Affirmed and Memorandum Opinion filed February 28, 2017.

In The

Fourteenth Court of Appeals

NO. 14-15-00348-CV

WILLIAM B. HARRISON, INDIVIDUALLY; AS BENEFICIARY OF THE ESTATE OF BRUCE F. HARRISON, DECEASED, AND EACH TRUST HELD UNDER THE LAST WILL AND TESTAMENT OF BRUCE F. HARRISON; AS CO-TRUSTEE OF THE WILLIAM BRUCE HARRISON EXEMPT GST TRUST UNDER ARTICLE VII OF BRUCE F. HARRISON'S WILL, THE WILLIAM BRUCE HARRISON NON-EXEMPT TRUST UNDER ARTICLE VIII OF BRUCE F. HARRISON'S WILL, AND THE WILLIAM BRUCE HARRISON/DJH, JR., TRUST UNDER ARTICLE XVIII OF BRUCE F. HARRISON'S WILL; AND AS A CONTINGENT REMAINDER BENEFICIARY OF THE DANIEL J. HARRISON III TESTAMENTARY TRUST AND THE DANIEL J. HARRISON III GST NON-EXEMPT TRUST; CAT HIL, LTD; WBH RANCHING MANAGEMENT, LTD; WBH RANCHING OPERATIONS, LLC; WBH MINING MANAGEMENT, LTD; WBH MINING OPERATIONS, LLC; CAT FOG, LTD; HARRISBURG EQUITABLE MANAGEMENT LLC; AS CO-TRUSTEE OF THE WILLIAM BRUCE HARRISON EXEMPT GST TRUST, THE WILLIAM BRUCE HARRISON NON-EXEPT TRUST, AND THE WILLIAM BRUCE HARRISON/DANIEL J. HARRISON, JR., TRUST,
Appellants

V.

HARRISON INTERESTS, LTD; DANIEL J. HARRISON III, INDIVIDUALLY; AS TRUSTEE OF THE BRUCE F. HARRISON TESTAMENTARY TRUST HELD UNDER THE LAST WILL AND TESTAMENT OF DANIEL J. HARRISON, JR., DECEASED; AS TRUSTEE OF THE DANIEL J. HARRISON III AS TRUSTEE OF THE DANIEL J. HARRISON III TESTAMENTARY TRUST HELD UNDER THE WILL OF DANIEL J. HARRISON, JR.; AS TRUSTEE OF THE DANIEL J. HARRISON III GST NON-EXEMPT TRUST HELD UNDER THE COMPLETE AMENDMENT AND RESTATMENT OF THE DECLARATION OF MARY ALICE SMITH REVOCABLE MANAGEMENT TRUST MASTER AGREEMENT; AS GENERAL PARTNER AND MANAGING PARTNER OF HARRISON INTERESTS, LTD; AS CO-INDEPENDENT EXECUTOR OF THE ESTATE OF BRUCE F. HARRISON, DECEASED; EDWIN H. KNIGHT, JR., INDIVIDUALLY; AS GENERAL MANAGER OF HARRISON INTERESTS, LTD; AS CO-INDEPENDENT EXECUTOR OF THE ESTATE OF BRUCE F. HARRISON, DECEASED; FULSHEAR OIL & GAS PARTNERS, LP, AND FULSHEAR OIL & GAS, LLC, Appellees

---

On Appeal from the 190th District Court
Harris County, Texas
Trial Court Cause No. 2010-82117

M E M O R A N D U M O P I N I O N

This appeal concerns a Master Agreement, Release and Indemnity executed to effect the premature distribution of assets to a beneficiary and divide those assets commonly held between the beneficiary and the fiduciaries. The issue presented is whether the beneficiary can maintain a claim for breach of fiduciary duty against the estate's trustees and executors despite the Master Agreement's provisions releasing and waiving their fiduciary obligations. Under the facts of this case, we determine he cannot and therefore affirm the trial court's judgment.

FACTUAL AND PROCEDURAL BACKGROUND[1]

Harrison Interests, Ltd. ("HIL") was formed in 1979 by Daniel J. Harrison, Jr. and his sons, Bruce F. Harrison ("Bruce") and Daniel J. Harrison III ("Dan") to hold and manage the family's assets. Edwin H. Knight, Jr. ("Ed") was hired to manage HIL. When Bruce died in 2004, his estate passed to his then-seventeen-year-old son, William B. Harrison ("William"), directly and in three separate trusts. William was to receive his full inheritance upon turning thirty. Under Bruce's will, Dan and Ed were named co-independent executors of his estate, co-trustees of two trusts, and Dan was named sole trustee of the remaining trust.

William joined HIL in 2008. Conflicts arose regarding William's role at HIL and in 2009 negotiations ensued for a premature distribution of assets that would allow William, now of legal age, and Dan to disassociate. William was represented by counsel, as were Dan and Ed. In March 2010, William filed a suit against Dan and Ed which he dismissed five days later.

Negotiations resumed and on June 21, 2010, a Master Agreement was executed. The Master Agreement is a sophisticated all-encompassing settlement agreement involving numerous concerns — including a division of HIL's assets, options for William and Dan to purchase each other's real estate interests, and cash payments to William. In addition, the Master Agreement released and indemnified Dan and Ed for the time period before June 21, 2010. The Master Agreement further required William to sign a second set of releases for Dan and Ed which would cover the period from June 21, 2010, until the final distribution of assets scheduled for December 17, 2010. The day before the scheduled distribution, William filed suit seeking injunctive relief from signing the second set of releases. Dan and Ed

[1] Because the parties are familiar with all the facts, we only set forth what is necessary to understanding the issues on appeal.

counterclaimed seeking declaratory and injunctive relief to require William to sign the second set of releases. The William Parties[2] counterclaimed bringing multiple causes of action.

Eventually, the parties filed competing traditional and no-evidence motions for summary judgment. Following a hearing, the trial court denied the motion filed by the William Parties and granted the motion filed by the Dan/Ed Parties[3] in a judgment signed December 17, 2014. The order also set a hearing date to determine the amounts to be awarded. The William Parties then demanded a jury trial on the issue of attorneys' fees.

The William Parties also moved to reconsider and to supplement the summary judgment record. The trial court granted the request to supplement but denied reconsideration and signed an amended summary judgment order on February 2, 2015. Subsequently, the William Parties filed a notice of partial nonsuit of certain claims. On March 2, 2015, the trial court signed an order dismissing with prejudice all of the claims on which summary judgment had been granted in favor of the Dan/Ed Parties, citing *Hyundai Motor Co. v. Alvarado,* 892 S.W.2d 853, 855 (Tex. 1995) (per curiam).[4] The order provides that it does not concern any of the Dan/Ed Parties' claims or the William Parties' claim for breach of contract.

---

[2] William's initial suit was filed only in his own name. Subsequently, others were included and the "William Parties" are those entities identified in the trial court as "Plaintiff/Third-Party Defendants."

[3] The "Dan/Ed Parties" are those entities identified in the trial court as "Defendant/Third-Party Plaintiffs."

[4] The claims dismissed with prejudice were for: (1) fraud, (2) fraudulent inducement, (3) breach of duty of good faith and fair dealing, (4) conversion, (5) gross negligence, (6) unjust enrichment, (7) waste of partnership assets, (8) partnership mismanagement, (9) economic duress, (10) a demand for accounting, (11) a demand for a receivership, (12) exemplary damages, and (13) attorney's fees.

A final judgment was entered on March 11, 2015, which incorporates by reference the amended order signed February 2, 2015. From that judgment, the William Parties bring this appeal.

IS AFFIRMANCE WARRANTED ON THE BASIS OF WAIVER?

As an initial matter, the Dan/Ed Parties argue this court should affirm the trial court's judgment without addressing the issues raised by the William Parties. The Dan/Ed parties contend the William Parties have failed to challenge certain portions of the judgment. In their enumerated issues the William Parties challenge the following rulings by the trial court:

- The denial of the William Parties' traditional motion for summary judgment that Dan and Ed owed him fiduciary duties as a matter of law;
- The denial of the William Parties' no evidence motion for summary judgment on Dan's and Ed's compliance with their fiduciary duties;
- The grant of the Dan/Ed Parties' no evidence and traditional motions for summary judgment on breach of fiduciary duty; and
- The grant of the Dan/Ed Parties' traditional motion for summary judgment on their affirmative defenses.

The Dan/Ed Parties assert the William Parties have failed to contest the trial court's judgment as to breach of contract, the declaratory judgment, and specific performance. According to the Dan/Ed Parties, since no relief can be granted on the William Parties' claim for breach of fiduciary duty without running afoul of the remainder of the trial court's judgment, we must affirm.

In support of their contention, the Dan/Ed Parties rely upon this court's decision in *Gulf Ins. Co. v. Vantage Props., Inc.*, 858 S.W.2d 52, 54–55 (Tex.

App.—Houston [14th Dist.] 1993, writ denied). In that case, an appeal was brought from the final judgment, which effectively granted Vantage's petition for declaratory relief. In their appeal, Gulf Insurance assigned no error to that portion of the trial court's judgment. We determined appellant was barred from asserting its claims of error in granting and denying competing motions for summary judgment because the issues upon which such summary judgment relief depended "were determined against appellant by the portion of the trial court's judgment from which it did not appeal." *Id.* Because "[a]ny relief granted by this court on appellant's contentions regarding the summary judgments would be inconsistent with the trial court's final judgment granting the declaratory relief," we overruled those claims without addressing their merits. *Id.* The Dan/Ed Parties argue the William Parties' failure to assign error to all of the trial court's rulings forecloses any holding by this court that is inconsistent with those judgments.

We first recognize that since *Gulf Ins.* was decided, the Supreme Court of Texas has repeatedly made clear that the disposal of appeals for harmless procedural defects is disfavored. *Weeks Marine, Inc. v. Garza*, 371 S.W.3d 157, 162 (Tex. 2012) (citing *Perry v. Cohen*, 272 S.W.3d 585, 587 (Tex. 2008) (per curiam)). Instead, we are to construe appellate briefs reasonably, yet liberally, so that the right to appellate review is not lost by waiver. *Id.* Error may be preserved in the body of the appellate brief, even if it is not presented as an issue. *Id*.

In their reply brief, the William Parties argue they have appealed from the final judgment and the issues they raise are inextricably intertwined with the validity of the Master Agreement. The William Parties argue "that without a valid Master Agreement, there is no contract to breach, and specific performance and declaratory judgment are unavailable."

However, the William Parties also refer this court to the initial brief's prayer to "remand to the trial court the issue whether Dan and Ed failed to comply with their fiduciary duties, and if so, void the unfair provisions of the Master Agreement . . .." The portions of the Master Agreement the William Parties identify as unfair are (1) the amount he is required to pay for Dan's half of the Middleton Ranch; (2) the procedure by which the Piloncillo Ranch is to be partitioned; (3) the Redemption Agreement, which converts HIL from a limited to a general partnership with Dan as sole general partner; (4) the inequality of the releases, because Dan and Ed were released from "more" than William was released from, and (5) Dan's and Ed's unilateral right to rescind if William sues for anything other than enforcing the Master Agreement (as of this date, we are not aware that right has been exercised). This then is the extent of the relief sought by the William Parties and, in spite of their use of the word "void," they do not seek to overturn the entire Master Agreement.

Taking into consideration the William Parties' entire brief, not just their enumerated issues, we find their argument is fairly encapsulated in their issues. As we appreciate it, that argument is that Dan and Ed breached their fiduciary duties, which they owed as a matter of law to William, because the complained-of portions of the Master Agreement are unfair to him. Were we to agree that Dan and Ed owed William fiduciary duties as a matter of law and could not be released from those duties by the Master Agreement, the trial court's rulings upholding the Master Agreement and ordering specific performance of the second set of releases would necessarily be undermined.[5] Accordingly, we decline to affirm the trial court's judgment on the basis of waiver.

[5] The Dan/Ed Parties also contend we must affirm the trial court's judgment because under the provisions of Bruce's will and the HIL Partnership Agreement, Dan and Ed can only be held liable for fraud, gross negligence, or acting in bad faith. Because the William Parties nonsuited

WERE THE FIDUCIARY DUTIES WAIVED BY WILLIAM?

The William Parties argue certain portions of the Master Agreement are unfair, as detailed above. They contend that because Dan and Ed owe William fiduciary duties as a matter of law the Dan/Ed Parties were required to rebut a presumption the transactions are unfair. "Texas courts have applied a presumption of unfairness to transactions between a fiduciary and a party to whom he owes a duty of disclosure, thus casting upon the profiting fiduciary the burden of showing the fairness of the transactions." *Collins v. Smith*, 53 S.W.3d 832, 840 (Tex. App.—Houston [1st Dist.] 2001, no pet.) (citing *Texas Bank & Trust Co. v. Moore*, 595 S.W.2d 502, 507–08 (Tex. 1980)). Where a transaction between a fiduciary and a beneficiary is attacked, it is the fiduciary's burden of proof to establish the fairness of the transaction. *Fitz-Gerald v. Hull*, 150 Tex. 39, 49, 237 S.W.2d 256, 261 (1951). The William Parties argue because the Master Agreement is a transaction between fiduciaries and a beneficiary the presumption applies to the case at bar.

The cases relied upon by the William Parties, however, did not involve an agreement altering or releasing the fiduciary's duties. *See Moore*, 595 S.W.2d at 502; *Johnson v. Peckham*, 120 S.W.2d 786, 787–88 (Tex. 1938); *Cooper v. Lee*, 12 S.W. 483, 486 (Tex. 1889); *Lee v. Hasson*, 286 S.W.3d 1, 21 (Tex. App.—Houston [14th Dist.] 2007, pet. denied); *Collins*, 53 S.W.3d at 841; *Estate of Townes v. Townes*, 867 S.W.2d 414, 417 (Tex. App.—Houston [14th Dist.] 1993, writ denied); *Miller v. Miller*, 700 S.W.2d 941, 947–48 (Tex. App.—Dallas 1984, writ ref'd n.r.e.). Thus they do not control the issue before us.

---

their claims for fraud, gross negligence and bad faith, the Dan/Ed Parties argue that William Parties have waived any complaint of a breach of fiduciary duty. Our analysis is controlled by the terms of the Master Agreement and not the terms of the will or the HIL Partnership Agreement. Accordingly, we decline to affirm the trial court's judgment on that basis.

The William Parties also cite *Keck, Mahin & Cate v. Nat'l Union Fire Ins. Co.,* 20 S.W.3d 692, 699 (Tex. 2000), in which the court considered whether a release agreement could bar claims arising from a fiduciary relationship. The court determined the release barred the insurance carriers' equitable subrogation claims for legal malpractice. *Id.* at 695. However, it did not preclude claims brought by the insured's equitable subrogees. One of the subrogees challenged the validity of the release on the grounds the insured did not understand the agreement, was not fully informed before signing it, or, alternatively, that there were fact questions as to whether the release was negotiated at arms-length and in good faith. *Id.* at 698-99. Because the relationship was fiduciary in nature and the release was negotiated during the attorneys' representation of the insured, the presumption of unfairness or invalidity applied. *Id.* at 699. The court noted the presumption would not have arisen had the insured hired new attorneys before agreeing to the release. *Id.* at 699 n. 3. Because the release was obtained during the course of the fiduciary relationship, the attorneys were not relieved of the burden to show *the release* was fair or valid. *Id.* at 699. The issue we consider, therefore, is whether it has been shown the release of Dan and Ed from their fiduciary duties was fair or valid.

We find *Texas Standard Oil & Gas, L.P. v. Frankel Offshore Energy, Inc*., 394 S.W.3d 753 (Tex. App. — Houston [14th Dist.] 2012, no pet.), instructive on that issue and analogous to the case at bar. In that case, we held the fraudulent-inducement release precluded all of Frankel's fraudulent-inducement claims. *Id.* at 763. In doing so, we recognized the principle that fraud vitiates a contract "must be weighed against the competing concern that parties should be able to fully and finally resolve their disputes by bargaining for and executing a release barring all further disputes." *Id.* at 762 (citing *Schlumberger Tech. Corp. v. Swanson*, 959 S.W.2d 171, 179 (Tex. 1997)). Likewise, we must balance the principle that fiduciary duties arise

as a matter of law with our obligation to honor the contractual terms that parties use to define the scope of their obligations and agreements, including limiting fiduciary duties that might otherwise exist. *See Strebel v. Wimberly*, 371 S.W.3d 267, 284 (Tex. App.—Houston [1st Dist.] 2012, pet. denied); *see also In re Estate of Miller*, 446 S.W.3d 445, 455 (Tex. App.—Tyler 2014, no pet.) ("Unless otherwise provided by statute or law, duties owed by an agent to his principal may be altered by agreement.") (citing *Nat'l Plan Adm'rs, Inc. v. Nat'l Health Ins. Co*., 235 S.W.3d 695, 700 (Tex. 2007)); *Beckham Res., Inc. v. Mantle Res., LLC*, No. 13-09-00083-CV, 2010 WL 672880, at *10 (Tex. App.—Corpus Christi-Edinburg Feb. 25, 2010, pet. denied) (mem. op.).

This is especially true where the contractual limitation arises from an arms-length business transaction between sophisticated parties. *Strebel,* 371 S.W.3d at 284; *see also Nat'l Plan Adm'rs, Inc.,* 235 S.W.3d at 703. This principle adheres to our public policy of freedom of contract. *El Paso Field Servs., L.P. v. MasTec N. Am., Inc*., 389 S.W.3d 802, 811–12 (Tex. 2012); *see also FPL Energy, LLC v. TXU Portfolio Mgmt. Co*., 426 S.W.3d 59, 67 (Tex. 2014) (noting that sophisticated parties have broad latitude in defining the terms of their business relationship); *Forest Oil Corp. v. McAllen*, 268 S.W.3d 51, 58 (Tex. 2008) (articulating the principle that Texas courts should uphold contracts "negotiated at arm's length by 'knowledgeable and sophisticated business players' represented by 'highly competent and able legal counsel.'"); *Cross Timbers Oil Co. v. Exxon Corp*., 22 S.W.3d 24, 26 (Tex. App.—Amarillo 2000, no pet.)) (Stating that "[i]n short, the parties strike the deal they choose to strike and, thus, voluntarily bind themselves in the manner they choose").

The record reflects the Master Agreement was not executed solely for the purpose of prematurely distributing assets to William but also to terminate his

relationship with Dan and Ed and settle all claims against them. This severance of the relationship is achieved not only through purchasing each other's interest in commonly-held assets, but by releasing Dan and Ed from their fiduciary duties.

In deciding whether the record supports the trial court's implied finding the release is valid, we consider the following: (1) the terms of the contract were negotiated, rather than boilerplate, and the disputed issue was specifically discussed; (2) the complaining party was represented by counsel; (3) the parties dealt with each other in an arms-length transaction; (4) the parties were knowledgeable in business matters; and (5) the release language was clear. *Frankel Offshore Energy*, 394 S.W.3d at 763. Moreover, the fact that the parties "are effecting a 'once and for all' settlement of claims" weighs in favor of upholding the release. *Id.*

We first note William was of legal age and the William Parties make no claim that William lacked capacity to enter into the Master Agreement. William attended college for several years and studied business. William sought a split of interest in assets that were held in common with the Dan/Ed Parties, as well as early distribution of assets. William was represented by counsel that he described as "talented and intelligent" throughout the negotiations of the Master Agreement. The William Parties' legal team included lawyers that specialized in trusts and estates as well as oil and gas. The Atlantic Trust Company served as co-trustee with William and was represented by its own independent counsel. William was very involved in the negotiations and suggested many of the terms in the Master Agreement himself. William actively participated in the decisions on the Master Agreement. The releases were disputed and specifically discussed. The Master Agreement clearly and unequivocally releases Dan and Ed, in all capacities, from any and all claims, excluding breaches or defaults under the Master Agreement.

The record reflects the Master Agreement was negotiated by William with benefit of counsel, William's knowledge of business matters was never called into question, and the release language is clear. Not only did William enter into the Master Agreement which provided for the releases, he then executed the first set of releases. No challenge to the releases was made until after the first distribution of assets occurred. Thus the record before this court rebuts the presumption of unfairness or invalidity attaching to the release. Accordingly, William's only remaining claim for breach of fiduciary duty is precluded and the judgment of the trial court is affirmed.[6]

/s/ John Donovan
Justice

Panel consists of Justices Jamison, Donovan, and Brown.

[6] This determination makes it unnecessary to address William's remaining arguments.