The Texas Lawbook

Free Speech, Due Process and Trial by Jury

20 Rulings, 5 Divisions: Reappointed Business Court Judges Build Rapidly Maturing Case Law

AUGUST 10, 2026 | **BY ZACK EWING, AUSTIN LESCH & SETH SMITHERMAN**

There's no sign of a summer slowdown in Texas Business Court. The Court has delivered 20 opinions since our last installment, and thus far, summer's defining feature has been breadth over blockbuster.

All five divisions and nine different judges pitched in. The First Division led the way with almost half the total publication volume. July supplanted May as the Court's busiest month yet, but it was also its most doctrinally varied, one in which the Court behaved less like a specialty commercial docket and more like a full-service court majoring in business disputes. Four of the summer's opinions are sequels to cases this series has already covered — *Dallas Sports Group,Thompson, Cobalt Falcon* and *Fiberwave* — a reminder that the Court's docket is now mature enough to generate its own internal history.

Although a divided Fifteenth Court of Appeals in *In re Frank Jackson, Relator* granted mandamus relief against an unreasoned Eleventh Division order declining to dismiss under Rule 91a, the summer has otherwise had its bright spots. In *Brown*, the Court was able to sidestep a challenge to its own constitutionality. And July 29, Gov. Greg Abbott announced the reappointment of all ten of the Business Court's judges, praising the Court's "monumental success" at handling "the most complex commercial matters with the expertise and speed Texas businesses demand" and commending its judges as "draw[ing] national attention as models for commercial dispute resolution."

Three themes tie the summer's substantive opinions together thus far:

First, the Court's by-now familiar insistence that corporate and contractual documents mean what they say, even when the parties wish otherwise. In *Sri Shirdi Sai Baba Temple of Austin v. Lam*, a nonprofit's certificate of formation defeated its conflicting bylaws despite general agreement about the basic governance outcome the bylaws were meant to achieve. And in both *Village Crossing v. West Creek Investments* and *Riverside Homebuilders v. FG Aledo Development*, the Court refused to rewrite real estate contracts that did not adequately identify the real property to be sold. In *Simpson*, the Court applied the plain terms of an agreed divorce decree to toss breach of fiduciary claims. And in *Cobalt Falcon v. AXS Investments*, it declined to let a party's regret over a perpetual payment obligation be repackaged as unconscionability. This is the same textualist instinct that has animated so many of the Court's already-large and ever-growing body of work.

Second, the Court again reached for tools that resolve legal questions early. Fischer used Rule 166(g) in dispositive fashion, and *Cobalt Falcon* illustrates how even a nondispositive Rule 166(g) ruling can narrow what is left to try. *Stratton v. Hogan* dismissed claims under Rule 91a. And *Fiberwave* offered a twist, deploying Rule 166(g) not to construe a contract but to declare it ambiguous. Readers who have followed this series since January will recognize the pattern, if not always the outcome.

Third, as usual, the Court paid careful attention to constitutional, statutory, and other structural limitations on its jurisdiction. It repeatedly declined to reach the merits of claims on jurisdictional grounds, dismissing a nonresident shareholder in CWK *Management v. Maggi* for want of specific personal jurisdiction and pouring out malpractice-flavored claims against church counsel in *Jeremiah Counsel v. Young* because Chapter 25A withholds that subject matter from the Court. Yet in *Kampmann v. Smith*, the Court held firmly to the original jurisdiction the Legislature conferred upon it, refusing to abate or transfer in deference to other suits between the parties elsewhere. Relatedly, two opinions issued a day apart — *Sri Shirdi and Jeremiah Counsel* — mapped the boundary between the church autonomy doctrine and the secular corporate law that religious nonprofits opt into when they incorporate, and together they offer the clearest guidance yet on which of those disputes a Texas court may resolve.

Brown v. Exxon Mobil Corporation, 2026 Tex. Bus. 35 (11th Div.)

The Decision

At the very end of May, the Court granted M. Brown's motion to remand, holding it lacked subject matter jurisdiction over an employment discrimination case brought under Section 21.051 of the Texas Commission on Human Rights Act.

What Happened

Brown was Vice President of Basestocks & Waxes for ExxonMobil Product Solutions Company. His employment ended in July 2025, and he thereafter filed a race discrimination claim. According to defendant Exxon, Brown was randomly drug-tested under its alcohol and drug use policy, tested positive for THC-metabolite, and resigned after meeting with HR. Brown alleges he was terminated because of his race. Specifically, Brown contends THC-metabolite is not an "illicit or unprescribed or controlled drug" under the policy, and alternatively alleges that, even if he violated it, he was treated differently from non-Black executives who he claims did the same.

Brown filed his petition in the 11th District Court of Harris County, asserting a statutory cause of action for race discrimination in violation of Texas Labor Code § 21.051(1). The case was removed to the Business Court and asserted jurisdiction on two grounds: (i) as "an action regarding the governance, governing documents or internal affairs of an organization" under Section 25A.004(b)(2), and (ii) as an action arising out of a "qualified transaction" under Section 25A.004(d)(1).

No Jurisdiction Under 'Internal Affairs'

The dispute turned on the meaning of "internal affairs." The Court's analysis applied the canon of *noscitur a sociis* — "it is known by its associates" — to give contextual meaning to "internal affairs" in Section 25A.004(b)(2) by reading it alongside "governance" and "governing documents." This textual analysis revealed that "internal affairs" encompasses internal entity governance as dictated by the entity's governing documents and governing law. The Court continued with a similar analysis of 25A.001(7), which further defines "internal affairs" as "the rights, powers, and duties of an organization's governing persons, officers, owners, and members" and "matters relating to the organization's membership or ownership interests." The Court determined that "rights" are those rights which arise from governing persons, officers, owners or members role as such.

The Court then took up three jurisdictional arguments. First, on the argument that the CEO's participation in the termination decision created jurisdiction, the Court reasoned that not every action taken by a CEO qualifies as one involving internal affairs, and that an expansive interpretation would confer Business Court jurisdiction over almost any CEO decision.

Second, on the argument that Brown's vice president status made the case one regarding "internal affairs," the Court reasoned that the "rights" described in Section 25A.004(b)(2) are those derived from an individual's official, titular role within the organization — whereas the right to be free from unlawful racial discrimination and the right to seek redress are statutory rights derived from the Texas Labor Code and common to millions of Texas employees.

Third, on the argument that the case was a matter "relating to the organization's membership or ownership interests" because Brown's unvested RSUs constituted "ownership interests," the Court noted that the incentive program gives the defendant broad discretion over the grant, amendment and forfeiture of awards, with no employee entitled to them "as a matter of right." And Brown conceded he does not dispute defendant's "ability to withhold any employee benefit if allowed to do so under a relevant agreement or internal company document." For that reason, the Court found the dispute was not about the RSU program's terms.

No Jurisdiction Under 'Qualified Transaction'

The court also found the action did not arise out of "qualified transaction" under § 25A.004(d)(1) involving at least $5 million. Honing in on the "arising out of" requirement, the Court reasoned that the transactions were not a but-for cause of the suit.

The decision came from Judge Patrick K. Sweeten of the Texas Business Court, Third Division, sitting by assignment in the Eleventh Division.

Brown was represented by Tony Buzbee of The Buzbee Law Firm and Charles A. Sturm of Sturm Law PLLC. ExxonMobil was represented by Dasha Brotherton, Patrick W. Mizell and Stacey Neumann Vu of Vinson & Elkins.

Dallas Sports Group, LLC v. DSE Hockey Club, L.P., 2026 Tex. Bus. 36 (1st Div.)

The Decision

Following up its 90-page April opinion, the Court delivered another chapter in the cross-sport showdown between Dallas' NBA and NHL teams. This time, the Court decided three issues: (i) the Mavericks' redemption of Dallas Sports & Entertainment, L.P.'s interests (DSELP); (ii) the Stars' counterclaim; and (iii) res judicata defenses from the Stars' 2011 bankruptcy. The Mavs swept the issues 3-0.

What Happened

As we chronicled in our April issue, this dispute centers around whether the Mavericks effectively redeemed the Stars' ownership interests in COC and Center GP, the entities operating Dallas's American Airlines Center. Notably, on the day before a scheduled hearing, the Stars revealed for the first time that DSELP, rather than another Stars' affiliated entity (called Hockey Club), was the actual entity holding the Stars' interests in COC and Center GP. This was despite months of prior pleadings, sworn evidence, and summary judgment motions in which Hockey Club repeatedly asserted it owned the relevant interests in COC and Center GP.

After this reveal, the Court signed an order regarding joinder, which deemed DSELP to have participated in the summary judgment proceedings as if it were an original party, and the parties agreed during a status conference that adding DSELP would not affect the pending motions. Following argument, the Court held on April 2 that the Mavericks successfully redeemed the Stars' interests in COC and Center GP for a $110 cash tender. But the Court's order left open three issues: (i) whether the Maverick's redemption was valid as to DSELP; (ii) whether the Court's April

2 ruling resolved DSELP's affirmative defenses and counter claims; and (iii) whether res judicata effects related to the Stars' 2011 bankruptcy proceedings affected the Mavericks' claims. On May 5, the Court resolved all three issues in favor of the Mavericks, and this opinion followed.

The Redemption Method Applied to DSELP

The Court held that the Mavericks' redemption method was effective as to DSELP because the Mavericks' redemption letter and cash tender "got to the right people," substance mattered over form, and DSELP was in privity with Hockey Club and not otherwise prejudiced. Importantly, the evidence showed that the Mavericks' redemption letter was directed to the attention of two individuals with ties to DSELP and Hockey club: Mr. Gaglardi (who ultimately owns both DSELP and Hockey Club) and Mr. Alberts (who is both companies' CEO and president). Both received the letter and discussed its contents with each other. DSELP's CFO received the cash and held it in the single safe that both entities use. Further, DSELP has no employees and depends on Hockey Club's employees to conduct its business, shares the same address, and does not even have its own bank account.

As the Court observed: "The Mavericks could have put a fictitious name or no name in the addressee block, and it would not have mattered because the right people got the letter and the cash (at the right address). The Mavericks could have handed the letter and the cash to [DSELP and Hockey Club's CFO] during a game at the Arena and the result would be the same." Actual notice and receipt was enough, so the Court's rulings bound DSELP as well.

The Stars' Counterclaim Was Negated

In the second issue, the Court concluded that the April 2 ruling in favor of the Mavericks' declaratory judgment action also negated the Stars' 22-part declaratory judgment counterclaim. The Star's counterclaim did not assert unique issues not already implicated by the Mavericks' action, and the Court applied the longstanding principle that the Declaratory Judgment Act is not available to settle disputes already pending before a court. The Stars' counterclaim was therefore moot.

Res Judicata Did Not Bar the Mavericks' Claims

Finally, the Stars argued that res judicata effects from their predecessor's 2011 bankruptcy barred the Mavericks' redemption claims, due to the fact that the Stars moved to Frisco well before the bankruptcy, in 2003. The Court disagreed, reasoning that the Stars' current ownership assumed and accepted the location commitment's promises to Dallas post-bankruptcy. In other words, even though the 2011 bankruptcy gave the Stars a fresh start, they still needed to maintain their Team's principal corporate and executive office in Dallas until the location commitment expired. So, regardless of their pre-bankruptcy conduct, the Stars' post-bankruptcy breach of the location commitment created a new triggering event that gave the Mavericks the ability to exercise the redemption rights. As the Court concluded: "the 2011 bankruptcy gave the Stars a fresh opportunity to comply with that post-bankruptcy obligation and they ignored that opportunity."

Additionally, the Court found the Stars failed to preserve their res judicata defense by not asserting it in prior responses to the Mavericks' prior summary judgment motion.

The decision came from Judge Bill Whitehill of the Texas Business Court, First Division.

Charles Babcock, Chris Bankler, Sarah Starr, Minoo Blaesche and Gabriela Barake of Jackson Walker represented Dallas Sports Group. Doug Alexander, Kirsten Castaneda and Wallace B. Jefferson of Alexander Dubose Jefferson, Chad Baruch of Johnston Tobey Baruch, and Joshua Sandler, Frank Carroll, Benjamin Hamel, John David Janicek, Cory Johnson and Andrew Patterson of Winstead represented DSE.

South Shore ER, LLC v. Bashiri et al., 2026 Tex. Bus. 39 (11th Div.)

The Decision

The Court denied SSER's motion to remand the case to Galveston County district court, holding that (1) the company agreement's venue-selection clause is unenforceable, (2) even if enforceable, removal would not violate the clause, (3) removal was timely, and (4) all of SSER's claims fall within the Court's original jurisdiction.

What Happened

SSER is a stand-alone emergency medical facility in League City, Texas, formed in 2021 by Dr. Suchmor Thomas. SSER is governed by a company agreement containing noncompete, nonsolicitation and confidentiality provisions. Amir Bashiri subsequently became a member and manager of SSER, receiving a 15 percent membership interest in exchange for serving as chief nursing officer and chief operating officer. Dr. Joseph later became a member as well. Both Bashiri and Dr. Joseph were bound by the company agreement.

In 2022, SSER began plans for a new facility in Manvel, Texas. Bashiri served as one of the most active participants in the expansion efforts and had access to confidential information regarding the expansion, including site selection and market analysis. SSER alleges that Bashiri, Dr. Joseph and Dr. Zachariah then conspired to divert the Manvel expansion opportunity for themselves. The trio formed a competing entity (Manvel Emergency Center) to operate a stand-alone emergency facility less than two miles from SSER's planned site. SSER further alleges that Bashiri took physical files containing SSER's confidential information related to the expansion and that the conspirators solicited SSER employees and attempted to block SSER from obtaining a required special use permit.

SSER filed suit in Galveston County in December 2024. Defendants removed the case to the Business Court in April 2026, asserting they first learned the amount in controversy exceeded $5 million when SSER served an expert report on March 23, quantifying damages at over $16 million. One week after the expert report was served, SSER filed its live pleading — the Fifth Amended Petition — which only specified one dollar amount, a $1.84 million claim against Bashiri for unjust enrichment.

Unenforceable Venue-Selection Clause

SSER first argued that a clause in the company agreement mandating litigation in Galveston County required remand. The Court held the clause was a venue-selection clause — not a forum-selection clause — and was therefore generally unenforceable under Texas law unless authorized by statute. The Court rejected SSER's argument that Texas Civil Practice and Remedies Code § 15.020 authorized the venue-selection clause as part of a "major transaction," finding the agreement contained no stated value of consideration for any membership interest. The stated value was relevant because the statute provides that a "major transaction" is "evidenced by a written agreement under which a person pays or receives, or is obligated to pay or entitled to receive, consideration with an aggregate stated value equal to or greater than $1 million."

SSER's attempt to equate Bashiri's $1.84 million in received distributions with the "stated value" of consideration failed because distributions that accrued over time based on the company's performance are not "aggregate stated value" as required by the statute. The Court also rejected SSER's final argument — which attempted to aggregate all members' contributions to reach the $1 million threshold — holding the statute's reference to "a person" focused on whether one person paid or received consideration of $1 million or more.

Eleventh Division Located in Galveston County

As an alternative basis, the Court held that even if the venue-selection clause were enforceable, removal to the Eleventh Division — which encompasses Galveston County — would still be proper. Even though the Eleventh Division does not maintain a physical courthouse in Galveston County, Chapter 25A expressly authorizes Business Court judges to hold court "at any courtroom within the geographic boundaries of the division," and counties are required to accommodate the court. The Court rejected SSER's reliance on federal cases involving geographically fixed federal courthouses, noting that Business Court divisions operate differently.

Timely Removal

The Court found removal timely. The only specific dollar amount in SSER's pleadings was the $1.84 million in distributions to Bashiri, and the Court rejected SSER's argument that defendants should have inferred a $12 million amount in controversy through "basic math" extrapolating Bashiri's membership, a "chain of suppositions" about the damages theory and the defendants' $2 million counterclaims. The expert report served on March 23 was the first document to reasonably establish an amount in controversy exceeding $5 million, and defendants filed their notice of removal exactly 30 days later.

Original Jurisdiction Over All Claims

Finally, the Court rejected SSER's argument that the majority of its claims required supplemental jurisdiction. The Court held that SSER's claims presented a single, integrated business dispute regarding SSER's governance and internal affairs (Section 25A.004(b)(2)), breaches of fiduciary duties by owners and managers (Section 25A.004(b)(5)), and trade-secret misappropriation (Section 25A.004(d)(4) and (d)(5)). Following its prior holding in *Reed v. Rook TX, LP*, the Court confirmed that the term "action" in Section 25A.004 refers to the lawsuit generally — not individual causes of action — and that jurisdiction extends to the entire proceeding once any statutory basis for original jurisdiction is satisfied.

The decision came from Judge Brian Stagner of the Texas Business Court, Eighth Division, sitting by assignment in the Eleventh Division.

SSER was represented by Michelle Slaughter, Shannon Rinderknecht and Chris Johnson of Johnson & Associates. Defendants were represented by John Carter Byrum, Justin T. Scott, Charles L. Sharman and Catherine Welch of Bradley, Craig Eiland of Eiland & Bonnin, and Patrick H. Gurski of Gurski Law Firm.

Local Marketing, Inc. v. Angela Nicole Bennett, et al., 2026 Tex. Bus. 40 (11th Div.)

The Decision

The Court granted Local Marketing's motion to dismiss the counterclaims brought by Defendants Heidi Jo McIvor and McIvor Marketing under the Texas Citizens Participation Act. The Court held that McIvor failed to meet its prima facie burden by presenting clear and specific evidence of damages caused by allegedly defamatory letters Local sent to customers, and further held that the statements did not constitute defamation per se. The Court awarded Local $18,010 in attorney's fees and lifted the TCPA discovery suspension.

What Happened

Local Marketing sued former executives and employees in a Harris County district court, alleging that they breached employment contracts and misappropriated Local's trade secrets when forming a competing marketing company. After Local removed the case to the Business Court, McIvor countersued for defamation and tortious interference with business relations, based on letters

Local sent to certain McIvor customers who were Local's former, current, or prospective customers. Local moved to dismiss under the TCPA.

The letters at issue attached and described a temporary restraining order from the lawsuit that Local brought against McIvor in Harris County. Local had sought but failed to obtain a customer-solicitation restraint in the TRO, yet its letters informed McIvor's customers that McIvor was "specifically restrained and enjoined" from "soliciting [Local's] customers. This includes you." The day after sending the letters, Local moved the trial court to add the customer-nonsolicitation provision, which the court ultimately declined to do. The TRO eventually expired and the court denied a temporary injunction.

TCPA Applicability

The first issue was whether the TCPA applied to McIvor's counterclaims, and the Court held that it did. The Court reasoned the TCPA applied because the TCPA defines "exercise of the right to petition" as including "a communication in or pertaining to … a judicial proceeding," and the letters were "communications" that "pertain[ed] to" the Harris County lawsuit. The letters attached the TRO, cited the cause number and caption and described the ruling — making them directly pertaining to the suit as the statute requires.

Failure to Prove Damages

Both of McIvor's counterclaims — for defamation and tortious interference — require a showing of damages. Yet, the Court found McIvor failed to present the "minimum quantum of evidence necessary to support a rational inference" of damages that is necessary to survive a TCPA motion to dismiss. McIvor's declaration that it "was damaged" was conclusory and insufficient, and McIvor's only substantive evidence was that its owner spent time explaining the litigation to three customers — but the Court held this alone, without any supporting damages model or supporting details, was insufficient.

No Defamation Per Se

McIvor also argued defamation per se would excuse proof of damages. The Court rejected this theory, holding that a false statement that McIvor had been enjoined from soliciting customers was not "uniquely injurious to the marketing profession," particularly given that the court had enjoined McIvor from soliciting Local's employees and from accessing its customer lists. The letters did not accuse McIvor of committing a crime and did not satisfy the Texas standard of a statement "so obviously detrimental to one's good name" that damages need not be shown.

Attorney's Fees and Sanctions

The Court awarded Local $18,010 in mandatory TCPA attorney's fees, finding Local's fee calculation reasonable and uncontested. The Court declined to award sanctions, finding no improper purpose in McIvor's counterclaims.

The decision came from Judge Stacy Rogers Sharp of the Texas Business Court, Fourth Division, sitting by assignment in the Eleventh Division.

Local Marketing was represented by Darren A. Braun and Ashish Mahendru of The Litigation Group. Defendants were represented by Hunter Fugate and Jana Woelfel of Clark Hill, Donald W. Gould II, Sophia A. Malik and Patrick Waites of Johnson DeLuca Kurisky & Gould, and Samuel B. Haren, Andrew K. Meade and Leann Pinkerton of Meade & Barr, Kendall Webb and Zach Wolfe of Zach Wolfe Law Firm, and David Fettner of Fettner Thompson.

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

The Decision

In this, the second published opinion in this case, the Court sided with defendants, applying the four-factor "family resemblance" test adopted in

Reves v. Ernst & Young to hold that a promissory note was a commercial loan, not a "security" under the Texas Securities Act.

What Happened

Like the Court, we presume our readers' familiarity with the dispute from our May reporting on this case. Mann, a private equity investment broker, advised Thompson, a family office director, regarding alternative investments, leading Thompson to invest millions in Anchor-managed funds. Thompson later agreed to lend Anchor money on condition that Mann supply a personal financial statement and loan guarantee. Because Mann had signed, among other things, a secured promissory note to secure the loan, Thompson included a claim under the TSA. Mann moved for summary judgment, arguing the note was a loan, not a covered "security."

Which Test Applied?

A threshold question was which test applied. The defendants urged the "investment versus commercial" test, which depends on the totality of the circumstances, while the plaintiffs invoked the "family resemblance" test, which presumes that any note maturing beyond nine months is a security. Citing Reves, the Court sided with family resemblance, which imposes upon the movant the burden of showing the note "(i) is an enumerated judicial exception or (ii) bears a strong family resemblance to one of the exceptions." A "family resemblance" depends on four factors, including the parties' motivations, the plan of distribution, the investing public's reasonable expectations and any risk-reducing measures in place.

Applying Reves

Though the Court rejected Mann's argument that the four-year note met any "short-term loan" exception to Reves, it ultimately ruled for Mann. Plaintiffs conceded the second factor. As for party motives, the Court found them genuinely mixed: Thompson was entitled to interest, which Reves treats as "profit," but admitted the Note carried a below-market rate and borrower-friendly schedule. Mann, however, admitted using the Note to raise capital and avoid diluting Anchor's existing equity investor, with proceeds funding salaries and ordinary expenses. Ultimately, because the borrower's motives were investment-oriented, this factor favored security status.

The remaining factors cut decisively the other way. As for the third factor, the instrument was titled a "Secured Promissory Note," referenced no "investors" or "investments," repeatedly described the funds as a loan, was never advertised as an investment, and was negotiated by sophisticated parties with sophisticated counsel. And as for the fourth, the note was collateralized, personally guaranteed, laden with representations and covenants and provided Thompson inspection and information rights — multiple risk-reducing measures that, the Court held, strongly suggested the note was not a security.

The decision came from Judge Bill Whitehill, First Division.

The Thompson parties were represented by Monica Gaudioso, Alexander More and Robert C. Rowe of Carrington, Coleman, Sloman & Blumenthal. Anchor Capital GP and Mann were represented by Aaron O'Dell, Michael Pezzuli Jr. and Nathaniel Lee of Winston Taylor and LeElle Slifer of King & Spalding.

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

The Decision

In a multifront procedural slugfest, the Court denied all three of defendant's threshold jurisdictional and venue challenges, including a plea to the jurisdiction, a verified plea in abatement based on dominant jurisdiction and an alternative motion to transfer venue.

What Happened

The case arises from the collapse of a decade-long dealership partnership between Kampmann and Smith, who formed Principle Auto Group. Both relevant entities maintain registered offices and principal places of business in Bexar County. The breakdown previously spawned three other lawsuits: a Tarrant County suit tried to a jury in 2026 with a verdict (but no final judgment) for Smith, a Kendall County suit over interference with shared-services employees and a severed set of Smith's declaratory claims transferred to Kendall County. Proving that the third time isn't always the charm, Kampmann filed again in Business Court, pleading declaratory relief, breach of contract, breach of fiduciary duty, and a court-ordered winding up of the relevant entities.

Plea to the Jurisdiction

Smith's plea to the jurisdiction argued no case or controversy existed because the petition did not identify "a single dollar of loss." In the Court's view, that conflated whether plaintiffs could prove damages, a merits question, with whether they alleged a concrete injury traceable to the defendant, the jurisdictional question. Invoking its own decision in **Pradera**, the Court reiterated that absent a sham pleading, the petition's allegations control. Because plaintiffs pleaded over $5 million and Smith offered no contrary evidence, the Court declined to look behind the pleading. Ultimately, each count survived: the claims for declaratory relief presented a live dispute over competing constructions of buy-sell provisions, while the contract and fiduciary counts pleaded concrete injuries including a lost option to sell at net book value, an undisclosed side deal, cross-entity liability exposure and about $200,000 in personal legal fees charged to three dealerships. The Court added that dismissal without leave is available only when pleadings affirmatively negate jurisdiction, not for curable pleading defects.

Dominant Jurisdiction and Transfer

The Court also denied the abatement and transfer motions, applying familiar dominant-jurisdiction principles to conclude the suits were not inherently interrelated. While this case centered on dissolving the Bexar County entities, the Court reasoned, the other three suits concerned different claims or involved different parties altogether. In any event, the Court separately refused to abate because under the Business Organizations Code, it is within a Bexar County court's jurisdiction to wind up Bexar County entities. And importantly, it denied discretionary abatement and transfer for essentially the same reasons, announcing that "the Business Court will continue to exercise jurisdiction over claims within its original jurisdiction, even when related claims proceed elsewhere."

The decision came from Judge Marialyn Barnard, Fourth Division.

Kampmann was represented by Stephen Calhoun, Dyana Mardon and Julia Wommack Mann of Jackson Walker and David Evans. Smith was represented by Catherine Baldo, John Guild, Kenneth Meixelsperger and Gregory Nieman II of Bell Nunnally.

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

The Decision

This case is a great example of how a Rule 166(g) motion construing the parties' transaction agreement can indeed streamline the triable issues. In a direct sequel to its May ruling, the Court applied Delaware law to grant summary judgment in favor of Cobalt Falcon on the question of AXS's liability for breach of contract. It also granted no-evidence summary judgment against AXS's four affirmative defenses: substantive unconscionability, liquidated damages as an unenforceable penalty, failure to mitigate and limitation of remedies.

Prior 166(g) Motion Streamlined the Breach Analysis

Recall that AXS acquired rights to an exchange traded fund from Cobalt Falcon in exchange for monthly payments "in perpetuity (unless otherwise agreed)." Because the Court had already concluded that language imposed an obligation surviving the fund's closure, Cobalt Falcon had no trouble establishing the existence of a contractual obligation. As for breach and damages, AXS did not dispute it had stopped monthly payments but argued that the lack of an acceleration clause capped its liability at payments accruing before June 11, 2025. The Court nevertheless granted summary judgment, reasoning that AXS's arguments went to the amount of damages, not their existence, and observing that Cobalt Falcon had moved only on liability.

AXS's Affirmative Defenses

The bulk of the opinion concerned AXS's affirmative defenses, particularly its unconscionability defense. AXS picked up largely where it had lost before, arguing that an "eternal obligation" to make monthly payments regardless of the fund's status is unconscionable. The Court, mindful that under Delaware law, unconscionability is invoked "with extreme reluctance" and that a bad bargain is not an unconscionable one, rejected AXS's arguments for essentially the same reasons enumerated in its Rule 166(g) motion. In response to AXS's focus on cost-price disparity and overall imbalance, the Court emphasized these are measured at the time of contracting and that the parties' contract conveyed perpetual rights for perpetual payments, which as the Court had already held, "[wa]s not inherently absurd." Thus, in the absence of any other source of unconscionability, the Court repeated now what proved decisive then: "[C]losure of the Fund was entirely within [AXS's] own hands."

None of AXS's remaining defenses survived, either. First, the Court rejected the idea that any liquidated damages were at issue, reasoning that under Delaware law such damages are a sum fixed at contracting and observing that Cobalt Falcon instead sought direct damages flowing from breach. The Court next ruled that AXS hadn't put forth any evidence of Cobalt's failure to mitigate. Finally, the Court rejected AXS's "performance by payment and duplicative recovery" defense as not qualifying as an affirmative defense at all.

The decision came from Judge Andrea K. Bouressa, First Division.

Cobalt Falcon was represented by Leo Park and Chris Schwegmann of Lynn Pinker Hurst & Schwegmann. AXS was represented by David Miller and William Sandy Snyder of Bradley Arant Boult Cummings and Douglas Hirsch and Jennifer Rossan of Sadis & Goldberg.

Stratton v. Hogan, 2026 Tex. Bus. 44 (4th Div.) (mem. op.)

The Decision

This case provides yet another example of the Business Court's preference for resolving key legal issues in an accelerated posture, a practice we noted in our first installment of this series and have monitored ever since. Here, the Court partially granted a Rule 91a motion, dismissing an individual co-owner's conversion claim for corporate property while denying dismissal of a related contract claim, and declined to award fees to either side. The opinion invokes a familiar fact pattern: what to do when a shareholder sues individually for injuries to the corporation?

What Happened

Like *Kampmann*, this case stems from a business relationship gone awry. Stratton and Hogan sued each other for breach of fiduciary duty, for breach of the operating agreement, and to wind up the businesses. As bad turned to worse, Stratton added claims against Hogan for disparagement, conversion, and further breaches of contract. Hogan moved to dismiss the three newly added claims under Rule 91a, and the Stratton parties timely amended to drop the disparagement claims.

The Conversion Claim

Stratton alleged Hogan converted equipment by moving it between two clinics the corporation operated, for use in Hogan's "prospective independent operation." The problem with that theory, the Court explained, was that by his own pleading, Stratton complained that Hogan converted *the corporation's* property, which he did not personally own or have rights to possess. Nor could § 21.563 of the Business Organizations Code, which allows a court to treat a closely held corporation's derivative proceeding as a direct action, save Stratton's impermissibly derivative action. The statute did not apply because Stratton pleaded no derivative claim to convert, and because it does not eliminate the requirement that a shareholder recovering individually prove a personal cause of action and personal injury. The pleading also negated harm: Stratton conceded the equipment had been divided through the wind-up and sought recovery only "to the extent these items (and any others) are excluded from the true-up," which acknowledged that any prospective harm had not yet occurred.

The Contract Claim and Fees

Stratton's contract claim survived, however. The Court ruled the Stratton parties pleaded facts supporting each element, and that Hogan's sole argument — to the effect that the obligor entity had not appeared — was not a permissible Rule 91a argument.

The decision came from Judge Stacy Rogers Sharp, Fourth Division.

Stratton was represented by Ricardo G. Cedillo and Derick Rodgers of Davis, Cedillo & Mendoza. The Hogan parties were represented by David Prichard, David R. Montpas and Matthew Salazar of Prichard Oliver Montpas.

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

The Decision

Once again displaying the detail-oriented formalism we've come to expect from the Business Court, this opinion confronted a governance dispute over a religious nonprofit corporation in Austin. The opinion walked through both the church autonomy doctrine, deciding the dispute was resolvable on neutral principles, and black-letter corporate governance law, arriving at a "clear and simple answer:" in a conflict between an organization's certificate of formation and its bylaws, the certificate of formation controls.

What Happened

In 2007, the Temple filed a certificate vesting management in a board of directors and stating it "will have no members." In 2024, a new board took over after the prior directors resigned amid a fraudulent donation-matching scheme. In 2025, it adopted new bylaws without the involvement of an attorney that all parties agreed were intended to convert the Temple from a board-management to a member-management structure. Under the new bylaws, the new board created an election committee to facilitate a vote by the trustee-members to form a new board of directors.

The Temple later retained counsel, however, who concluded the amended bylaws conflicted with the certificate and recommended a short election delay to file an amended certificate. The 2024 Board revoked the new bylaws in response, but two members of the terminated election committee nevertheless proceeded with a putative election. The winners of the election created a self-declared new board, filed an amended certificate, and brought this lawsuit the next day—one day before the 2024 Board's scheduled meeting to do the same thing.

The Certificate Controls

The first dispute was what to do with the conflicting certificate and bylaws. While the 2007 certificate of formation provided for board management, the 2025 bylaws purported to convert the management structure to member management. Because in the event of a direct conflict, the certificate controls, the Court rejected the new board's request for a declaration that the 2025 bylaws were valid. Vindicating the Business Organizations Code, the Court next rejected any suggestion that § 22.103 is "absurd and unworkable" or creates a "Catch-22." To the extent old governing documents do not adequately capture an organization's present governing intent, the problem can be solved easily by filing basic changes to simple documents.

Church Autonomy

The Court also rejected plaintiffs' suggestion that the church-autonomy doctrine was an obstacle to applying neutral principles. Applying the Texas Supreme Court's recent SMU decision, the Court observed that the Temple "chose to establish [itself] as a nonprofit corporation subject to Texas corporations law" and observed that plaintiffs themselves had pleaded that how a corporation's directors change its articles and bylaws is "secular, not ecclesiastical."

The decision came from Judge Melissa Andrews, Third Division.The Temple was represented by David Bender Jr., Brian Singleterry and Christopher Knight of Haynes & Boone. Defendants were represented by Timothy Cleveland and Austin Krist of Cleveland Krist and Russell Sloan, Attorney at Law.

Jeremiah Counsel Corporation v. Young, 2026 Tex. Bus. 46 (11th Div.)

The Decision

One of the summer's most ambitious opinions arrived in yet another church-governance fight, this time over the Second Baptist Church of Houston, a nearly 100-year-old church with almost 100,000 adherents. Again threading the needle between church autonomy and neutral principles, the Court decided it had jurisdiction to test the validity of amendments to church-governance documents according to neutral principles but lacked jurisdiction to reach derivative claims — fraud, fiduciary duty, etc. — about core church decision-making concerning the defendants' doctrinal sincerity. Read alongside *Sri Shirdi*, issued a day earlier, the two opinions provide useful insight into what kinds of disputes are and are not justiciable under neutral principles of law.

What Happened

Until 2023, Second Baptist operated under articles amended in 1978 and bylaws vesting significant voting rights in members. In 2023, individual defendants — including the longtime senior pastor, his son and successor, an associate pastor and the church's attorney — proposed amendments to the articles and bylaws. On four occasions (two written and two oral), church membership received notice that amendments to the bylaws (but not the articles) were to be considered at an upcoming meeting "to protect our ability to continue operating as a Biblical Church." The vote carried, and the resulting bylaws abolished member voting rights, replaced the board of trustees with a self-perpetuating "Ministry Leadership Team," gave the senior pastor sole authority to select his successor, and consolidated control over church assets. Concerned church members founded the JCC and sued to challenge the new regime.

Standing

Because courts always have jurisdiction to evaluate their jurisdiction, the Court analyzed standing as a predicate issue and concluded the JCC satisfied all three prongs of associational standing because many JCC members lost voting rights, its charter commits it to promoting accountable church governance, and the declaratory relief sought required no individual participation and involved no damages. The JCC did not, however, have standing to pursue its derivative claims. Section 20.002(c) reaches only *ultra vires* acts beyond the corporation's purpose as expressed in the certificate or inconsistent with a limitation expressed therein. Applying those standards, the Court concluded that complaints about how leaders conducted a vote or managed property do not contradict the core purpose of a church and disapproval "does not transform the exercise of these core corporate functions into ultra vires acts." And even if the acts were *ultra vires*, disputes about them relate to core governance decisions and are thus barred by the church-autonomy doctrine.

Articles Invalid, Bylaws Valid

Turning to the amendments — claims that were justiciable — the merits turned on the sufficiency of notice. Amendments to the articles were invalid because no notice whatsoever, let alone the required written notice, was given regarding those proposed changes. The bylaw amendments, however, were a different story because Texas law permits churches to notice a meeting by oral announcement at a regularly scheduled worship service, and defendants did that and more.

That left the contention that the articles and the new bylaws conflict — the same issue presented in *Sri Shirdi*. The Court found no conflict because while 1978 articles required that trustees shall be elected, they were conspicuously silent about *who* would elect them. In a memorable footnote, the Court ecumenically observed that the Pope is "elected," but by the College of Cardinals, not by lay Catholics. Thus, because the articles did not provide members the right to vote, changes to the bylaws to remove that right did not conflict with the articles.

What the Court Couldn't Decide

Having decided everything within its authority, the Court then explained why the church-autonomy doctrine barred its consideration of JCC's fraud and fiduciary duty claims: under these circumstances, assessing falsity would require inevitably require discovery and evidence, perhaps even expert testimony, about what "operating as a biblical church" means, which the church-autonomy doctrine prohibits secular courts from considering.

Finally, for those in search of a Business Court angle, the Court's treatment of claims against Brewer, the church's attorney, delivered. In an ordinary case, the Court reasoned, Brewer's attorney-immunity defense would have disposed of the claims against him. But the Business Court "is no ordinary Court," and sustaining an issue it raised sua sponte, the Court dismissed the claims against him (which sounded in malpractice under Texas's anti-fracturing doctrine) for lack of subject-matter jurisdiction.

The decision came from Judge Grant Dorfman, Eleventh Division.

Jeremiah Counsel Corporation was represented by Andrew Pickens III and John Strawn Jr. of Strawn Pickens LLP. Second Baptist Church was represented by Wallace Jefferson and Amy Warr of Alexander Dubose Jefferson, Jay Alan Sekulow and Stuart J. Roth of the American Center for Law & Justice, Michael Rubenstein and Michael Cash of Liskow & Lewis, Bill Jones of The Jones Firm and Rebecca Gonzalez-Rivas of Norton Rose Fulbright. Brewer was represented by Brent Perry and Erica Fauser of Buford Perry and Bill Jones of The Jones Firm. Maxcy and the Youngs were represented by Michael Rubenstein and Michael Cash of Liskow & Lewis and Bill Jones of The Jones Firm.

Synergy Thermogen, Inc. v. Blackbrush Oil & Gas, L.P., 2026 Tex. Bus. 47 (1st Div.)

The Decision

In arguably its most detailed discovery ruling to date, the Court held that notes of a call between the plaintiff's former employee and a defendant-affiliate's nonlawyer representatives were neither core nor protected noncore work product and ordered them produced for attorneys' eyes only. The opinion is a useful roadmap — and something of a cautionary tale — for litigants claiming work-product protection over materials generated by nonlawyers at counsel's direction.

What Happened

In the underlying suit, Synergy, a clean-energy developer, brought breach-of-contract claims against Blackbrush, an oil and gas company, and Synergy NC, a Blackbrush-related investment entity. After the suit was filed, Todd Walker, a former Synergy employee, called a Blackbrush agent about his issues with the lawsuit, prompting a follow-up call between Walker and representatives of Synergy NC. At the direction of Synergy NC's counsel, one participant took notes, which were later typed and sent to counsel. Synergy later learned about the existence of the notes at a deposition and sought their production. After the Business Court-specific letter briefing process for discovery issues (see L.R. 4(d)), the Court called for in-camera review.

Core Work Product

The notes were not core work product. Rule 192.5(b)(1) shields only material containing an attorney's or an attorney's representative's mental impressions, opinions, conclusions or legal theories. Synergy NC argued the notes qualified because counsel had directed their creation. The Court disagreed on two independent grounds. First, no attorney created the notes or attended the call; while counsel asked a participant to take them, no participant was counsel's "representative" under the rule, which reaches only those employed to assist in rendering legal services or an accountant reasonably necessary to that work. Second, the in-camera review showed the notes were "only a factual summary of the issues discussed," lacking mental impressions or legal strategy and "instead like traditional board meeting minutes."

Noncore Work Product

And while Synergy NC provided prima facie evidence the notes were noncore work product, Synergy demonstrated the need for their discovery by showing substantial need and undue hardship. On need, the Court accepted that the former employee had been privy to Synergy's confidential and privileged information and that Synergy needed to know the extent of any disclosure. And on hardship, the general rule is that an available deposition defeats the claim — but Synergy had deposed both the disclosing employee and the person it believed drafted the notes, and neither recalled what was said. Synergy thus had no reasonable basis to identify the actual drafter, Synergy NC never clarified during letter briefing, and Synergy learned the truth only after fact discovery closed. Deposing the drafter now, the Court held, would be an undue hardship.

The decision came from Judge Bill Whitehill, First Division.

The Synergy Parties were represented by Stephen Cook, Rachel E. Feiden, Rebecca Lecaroz, Helena Man, Kelly Swanson and Lauren Varnado of Brown Rudnick. The Blackbrush Parties were represented by Alexis Desire, Andrew Junker, Catherine Playko, Evan Singer, Jason Varnado, Jonathan Khouzam, Joseph Van Asten, Kaci Katusak, David L. Peavler, Nicole Paige, Sidney McClung, Trevor Deason and Walter Davis of Jones Day.

CWK Management, Inc. v. Maggi, 2026 Tex. Bus. 48 (1st Div.)

The Decision

Adding to a growing body of Business Court personal-jurisdiction law that runs through *American Airlines v. JetBlue* in February and *Daimler Truck Financial Services* in April, the Court granted a nonresident shareholder's special appearance because plaintiffs, who neither sought to pierce the corporate veil nor alleged that the shareholder personally acted in Texas, could not establish specific jurisdiction.

What Happened

The dispute concerns the sale of car wash businesses on allegedly below-market terms that cut plaintiffs out of the upside and violated the LLC agreement of an entity jointly owned by the parties. Specifically, plaintiffs alleged that Maggi, Hill and Poland, a California resident, were involved in the sale. Plaintiffs alleged a number of forum contacts for Poland, including that he (1) among others, "concocted" and "orchestrated" the sale, (2) served as the entity's manager, (3) intentionally interfered with CWK's contract rights and participated in Maggi and Hill's fiduciary breaches occurring in part in Texas and (4) admitted in a letter that he and others structured the deal to lower plaintiffs' stake.

Special Appearance

Poland specially appeared. Quoting familiar specific personal jurisdiction principles as expressed in the Texas Supreme Court's opinion in *Moki Mac*, the Court required a substantial connection between the defendant's forum contacts and the "operative facts" that "will be the focus of the trial." Ultimately, the Court concluded that none of the asserted contacts met this standard. As for the allegation that he "concocted" and "orchestrated" the sale with others, the Court called that conclusory, impermissible group pleading that does not test each party's contacts individually. And while Poland was alleged to be the relevant entity's manager, he acted solely in that capacity, not his personal capacity, concerning the sale, and it was the entity, not Poland, that entered the transaction. When an agent negotiates a contract for its principal in Texas, it is the principal who does business in the state, not the agent. Absent veil-piercing, that was sufficient to reject the remaining alleged contacts as a possible basis for jurisdiction.

The decision came from Judge Bill Whitehill, First Division.

CWK Management and Carfora were represented by Kyle H. Dreyer. Texas Express Wash, Texas Wash Holdings, ClearWater Express Wash, CWE Partners, Hill and Maggi were represented by Taylor Levesque and Seth Roberts of Troutman Pepper Locke. BWE II and Poland were represented by Ellen Cirangle and Ian Edward Browning of Lubin Olson, Linda Richichi Stahl of Carter Arnett and Seth Roberts of Troutman Pepper Locke.

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

The Decision

Serving as another reminder that the Court will refuse to improve a bargain the parties made (or in this case, failed to make), this opinion declared a commercial purchase agreement unenforceable in its entirety as insufficiently definitive and violative of the Statute of Frauds. The Court dismissed the buyer's counterclaims for lack of enforceability and held in the alternative that even assuming the agreement was enforceable (it was not), the buyer materially breached first.

What Happened

Village Crossing agreed to sell West Creek roughly 11.56 acres in Rosenberg at a blended rate of $11.75 per square foot, combining a larger tract of interior land with a smaller parcel of considerably more valuable highway frontage. The agreement referred to "the Land," but contained inconsistency as to the frontage and supplied no northern boundary at all for the interior acreage. It conceded that its own description "may be legally insufficient" and promised that a future survey would "become the legal description." West Creek delivered a survey extending into reserves the seller never intended to sell. When Village Crossing objected, West Creek insisted its survey necessarily became "the Land" and refused to resurvey. Village Crossing terminated, and West Creek later reversed course, asking that the Court sever the frontage parcel and compel its conveyance at the blended rate.

One Contract, Not Two

A predicate issue was whether the parties agreed to two (potentially severable) conveyances or just one. Unfortunately for West Creek, every operative provision pointed one way: one defined term "Land," one survey, one price, one deed, one cure procedure, and one deposit. Sophisticated parties know how to structure a divisible deal, the Court ruled, and these parties did none of the things that would have made one, including, to take *Morrow v. Shotwell* as an example, by contractually identifying a "FIRST TRACT" and a "SECOND TRACT." Nor could the boilerplate severability clause fill the gap, because "a severability clause is not a magic wand." The Court also concluded conveyance of the more valuable frontage tract at the blended rate would work an inequity by transferring the property at over a million dollars below West Creek's own valuation.

Indefiniteness and the Statute of Frauds

With one indivisible bargain established, the rest followed. For a land sale, no term is more basic than the property's identity, and nothing in the agreement located the interior acreage's northern boundary. Section 5.2 could not supply it, because a survey performs "a mathematical measuring function, not a boundary-drawing one." As the Court put it, "[w]hen a single exhibit sends two sophisticated commercial parties in opposite directions, the writing has failed at its most basic task." The agreement also failed the Statute of Frauds by failing to provide the essential terms. Parol evidence may explain descriptive terms but may not supply the "framework or skeleton," and a promised future survey cannot furnish a description that must exist at execution. And finally, even assuming the contract was enforceable, the Court ruled that West Creek had breached first by failing to deliver a conforming survey.

The decision came from Judge Brian Stagner, Eighth Division, sitting by assignment in the Eleventh Division.

Village Crossing was represented by Hunter Barrow of Andrews Myers and Thomas Lee Bartlett. West Creek was represented by Matthew Kevin Powers of Spencer Fane.

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

The Decision

Returning to a case we last covered in January, the Court issued a memorandum opinion supporting its July 7 omnibus summary judgment order along with a ruling on Rule 166(g) cross-motions. In a significant narrowing of the case, the Court granted summary judgment eliminating the fraud claims in the case, made an ambiguity finding to leave the contract issues for trial.

Ambiguity

The parties' Solution Providers Guidebook provides that on a for-cause termination, a solution provider retains a vested interest in residual compensation "for no more than 36 monthly payments remaining on an Order." AT&T argued the 36 payments run from the order's start date; Fiberwave, from termination. The Court found textual support favoring AT&T's position: neighboring paragraphs expressly measure vesting "from the date of Termination," demonstrating that where the parties meant that trigger, they said so — and the compensation provision at issue conspicuously omits that language. Fiberwave countered that "no more than" and "remaining" imply a calculation of what is left unpaid, and that without termination the number of remaining payments is unknowable, since an order has no inherent end date. Because the Court concluded each reading is arguably reasonable, it declared the Guidebook ambiguous and sent the question to the jury. The Court's closing observation doubles as a drafting lesson: either meaning "could have been clearly articulated," and "[t]he language actually chosen ... regrettably was not clear."

Fiberwave's Fraud Theory Rejected as Speculative

Fiberwave alleged AT&T never intended to pay vested post-termination compensation, pointing to kickback reports AT&T received in 2016 and 2018. Critically, AT&T investigated those reports and deemed them unsubstantiated. The Court agreed with AT&T, holding that circumstantial evidence AT&T *could* have known of conduct supporting a later denial is not more than a scintilla of proof that AT&T intended not to perform when it contracted; the Court characterized the inference as "purely speculative." The Court further found an independent ground for dismissal: the agreement's waiver provision and merger clause together foreclosed any reliance on a prior course of dealing, defeating a required element of Fiberwave's fraud claim.

AT&T's Counterclaims

AT&T's fraud theory rested on contractual representations of compliance with "all applicable anticorruption laws." The Court found that AT&T had not identified a particular law the conduct violated or sufficiently established Fiberwave intend to induce reliance. The Court also found disgorgement and rescission were not available remedies. In addition, the Court found that Percy did not have a duty to disclose, which foreclosed the fraud-by-omission theory against him.

The decision came from Judge Andrea K. Bouressa, First Division.

Fiberwave and Percy were represented by Byron Henry of Henry Hill and James Shields, Bart Higgins, Brian Shields and Sasha Begovic of Shields Legal Group. AT&T was represented by Tyler Bexley, Allison Cook, William Hamilton, Peter Marketos, Brett S. Rosenthal, Kendal Simpson, Margaret Terwey and Whitney Wendel of Reese Marketos. Spearhead Networks Tech and Chaudhry were represented by Dallas Flick, Michael Lang, Matthew Muckleroy and David Wishnew of Crawford Wishnew Lang.

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

The Decision

In another Rule 166(g) ruling, the Court held as a matter of law that a lender's notices of intent to foreclose, sent by UPS next-day delivery and email, satisfied both the deeds of trust and Property Code $ 51.002(b)(3), each of which called for certified mail. It also held that notice to the debtor's designated agent and a designated address was notice to the debtor.

What Happened

Revere lent to Westside Flats Owner, secured by two properties, one of them pledged by CG Sunset Land. After Westside defaulted, Revere sent notices of intent to sell by UPS next-day delivery and email. Each deed of trust required notice by certified mail at least 21 days before sale. It was undisputed that the debtor received them no later than certified mail would have arrived.

Westside sued anyway, calling the deviation a material breach that made the foreclosures wrongful.

'All' Means 'All'

Revere pointed to § 8.03, which provides that all notices under the deed of trust "shall be considered as properly given" if delivered to a third-party commercial delivery service for same- or next-day delivery with evidence of receipt. Westside answered that the general provision must yield to § 7.02's specific certified-mail requirement. Not so. That canon reaches only *conflicting* provisions, and these do not conflict. Section 7.02 requires certified mail; § 8.03 deems courier delivery proper even if technically improper. Consulting *Black's Law Dictionar*y on "deem," the Court reasoned that § 8.03 could serve no function unless it reached notices that would otherwise fall short. "All" means "all."

Statutory Notice and the Right Address

The Court continued to the statutory analysis, which followed the case law's distinction between notice of an *intent* to sell and notice of a completed sale; for the former, alternative service suffices if the debtor timely receives it, as happened here. The Court also rejected CG Sunset's objection that its notice was addressed to Casoro Group, LLC rather than to CG Sunset by name, since the deed of trust designated Casoro and its address as CG Sunset's own and Casoro received the notice. Notice to an agent is notice to the principal.

The decision came from Judge Bill Whitehill, First Division.

The Revere parties were represented by Camille Youngblood, Morgan Meyer and Jeffrey Mills of Wick Phillips. Westside, CG Sunset and Lee-Wen were represented by Daniel Durell of Troutman Pepper Locke.

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

The Decision

On competing summary judgment motions involving a partial ownership interest in the Texas Rangers held in a constructive trust created by a divorce decree, the Court granted Bob Simpson's motion in full and denied Janice's.

What Happened

Bob Simpson acquired partial ownership of the Rangers during his marriage to Janice, holding Class A, B and E units — his "Original Retained Interest" — individually and through Hardball Express. After the parties' divorce, Janice's interests were held in a constructive trust, with Bob as trustee of her share and Janice as sole beneficiary. The decree demanded "the highest degree of loyalty and full disclosure" and obliged Bob to forward any owner information within 24-four hours. But Section D let him, "at his election and without any liability," fund capital calls from separate property and keep the resulting units "even if such issuance is dilutive." Section F added a tag-along right triggered only if he disposed of more than 50 percent of his Original Retained Interest. Bob participated in three capital calls without telling Janice of one such call, then contracted to sell Class B units without telling her, either.

A Breach Without a Remedy

The Court found Bob self-dealt and breached the 24-hour disclosure provision and his duties of loyalty and full disclosure by not reporting the March Capital Call, having wrongly believed Janice could not participate. But that did not matter because Section D authorized without liability the very dilution she complained of, and her claim that she would have contributed from separate property was speculative — the more so, the Court noted, because it contradicted her long-held intention to sell out. She sought no equitable relief. Worth noting for drafters: Her own attorneys wrote the provisions that defeated her.

The Tag-Along Never Triggered

The remaining claims failed on arithmetic. The decree gave Bob 36 units, nine of them Class B; the nine he later acquired through the capital call were never part of his Original Retained Interest and were not sold. Selling nine of 36 disposed of 25 percent, far below Section F's threshold, so no notice was owed and no tag-along obligation breached. That defeated the contract claims under both the decree and Hardball Express's company agreement, and absent a duty to disclose, the fraud claims as well.

The decision came from Judge Jerry D. Bullard, Eighth Division.

Janice Simpson was represented by Andres Correa, Eric Pinker and Paulina Nenclares of Lynn Pinker Hurst & Schwegmann and Ruben Garcia of Garcia Firm PLLC. Bob Simpson and Hardball Express were represented by Jeffrey Parks, Jonathan Suder and Michael T. Cooke of Friedman, Suder & Cooke.

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

The Decision

In the summer's second Statute of Frauds casualty, the Court again refused to rescue a real estate contract that could not say what land it conveyed. It held a contract for 181 residential lots unenforceable because the writing never identified which 181 and because the buyer's selection right depended on a third party's future, discretionary division of the subdivision. That was dispositive, so the Court reached none of the seller's other grounds.

What Happened

FG Aledo owned roughly 358 residential lots in Parker County and had already agreed to sell about half of them to D.R. Horton. Aledo's contract with Riverside purported to give Riverside the right to buy the other 181, but identified no lots by lot and block, metes and bounds, or recorded plat, instead describing only the overarching 71.964-acre tract. Section 1.01(c) required the subdivision's "Other Builder" (read: D.R. Horton) to divide the lots into two equal groups, after which Riverside had 15 days to pick one. Section 1.01(d) acknowledged the "insufficiency of the legal description" and recited that the parties would "obtain" one from a plat recorded later. Hundreds of pages of briefing addressed factual issues attending the contract's validity and execution, but the Court assumed valid execution and went straight to the writing.

Selection Rights Must Be Unqualified

The Court distilled a healthy body of Statute of Frauds case law down to one principle: While the Statute of Frauds tolerates letting a buyer pick a parcel from a larger tract, that is true only where the writing sufficiently describes that tract and confers a self-executing, "unqualified right" of selection dependent on no further contingencies. Riverside claimed exactly that was true here, but the Court disagreed. D.R. Horton first had to divide the subdivision however it wished — north to south, east to west, in alternating rows, by quadrants — each split yielding a different set of lots. Until Horton acted, Riverside's lots were "not merely unidentified — they were completely unknowable."

A Telltale Admission

If there were any remaining doubt, the Court reasoned, § 1.01(d) of the contract demonstrated that the parties were aware of the deficiency. The Court called the clause a "telltale admission" because parties do not ordinarily need to "obtain" something they already possess. Compliance with the Statute of Frauds cannot be postponed: later evidence may apply an existing description to the ground, but later-created documents cannot supply the descriptive nucleus the writing lacks. Because Riverside's claims all depended on an enforceable obligation to convey identifiable land, the Court granted Aledo's summary judgment motion based on the Statute of Frauds.

The decision came from Judge Brian Stagner, Eighth Division, who also authored the month's other Statute of Frauds decision.

Riverside was represented by Alexandra Williams, Jeffrey Gilmore and Timothy Davis of Jackson Walker. Aledo was represented by Andrew Sims, Heather Phillips, J. Nathaniel James, Russell R. Barton and Preston Sawyer of Harris, Finley & Bogle.

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

The Decision

The final opinion is a reminder that Rule 91a depends on the pleadings — and only the pleadings. The Court dismissed every claim against a court-appointed receiver with prejudice on derived judicial immunity even though the court of appeals had vacated the order appointing him. But it denied the same defense to two entities involved in the sale because Rule 91a confines the Court to the plaintiff's pleading.

What Happened

Like *Simpson*, this case follows from a divorce. A 2019 Dallas County decree ordered Clifford R. Fischer & Company and its related entities sold and the proceeds divided equally. And in April 2024, the district court appointed Newman as receiver to conduct the sale. Gail Corder Fischer appealed and was denied a stay, so Newman proceeded and executed an equity purchase agreement in October 2025. The sale closed while the appeal was pending. That December the Dallas Court of Appeals vacated the receivership order as beyond the district court's enforcement powers. Gail then sued the receiver parties for breach of fiduciary duty, self-dealing, fraud, conspiracy and trade-secret misappropriation, alleging the sale undervalued the company. Newman and several entities involved in the sale claimed derived judicial immunity.

Derived Judicial Immunity Covers Bad Apples

Derived judicial immunity turns on a functional test: whether the officer acted as an arm of the court performing a function comparable to the delegating judge's. Court-appointed receivers executing court orders generally qualify, and once the cloak attaches, every action taken with respect to that function — "whether good or bad, honest or dishonest, well-intentioned or not" — is immune. Gail's own petition tied every grievance to Newman's role "as the purported receiver." In essence, she alleged a "bad apple" receiver, and immunity covers bad apples.

Vacatur Does Not Work Backward

Nor did the vacatur work backward. "Jurisdiction" has a specialized meaning here: the question is not whether the particular order was correct but whether the appointing court had general subject-matter jurisdiction over proceedings of that kind. It did — the order was vacated because it exceeded the district court's authority under Family Code § 9.007, not for want of jurisdiction, and appointing a receiver to sell property is squarely within a district court's power. The Court disclaimed any view on the vacatur's consequences or the validity of the sale, both pending on remand.

Rule 91a Cuts Both Ways

The entities' motion failed for a reason unrelated to the merits. A Rule 91a movant relying on an affirmative defense needs the plaintiff's pleading to establish every element conclusively, and this petition never alleged that either entity was appointed receiver or served as the receiver's extension. The motion tried to supply those facts, but Rule 91a bars reliance on unpleaded facts and evidence, so the Court could not even consult the receivership order. Denied without prejudice, with the reminder that Rule 91a "is not a substitute for summary judgment practice."

The decision came from Judge Brian Stagner, Eighth Division.

Gail Corder Fischer was represented by James Robertson III and Stephen R. Bishop of Glast Phillips Murray and Charles Gameros Jr. of Hoge & Gameros. Clifford R. Fischer, Clifford Fischer & Company and other co-defendants were represented by Allen Al-Haj, Nicholas Kennedy and Rylie Hayes of Baker McKenzie. Newman, Fisher Seller and Fisher Purchaser Holdings were represented by George Kryder III, Jeremy Reichman and Michael Lee of Vinson & Elkins.

