United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
July 6, 2026
Lyle W. Cayce
Clerk

No. 25-20421
Summary Calendar

20100 Eastex, L.L.C.,

Plaintiff—Appellant,

versus

Saltgrass, Incorporated,

Defendant—Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:20-CV-1347

Before Richman, Southwick, and Willett, *Circuit Judges*.

Don R. Willett, *Circuit Judge*.

This case involves a disputed property contract—and what happens when the person who drafted it and signed it on behalf of *both* parties later explains in uncontroverted testimony exactly what it means.

20100 Eastex, L.L.C., purchased land encumbered by a restrictive covenant, then sought to demolish the existing restaurant and build a new one. Saltgrass refused consent, and Eastex sued. After more than six years of litigation, the district court concluded that the contract required Eastex to

obtain Saltgrass's approval before breaking ground—and that Eastex never did. The drafter's testimony confirms that conclusion.

We AFFIRM summary judgment for Saltgrass, DISMISS Eastex's attorney-fee appeal for lack of jurisdiction, and REMAND for determination of Saltgrass's appellate attorney fees.

I

A tract of land in Humble, Texas held two restaurants: Joe's Crab Shack and Saltgrass Steak House. The land was subdivided into two parcels—one for each. Both shared a parking lot. The entities that owned them shared the same corporate parent—Landry's, Inc.—and the same managerial team.

In 2006, Landry's decided to sell Joe's. Before doing so, it executed a Reciprocal Easement Agreement (the Agreement) between the two restaurants to protect its interests.

The Agreement established easements and restrictions on the parcels. Under Article II, each owner granted the other an easement over the roads, sidewalks, and parking lots on its parcel, and agreed that each subdivision would be used only for a "Full Service, Sit-Down Restaurant." Section 3.3 is the focus of this litigation and provides:

> No Owner may alter or reconfigure the [roads, sidewalks, and parking lots] located on such Owner's Parcel without the express prior written consent of the other Owner, which may be withheld in such other Owner's good faith business judgment. Moreover, no Owner may relocate any buildings or other improvements located on such Owner's Parcel, nor construct any new building or other improvements on such Owner's Parcel, nor alter or reconfigure the "footprint" of the buildings and other improvements located on such Owner's Parcel without the express prior written consent of the other

> Owner, which may be withheld in such other Owner's good faith business judgment.

Section 7.10 of the Agreement permits an owner to take an action otherwise prohibited under Section 3.3 "if not denied in writing to the requesting Owner specifying the . . . reasons for such denial within fifteen (15) days of the date of written request." Section 4.3 provides that the prevailing party in any litigation is "entitled to recover attorney's fees from the other party[.]"

Because Landry's owned both Joe's and Saltgrass, Steven Scheinthal—a Landry's executive—crafted and executed the contract on behalf of each affiliate. More than a decade later, Eastex purchased the land that housed Joe's and bound itself to the preexisting property covenant in doing so.[1] Shortly after, Joe's holding company went bankrupt, and the restaurant closed.

The dispute arose in 2019. Eastex leased its parcel to BJ's Brewery and Alehouse, which agreed to demolish the vacant Joe's building and construct a new one in its place. On September 24, BJ's requested Saltgrass's approval for the construction project. On October 10—sixteen days later—Saltgrass rejected the request, stating it was "not prepared to sign the agreement" or alter its terms. BJ's replied on October 25 that it would proceed because Saltgrass had failed to specify its reasons within the fifteen-day window, invoking the deemed-approval consequence of Section 7.10. Saltgrass disagreed on two grounds: Section 7.10 required Eastex—not BJ's—to seek approval; and even if the request had had been procedurally proper, Saltgrass had never consented to the project.

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[1] *See In re Bartee*, 212 F.3d 277, 284 (5th Cir. 2000) ("A restrictive covenant that touches and concerns the land is binding on subsequent purchasers of the property.").

Eastex sued Saltgrass[2] seeking (1) a declaratory judgment that the Agreement permits BJ's to demolish the existing building and construct a new one, and (2) damages for Saltgrass's alleged breach of contract. According to Eastex, Section 3.3 requires only approval for construction affecting the easements. Saltgrass contends that Section 3.3 requires approval before *any* new construction on either parcel.

On cross-motions for summary judgment, the district court ruled for Saltgrass. The court held that "the express language of the . . . Agreement require[d] Eastex to obtain Saltgrass's consent before tearing down the existing structure or building a new one[,]" and that Eastex failed to submit "a written request to Saltgrass for consent to proceed with demolition or construction."[3]

Eastex appealed. We affirmed summary judgment on the breach-of-contract claim, reversed on the declaratory-judgment claim, and remanded for additional factfinding on the scope of Section 3.3.[4] We held that Section

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[2] As we observed on the first appeal, the parties had options instead of litigating this case, which has now spanned more than six years:

> Eastex could have sent Saltgrass its own request for approval of the project. It did not. Eastex and Saltgrass could have hashed out a commercially reasonable resolution to their dispute (perhaps, for example, Saltgrass could have allowed Eastex to build the new restaurant subject to certain agreed-upon restrictions ensuring unobstructed ingress and egress to the property for Saltgrass's patrons in exchange for a monetary payment from Eastex to compensate Saltgrass for any inconvenience caused by the construction). They did not. Instead, this (needless) litigation ensued.

20100 Eastex, L.L.C. v. Saltgrass, Inc., No. 23-20414, 2024 WL 4589077, at *2 (5th Cir. Oct. 28, 2024).

[3] *See 20100 Eastex, L.L.C. v. Saltgrass, Inc.*, No. 4:20-cv-1347, 2023 WL 4408623, at *4 (S.D. Tex. July 7, 2023), *report & recommendation adopted*, 2023 WL 4765578 (July 26, 2023).

[4] *20100 Eastex*, 2024 WL 4589077, at *3–5.

3.3. was ambiguous—susceptible to "at least two reasonable interpretations: (1) as a requirement of approval for any new construction, and (2) as a requirement of approval for constructions affecting the easements."[5]

On remand, the district court conducted additional factfinding on the scope of Section 3.3. Finding that uncontroverted evidence resolved the ambiguity, it again entered summary judgment for Saltgrass.[6] Eastex argues (1) that the meaning of Section 3.3 was a jury question, and (2) that the district court erred in awarding attorney fees to Saltgrass. We AFFIRM summary judgment for Saltgrass, DISMISS the attorney-fee appeal for lack of jurisdiction, and REMAND for determination of Saltgrass's appellate attorney's fees.

II

We review summary judgment *de novo*, "applying the same legal standards as the district court applied to determine whether summary judgment was appropriate."[7] Summary judgment is proper when, viewing the evidence in the light most favorable to the nonmoving party, there is "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."[8] The nonmovant must do more than cast "'some metaphysical doubt as to the material facts, by conclusory allegations, by

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[5] *Id.* at *4.

[6] *See 20100 Eastex, LLC v. Saltgrass, Inc.*, No. 4:20-cv-01347, 2025 WL 2029825, at *4 (S.D. Tex. July 21, 2025), *report & recommendation adopted*, 2025 WL 2418521 (S.D. Tex. Aug. 21, 2025).

[7] *Am. Int'l Specialty Lines Ins. Co. v. Canal Indem. Co.*, 352 F.3d 254, 259–60 (5th Cir. 2003).

[8] FED. R. CIV. P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

unsubstantiated allegations, or by a scintilla of evidence.'"[9] Instead, "the non-movant must identify specific evidence in the summary judgment record demonstrating that there is a *material* fact issue concerning the essential elements of its case for which it will bear the burden of proof at trial."[10] Both parties agree that Texas contract law governs this dispute.[11]

III

A

Section 3.3 is ambiguous—we held as much on the first appeal. But ambiguity does not always require a jury. Where undisputed extrinsic evidence resolves the ambiguity, a court may interpret the contract as a matter of law and enter summary judgment accordingly. That evidence resolves the question in Saltgrass's favor: Section 3.3 requires an owner's approval before any construction or demolition on the other's parcel.

Under Texas law, our "primary objective" when construing contracts "is to ascertain and give effect to the parties' intent as expressed in the instrument."[12] Terms carry "their plain, ordinary and generally accepted meaning unless the instrument itself shows them to have been used in a technical or different sense."[13] A contract that "can be given a certain or definite legal meaning or interpretation" is unambiguous, "and the court will

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[9] *Boudreaux v. Swift Transp. Co.*, 402 F.3d 536, 540 (5th Cir. 2005) (quoting *Little v. Liquid Air Corp.,* 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc)).

[10] *Baranowski v. Hart*, 486 F.3d 112, 119 (5th Cir. 2007) (quotation omitted and emphasis added).

[11] *See also F.D.I.C. v. Firemen's Ins. Co. of Newark*, 109 F.3d 1084, 1087 (5th Cir. 1997) ("We look to state law for rules governing contract interpretation.").

[12] *U.S. Polyco, Inc. v. Tex. Cent. Bus. Lines Corp.*, 681 S.W.3d 383, 387 (Tex. 2023) (quotation omitted).

[13] *W. Rsrv. Life Ins. Co. v. Meadows*, 261 S.W.2d 554, 564 (Tex. 1953).

construe the contract as a matter of law."[14] A contract that remains "reasonably susceptible to more than one meaning" after applying "established rules of interpretation," is ambiguous—and its meaning is ordinarily for the jury to decide.[15] A court that finds ambiguity may "consider extrinsic evidence for the purpose of ascertaining the true intentions of the parties expressed in the contract."[16]

We have already determined that Section 3.3 is ambiguous.[17] We therefore turn to the extrinsic evidence—and it favors Saltgrass.[18]

Eastex is correct that extrinsic evidence ordinarily raises factual questions that juries—not judges—should resolve.[19] Summary judgment is inappropriate when factual disputes remain.[20] But two features of this case

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[14] *Universal C.I.T. Credit Corp. v. Daniel*, 243 S.W.2d 154, 157 (Tex. 1951) (quotation omitted); *Coker v. Coker*, 650 S.W.2d 391, 394 (Tex. 1983) ("Whether a contract is ambiguous is a question of law for the court to decide[.]").

[15] *Bd. of Regents of Univ. of Tex. Sys. v. IDEXX Lab'ys, Inc.*, 691 S.W.3d 438, 443 (Tex. 2024) (quotation omitted).

[16] *Trammell Crow Residential Co. v. Am. Protection Ins. Co.*, 574 F. App'x 513, 517 (5th Cir. 2014) (per curiam) (quoting *Horn v. State Farm Lloyds*, 703 F.3d 735, 738 (5th Cir. 2012)). "Extrinsic evidence admissible to interpret an ambiguous contract may include overt statements and acts of the parties, the business context, prior dealings between the parties, and business custom and usage in the industry." 11 WILLISTON ON CONTRACTS § 32:7 (4th ed. 2025).

[17] *20100 Eastex*, 2024 WL 4589077, at *4.

[18] *See Friendswood Dev. Co. v. McDade & Co.*, 926 S.W.2d 280, 283 n.1 (Tex. 1996).

[19] *See, e.g.*, *IDEXX Lab'ys*, 691 S.W.3d at 445 ("[O]nly when one interpretation does not clearly emerge as correct after a full examination is a contract ambiguous and the determination of its meaning left to a jury."); *U.S. Polyco, Inc.*, 681 S.W.3d at 389 n.1 ("[G]enuine ambiguity leaves courts with no recourse but to turn the matter over to a jury."); *Coker*, 650 S.W.2d at 394 ("When a contract contains an ambiguity, the granting of a motion for summary judgment is improper because the interpretation of the instrument becomes a fact issue.").

[20] *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986).

change the analysis. First, the person who drafted Section 3.3—Steven Scheinthal—also executed the agreement on behalf of *both* signatories: his intent, undivided and uncontested, is the parties' intent. Second, his testimony about that intent is uncontroverted. Where extrinsic evidence is undisputed, the ambiguity dissolves and contract interpretation remains a question of law for the court.[21] Here, there is no genuine factual dispute for a jury to resolve.

The testimony is unambiguous. Scheinthal testified that "the whole purpose" of Section 3.3 was to give both entities the "business judgment to either allow" or prevent any demolition or construction on the other's parcel. Landry's wanted to prevent construction from creating a "war zone" next to the Saltgrass restaurant—a disruption that would threaten its commercial and aesthetic value. Scheinthal "made the agreement reciprocal," he explained, to ensure that "both restaurants would have the ability to protect their success." Saltgrass communicated the same

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[21] *See, e.g.*, *Brown v. Payne*, 176 S.W.2d 306, 308 (Tex. 1943) ("[E]ven in those cases of ambiguous instruments, if the parol evidence is undisputed as to the circumstances, the construction is yet a question of law for the court."); *In re Hite*, 700 S.W.2d 713, 718 (Tex. App.—Corpus Christi 1985, writ ref'd n.r.e) ("[The] general rule is not applicable in this case because the extrinsic evidence admitted was undisputed. Thus, there were no factual matters at issue. . . . [I]f there is no ambiguity, the construction of a written instrument is for the court[.]"); *In re O'Hara's Est.*, 549 S.W.2d 233, 238 (Tex. App.—Dallas 1977, no writ) ("[C]onstruction of a written instrument is ordinarily a question of law for the court, and even if it contains language on its face ambiguous, but extrinsic evidence of circumstances is undisputed, construction of the instrument is still a question of law for the court."); *Schindler v. Thomas*, 434 S.W.2d 187, 190 (Tex. App—Corpus Christi 1968, no writ) ("We hold the trial court properly granted summary judgment on the uncontroverted evidence explaining the provisions of the written instrument."); *see also, e.g.*, *Campagnie Financiere de CIC et de L'Union Europeenne v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 232 F.3d 153, 158 (2d Cir. 2000) (SOTOMAYOR, J.) ("[S]ummary judgment in a contract dispute may be granted 'when the language is ambiguous and there is relevant extrinsic evidence, but the extrinsic evidence creates no genuine issue of material fact and permits interpretation of the agreement as a matter of law.'" (quotation omitted)).

understanding to Eastex at the time of the dispute: Landry's "created the [contract] in 2006 . . . specifically to prevent this type of disruption to the businesses on each parcel and to control future development of the properties, as any prudent developer would."

No jury could improve upon the testimony of the man who wrote the contract and executed it for both parties. The district court captured the point precisely: "Scheinthal's intent *is* the intent of the parties." Eastex's reading of Section 3.3 is not unreasonable on its face—but reasonableness on its face is not the question when uncontroverted evidence resolves the meaning from the inside. The jury-question rule rests on an assumption that does not hold here: that intent must be inferred from circumstantial evidence—business context, prior dealings, industry custom. No inference is required. The source of intent is in the record, uncontroverted, and identified. Sending this case to a jury would not resolve a factual dispute—there is none. It would simply postpone a legal conclusion the evidence already compels. The district court did not usurp the jury's role. It performed its own.

The Agreement's own text reinforces this reading—independently and on two grounds. First, Section 7.10 required Eastex to request authorization—not its lessee. BJ's made the request here, not Eastex—a procedural defect that independently defeats Eastex's position regardless of how Section 3.3 is construed. Second, Section 3.3 proscribes the construction of "any new building" and the reconfiguration of any building's "footprint"—without limiting either restriction to construction affecting the easements. That Article III bears the title "Maintenance and Upkeep of Easements" does not narrow Section 3.3's reach: more specific provisions

control more general ones, and Section 3.3 speaks to buildings and footprints—not easements.[22]

Because Saltgrass's interpretation of the Agreement is the correct one, there is no genuine dispute of material fact. We therefore AFFIRM summary judgment for Saltgrass.

B

Eastex raises three objections to the attorney-fee award: lack of jurisdiction, untimely amendment without a showing of excusable neglect, and a Seventh Amendment right to a jury trial on fees. We need not reach any of them. Eastex's notice of appeal predated the fees order and did not mention fees—a double defect that forecloses review.[23] A notice of appeal that "refers only to the judgment," such as Eastex's, "does not bring the fee issue before the court."[24]

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[22] *See Forbau v. Aetna Life Ins. Co.*, 876 S.W.2d 132, 133–34 (Tex. 1994) (applying the canon that more specific terms of a contract control more general terms).

[23] *See, e.g.*, *Sommers v. Bank of Am., N.A.*, 835 F.3d 509, 514 (5th Cir. 2016) (holding that issues omitted from an appellant's notice of appeal "are outside the scope of the notice of appeal, so we do not consider them").

[24] *See Creuzot v. Green*, 850 F. App'x 917, 917–18 (5th Cir. 2021) (per curiam) (citing *NCNB Tex. Nat'l Bank v. Johnson*, 11 F.3d 1260, 1269 (5th Cir. 1994)); *see id.* at 917 ("A judgment on the merits and an award of attorney's fees are separate judgments and separately appealable."). Eastex filed its notice of appeal on September 19, 2025—before the district court resolved Saltgrass's fee motion. The fee order is not in the record. As we recognized in *NCNB Texas National Bank v. Johnson*, "no intent to appeal could exist, much less be apparent," for an order that had not yet been entered. 11 F.3d 1260, 1270 (5th Cir. 1994). An "order awarding attorney's fees or costs is not reviewable on appeal until the award is reduced to a sum certain." *See S. Travel Club v. Carnival Air Lines, Inc.*, 986 F.2d 125, 131 (5th Cir. 1993) (per curiam). After the notice of appeal was filed, the district court granted Saltgrass's fee motion—the same motion whose denial Eastex challenged in this appeal. Eastex did not appeal that order.

Saltgrass is entitled to appellate attorney fees under the Agreement. Section 4.3 provides that the prevailing party in any litigation regarding the Agreement is "entitled to recover attorney's fees from the other party[.]" Saltgrass has prevailed; the contractual entitlement follows.[25] "Our preferred procedure is to remand for the determination of the amount of such an award."[26] We therefore REMAND for that purpose.

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We AFFIRM summary judgment for Saltgrass, DISMISS Eastex's attorney-fee challenge for lack of jurisdiction, and REMAND for determination of Saltgrass's appellate attorney fees.

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[25] *See Intercontinental Group Partnership v KB Home Lone Star L.P.*, 295 S.W.3d 650, 653 (Tex. 2009).

[26] *Zimmerman v. City of Austin*, 969 F.3d 564, 571 (5th Cir. 2020) (citation omitted and alteration in original); *see also Instone Travel Tech Marine & Offshore v. Int'l Shipping Partners, Inc.*, 334 F.3d 423, 433 (5th Cir. 2003) ("The issue of appellate attorney's fees is a matter for the district court following the resolution of an appeal.").