**Supreme Court of Texas**

**February 6, 2015**

***Wackenhut Corp. v. Gutierrez***

No. 12-0136

Case Summary written by Tyler Frankel, Staff Member.

Per Curiam.

Appellant, Wackenhut Corporation (Wackenhut), owned and operated a charter bus that was in a car accident with Appellee, Jesse Gutierrez (Gutierrez), who was the driver of the car the bus collided with. Two days after this accident, Gutierrez sent Wackenhut a letter explaining the collision with one of its charter buses and claiming that the Wackenhut employee driving the bus caused the collision. Because of this car accident, Gutierrez had to be hospitalized and sustained injuries.

Wackenhut’s charter bus that was in the car accident had four video cameras in it that recorded while the bus was on. These cameras are set to “loop back” about every week (or 168 hours). When the cameras loop back, the old recordings on the camera are erased. About two years after the accident, Gutierrez sued Wackenhut for negligence and injuries sustained in the car accident. Because one of the bus’s cameras was positioned in a way that it could have recorded the collision, Gutierrez filed a Motion for Spoliation of Evidence claiming that Wackenhut either intentionally or negligently destroyed the recording of the accident. Wackenhut responded stating that there was no evidence of spoliation (intentional or negligent) thus the spoliation instruction—along with the other sanctions—was unwarranted and all evidence of spoliation should be excluded from trial. The trial court ruled orally that Wackenhut did negligently spoliate evidence and thus the spoliation jury instruction would be included in the jury charge. Wackenhut did not object to the spoliation jury charge until after it was read to the jury. The jury found in favor of Gutierrez. Wackenhut appealed and the court of appeals affirmed.

Issue: There were two issues in this personal injury case. The first is whether the party opposing the spoliation jury instruction preserved error when it responded to a pretrial motion for sanctions but did not formally object to the inclusion of the spoliation jury instruction in the jury charge until after the charge was read to the jury. The second issue is if the party opposing the jury instruction did preserve error, did the trial court commit reversible error by submitting the spoliation jury instruction.

The Texas Supreme Court reversed the court of appeal’s judgment and remanded the case to the trial court for a new trial. As to the first issue, this Court found that Wackenhut did preserve error in its answer to Gutierrez’s pretrial Motion for Spoliation of Evidence. According to *Payne*, “[t]here should be but one test for determining if a party has preserved error in the jury charge, and that is whether the party made the trial court aware of the complaint, timely and plainly, and obtained a ruling.” *State Dep’t of Highways & Pub. Transp. v. Payne*, 838 S.W.2d 235, 241 (Tex. 1992). The appellate record in this case shows that the trial court was made aware of Wackenhut’s objection to the spoliation instruction and rejected it. Wackenhut listed four specific reasons as to why the spoliation instruction would be improper in his pre-trial brief and, during the hearing on Wackenhut’s motion for new trial, the trial judge stated twice that the court had heard Wackenhut’s objection on the instruction, noted it in the record, and rejected it. Therefore, Wackenhut preserved error.

As to the second issue, this Court found that the trial court did make a reversible error by submitting the spoliation jury instruction. There are specific restrictions on the trial court’s discretion to submit a spoliation instruction to the jury. A trial court may submit a jury instruction only if it finds that (1) the spoliating party acted with intent to conceal discoverable evidence, or (2) the spoliating party acted negligently and caused the nonspoliating party to be irreparably deprived of any meaningful ability to present a claim or defense. *Brookshire Bros., Ltd. v. Aldridge*, 438 S.W.3d 9, 23-26 (Tex. 2014). In this case, there was ample amount of evidence to prove Gutierrez’s claim without the spoliation instructions—such as testimony from the drivers, eyewitness accounts and statements, Wackenhut’s report to corporate, photographs of the accident scene, and extensive medical records. Therefore, the trial court abused its discretion in allowing the spoliation instruction into the jury charge. Furthermore, this was reversible error. “[I]f a spoliation instruction should not have been given, the likelihood of harm from the erroneous instruction is substantial, particularly when the case is closely contested.” *Id.* at 29. Here this was true, and furthermore Appellee’s argument was centered on the tape proving that the driver was negligent and was extremely speculative in nature. Therefore, the record reflects the significant effect the spoliation instruction probably had on the jury. Thus, this was not harmless error.

***Envt’l Processing Systems, L.C. v. FPL Farming Ltd.***

No. 12-0905

Case Summary written by Josué Galván, Staff Member.

Justice Green delivered the opinion of the Court.

FPL Farming Ltd. (FPL) owns property primarily used for rice farming, including the surface and non-mineral subsurface rights to the property. Environmental Processing Systems, L.C. (EPS), a wastewater disposal facility, leased land adjacent to that of FPL. In 1999, FPL and EPS were involved in litigation concerning amendments to EPS’s wastewater permits; the courts ruled in EPS’s favor. Less than three years later, this suit ensued. FPL brought suit, alleging that wastewater from EPS’s facility had migrated into subsurface portions of FPL’s property. FPL sought injunctive relief, as well as trespass, negligence, and unjust enrichment damages. At the trial court, the jury found for EPS on three issues: (1) Whether EPS’s wastewater actually entered FPL’s land; (2) Whether FPL consented to the entry of any wastewater; and (3) The amount of damages, if any. The court of appeals affirmed, and the Texas Supreme Court reversed. The Court held that government-issued permits do not protect permit holders from civil tort liability. On remand, and the court of appeals reversed the trial court’s decision, holding that: (1) Deep subsurface water migration can constitute common law trespass; (2) Consent is a valid affirmative defense to a trespass cause of action, and because EPS bore the burden of proof, the jury charge’s inclusion of consent in its definition of trespass was invalid; (3) Evidence of implied consent blocked FPL from entitlement to a directed verdict; and (4) The trial court erred in excluding evidence of a settlement agreement between EPS and FPL’s predecessor. Both FPL and EPS appealed the court of appeals’ decision, and the Texas Supreme Court granted certiorari.

The Court considered the issue of consent: whether lack of consent is a necessary element a plaintiff must prove on a trespass cause of action, or whether consent is an affirmative defense. The Court also considered whether the trial court correctly denied FPL’s motion for a directed verdict.

The Court held that in order to maintain a trespass action, a plaintiff must, in proving that the entry was wrongful, establish that the entry was unauthorized or without consent. The Court based its decision on its historical treatment of trespass and the traditional definition of trespass—an entry onto another’s property without the property owner’s authorization or consent. Noting that “[i]n recent years, th[e] Court’s definition of a common law trespasser has remained consistent with [] historical precedent,” the Court chose not to deviate from tradition. Although other courts of appeal allow consent as an affirmative defense, the Court stated that “no well-reasoned allocation of the burden or proving consent in trespass cases has emerged . . .” The Court concluded that the trial court’s jury charge featuring the traditional definition of trespass (including lack of authorization or consent as a necessary element) was proper. Moreover, because the charge was correct and the jury found for EPS, any error in the trespass question regarding possible subsurface water migration was harmless. The Court also concluded that FPL’s motion for directed verdict relied on a false premise, since EPS did not bear any burden to prove FPL consented to entry. Thus, the trial court’s denial of FPL’s motion was proper, as consent is not an affirmative defense. The Court examined FPL’s contention liberally, holding that even under a liberal construction, FPL did not provide evidence the trial court could have used to find lack of consent as a matter of law.

The Court also disposed of two issues, neither approving nor disapproving of the court of appeals’ analysis and holding, and stating that any error was harmless: (1) Whether the trial court erroneously excluded evidence of a settlement agreement between FPL and EPS, and (2) Whether EPS was harmed by the jury question concerning trespass via wastewater migration. In the end, the Court reversed the court of appeals’ decision and reinstated the trial court’s judgment in favor of EPS.

***Wells Fargo Bank v. Murphy***

No. 13-0236

Case Summary written by John Garza, Staff Member.

Green, J., delivered the opinion of the Court. Johnson, J., did not participate in the decision.

The Murphys refinanced their loan with Wells Fargo Bank (Wells Fargo) by means of a promissory note and security agreement that created a lien on the homestead property. The documents indicated that the nonrecourse loan was secured by an extension of credit defined by Article XVI of the Texas Constitution. Wells Fargo filed an application for expedited foreclosure on the homestead after the Murphys fell significantly behind in making payments. The Murphys filed a separate and original proceeding in response to the foreclosure, which stayed and eventually resulted in the dismissal of Wells Fargo’s application.

The Murphys made several pleas in their separate and original proceeding, and Wells Fargo answered by asserting affirmative defenses and requesting attorney’s fees for prosecuting or defending a claim for declaratory relief. The trial court granted summary judgment to Wells Fargo along with $116, 505.75 in attorney’s fees to be paid by the Murphys. The court of appeals reversed the trial court’s judgment with respect to the attorney’s fees, explaining that neither party made a cognizable claim for declaratory relief and the nonrecourse nature of the loan barred a personal judgment against the Murphys.

Courts of appeal may not raise an issue *sua sponte* (of his, her, its, or their own accord). The Murphys did not initially dispute the cognizance of their declaratory relief pleading; rather, the court of appeals re-characterized the claim for declaratory relief as something else on its own. Based on the doctrine of *sua sponte*, the Supreme Court of Texas held that the court of appeals committed reversible error and that the pleading for declaratory relief should be treated as what the parties purported it to be—a claim for declaratory relief.

The Supreme Court of Texas then addressed whether the nonrecourse nature of the loan barred a judgment of attorney’s fees against the Murphys. The promissory note and security agreement were drafted in accordance with Article XVI of the Texas Constitution, which authorizes the extension of credit using homestead property. The Supreme Court of Texas defined an extension of credit as “all the terms of the loan transaction.” Because the Murphys filed a separate and original proceeding against Wells Fargo, the attorney’s fees no longer fell within the scope of the loan transaction and therefore allowed Wells Fargo to recover attorney’s fees from the Murphys in their individual capacities.

*Ryder Integrated Logistics, Inc. v. Fayette County*

No. 13-0968

Case Summary written by Chase Goetz, Staff Member.

Per Curiam.

At approximately 3:00 am, Fayette County Deputy Sherriff Randy Thumann (the Deputy) stopped an eighteen-wheeler driven by Ralph Molina (Molina), which parked on the eastbound shoulder. As the Deputy maneuvered his patrol car behind Molina, the truck began rolling back toward the Deputy. In response, the Deputy repositioned his vehicle so that he faced Molina and eastbound traffic. In addition to activated emergency lights, the Deputy’s headlights and high-beam spotlight shined directly into oncoming traffic. Moments after the Deputy’s repositioning, an eastbound eighteen-wheeler, operated by Ryder Integrated Logistics, Inc (Ryder), pulled right and struck the back Molina’s truck, causing Ryder’s truck to overturn and ignite, killing its driver.

In a suit initiated by Molina against Ryder and its driver’s estate, Ryder filed a third-party claim against Fayette County, alleging that the Deputy’s negligent vehicle positioning, resulting in its headlights facing eastbound traffic, caused the accident. The county answered and raised a plea to the jurisdiction, arguing that the accident had arisen outside of section 101.021 of the Civil Practice and Remedies Code, which “waive[s] governmental immunity when an injury ‘arises from the operation or use’ of a vehicle by a government employee.” The trial court sustained the plea, which the court of appeals affirmed.

Issue: Has Ryder adequately alleged harm arising from the Deputy’s vehicle use, resulting in the County’s waived immunity under section 101.021(1)(A) of the Civil Practice and Remedies Code?

Ryder adequately alleged harm arising from the Deputy’s vehicle use, resulting in the County’s waived immunity under section 101.021(1)(A) of the Civil Practice and Remedies Code. The Deputy’s use of his cruiser consisted of more than a stationary mount for his headlights; he was relocating his car when the accident occurred, which satisfied the statute. Additionally, Ryder adequately alleged negligence in that it asserts that the Deputy’s flawed execution of policy gave rise to the cause of action. Further, Ryder’s petition adequately alleged that the Deputy’s use of his cruiser served as the proximate cause of the accident, satisfying the “arising under” element of the statute. As such, the judgment of the court of appeals was reversed, and the case remanded back to the trial court.