost dues, and attorneys' fees incurred in the federal investigations, all of which the Court characterized as consequential damages; for the second category, SWAPA's original pleadings did not articulate any damages.

In an earlier opinion, the Court denied without prejudice Boeing's first summary judgment motion on the same grounds. Although the Court determined that proximate cause was lacking for the first category of claims — consistent with Illinois federal decisions in similar 737 MAX pilot litigation — and that the damages pleaded bore no causal link to the second category, Texas law required that SWAPA be afforded an opportunity to replead. The Court directed SWAPA to specify damages proximately caused by Boeing's alleged interference in the collective bargaining negotiations. SWAPA's amended petition did not cure the deficiency. It again pleaded only lost wages, lost dues, and attorneys' fees — damages that SWAPA's own allegations attributed to the grounding and the federal investigations, not to anything Boeing said or did in connection with the collective bargaining negotiations. Boeing renewed its motion for summary judgment on all of SWAPA's claims, arguing that they failed to satisfy proximate cause as a matter of law. The Court granted the motion, holding as a matter of law that SWAPA could not establish proximate cause for its pleaded consequential damages, and dismissed SWAPA's claims for those damages. The Court emphasized, however, that its ruling reached only consequential damages. Under Texas law, proximate cause is the causation standard for consequential damages, not direct damages, and because direct damages need not be pleaded with specificity, their causation cannot be weighed at the pleadings stage. Because a court cannot grant more relief than the movant seeks, SWAPA's claims for direct damages — those arising from representations or omissions that allegedly induced it to enter into a disadvantageous collective bargaining agreement — remain pending.



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