

United States Court of Appeals for the Fifth Circuit

No. 25-11330
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 9, 2026

Thomas B. Plunkett, III
Clerk

BANK OF AMERICA, N.A.,

Plaintiff—Appellee,

versus

ZTAR MOBILE INCORPORATED; KEVIN T. HADDAD,

Defendants—Appellants.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:23-CV-826

Before KING, HIGGINSON, and DOUGLAS, *Circuit Judges*.

STEPHEN A. HIGGINSON, *Circuit Judge*:*

This case serves as a reminder to read contracts before signing them. Kevin Haddad relied on an oral statement—made seven months earlier during contract negotiations—that led him to believe that a personal guaranty provision would not be included in a loan facility extended by Bank of America to his business, Ztar Mobile Incorporated. Though he was

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 25-11330

represented by in-house counsel, he signed the final loan documents without reading them, or having his counsel read them. Had he read those documents, the presence of the guaranty would have been obvious. He now appeals the district court's grant of summary judgment to Bank of America on its breach of contract claim, arguing that its conduct constitutes fraudulent inducement. For the reasons that follow, we AFFIRM.

I

Defendant-Appellant Kevin Haddad is the President and Chief Executive Officer of Defendant-Appellant Ztar Mobile Incorporated ("Ztar"). Ztar "resells cellular prepaid SIM cards." For years, Haddad and Ztar had a "reliable and uncontentious banking relationship" with Plaintiff-Appellee Bank of America, N.A. ("BANA"). Andrew Walker, a Vice President and Relationship Manager, has been Haddad's primary contact at BANA since 2017.

"By the end of 2018, Ztar had revolving lines of credit" with BANA "totaling roughly \$2 million," which were personally guaranteed by Haddad. In the summer of 2018, Walker approached Haddad to propose a new deal: the bank would extend a "new revolving line of credit" that would "wipe out and replace the previous line," and would be "primarily secured by a time-deposit bank account at one of [BANA's] Canadian institutions."

Walker repeatedly stated that "the new loan would not need a personal guaranty" from Haddad. During the negotiation of this deal, Walker circulated draft loan documents to Haddad which "referenced that [Haddad] would personally guarantee" the new line of credit. Ztar's in-house counsel reviewed this draft document, and Haddad states that he "objected" to the inclusion of the personal guarantee and "reminded Waker that was not supposed to be part of the deal." On August 14, 2018, after receiving the "revised . . . draft" from Haddad, Walker stated by email that

No. 25-11330

“[p]er the personal guarantee language, we can remove it as when the original docs we[re] done there was still a small amount remaining on the term loan that has since been paid off.” The parties had a phone call later that day to continue negotiating the terms of the loan. Because he “trusted Walker,” Haddad “moved forward with the deal assuming the new line of credit would not entail a personal guaranty.”

More than seven months later, on March 28, 2019, the parties executed the new loan agreement. Walker “showed up at Ztar’s offices unannounced” and emailed Haddad to say he had “snuck into [Ztar’s] conference room.” Upon entering the conference room, Haddad saw Walker “standing there with a stack of documents.” Because he “assum[ed] he could trust Walker,” and “was in a rush,” Haddad “signed the documents without reading them.” Ztar’s in-house counsel did not review any of “the final credit documents” (the “Loan Agreement”) “prior to their execution” by Haddad.

If Haddad had read the Loan Agreement before signing it, he would have observed that a “Guaranty signed by Kevin T Haddad” is listed as a document BANA “must receive” before it “is required to extend any credit to the Borrower”—Ztar—“under this Agreement.” The Loan Agreement further required that Haddad submit “annual financial statements” to BANA. The Loan Agreement also contained an explicit integration clause providing that it “and any related security or other agreements required by this Agreement constitute the entire agreement” and “supersede all previous negotiations, communications, discussions and correspondence concerning the subject matter hereof.”

Haddad also signed another piece of paper, which, as BANA observes, was conspicuously titled as a “CONTINUING AND UNCONDITIONAL GUARANTY” and listed “Kevin T. Haddad” as the “GUARANTOR” on

No. 25-11330

its front page. Haddad was also identified as the “Guarantor” in the document’s signature block.

So why did the guaranty remain in the Loan Agreement? The record of the parties’ negotiations between August 2018 and March 2019 is thin. In the same August 14, 2018, email thread, the parties appear to contemplate that the loan facility would be secured by “\$8mm CAD.” But an internal BANA memorandum dated September 18, 2018—a month later—states that the \$8 million loan facility would instead be secured by “\$6MM CAD (\$4.46MM USD),” with the “[g]ap covered by ABA lien and personal guarantee” by “Kevin Haddad.”

Haddad would reaffirm this guaranty when the parties extended the term of the Loan Agreement, which had an initial maturity date of May 31, 2020. The parties would extend this maturity date three times. On October 2, 2020, Haddad and BANA executed the “Amendment No. 1” to the Loan Agreement which, inter alia, extended the maturity date to January 31, 2021. In connection with that amendment, Haddad signed a “CONSENT AND REAFFIRMATION OF GUARANTORS AND PLEDGORS” which personally identified him as a “guarantor of . . . the Borrower’s obligations to the Bank under the Agreement.” Haddad and BANA would execute a second amendment to extend the maturity date to January 31, 2022. Each amendment also contained an integration clause representing that the “document represents the final agreement between the parties with respect to the subject matter hereof.”

In late October 2021, several months before the January 2022 maturity date, Walker and Haddad met for lunch. The parties dispute whether, at this meeting, Walker orally promised Haddad that BANA would extend the term of the loan “for at least another year.” Based on this alleged representation, Haddad states that he “did not have any reason to seek a new lender to

No. 25-11330

refinance Ztar's debt," though he "would have begun doing so if [he] knew that Walker was not telling me the truth." Haddad avers that Ztar would have had "no problem" finding a lender for a refinancing transaction at that time.

In January 2022, before the maturity date of the amended Loan Agreement, BANA discovered that it had a problem. The underlying collateral in the Canadian account had been "accidentally released" by BANA in March 2020 and the funds had been deposited into the "business account" of an affiliated Ztar entity—Ztar Mobile Canada—which was not a party to the Loan Agreement.

On January 31, 2022—the maturity date under the second amendment—the parties executed a third amendment, which pushed the maturity date back further two months, to March 31, 2022. At that time, BANA did not have a "clear understanding of what was going on" with the collateral, and continued to investigate the issue in early February 2022. Haddad states that neither he "nor any employee of Ztar had anything to do with the funds' release," and Haddad apparently was not informed of BANA's error when the parties negotiated and executed the third amendment.

On March 3, 2022, BANA informed Haddad that Ztar "needed to find another lender" and that it "likely would not continue its lending relationship with Ztar." At that point, though, Haddad states that it was "too late" and "no other lender would extend credit" to the entity because "[t]he potential upcoming default disqualified Ztar from refinancing." On May 4, 2022, BANA sent Haddad a "Notice of Acceleration," alleging that Ztar was in default, and sought payment of the outstanding balance on the revolver—more than \$5 million—by May 15, 2022. This litigation ensued.

No. 25-11330

BANA filed its Complaint on April 19, 2023, asserting breach-of-contract claims against Ztar and Haddad, seeking to hold Haddad personally liable for Ztar's debt based on the guaranty he had signed. Haddad and Ztar's principal defense is that Haddad was fraudulently induced to enter into the Loan Agreement because he relied on Walker's prior representation that the agreement would not contain a personal guaranty provision.

On February 27, 2025, the district court granted BANA's motion for summary judgment as to liability but denied BANA's motion as to damages for lack of adequate documentation.¹ On November 6, 2025, the district court granted BANA's second motion for summary judgment on the damages issue and entered judgment against Ztar and Haddad for \$7,141,290.14.

II

"We review a grant of summary judgment de novo, viewing all evidence in the light most favorable to the nonmoving party and drawing all reasonable inferences in that party's favor." *Searles v. City of Houston*, 180 F.4th 842, 845 (5th Cir. 2026) (quoting *Ratliff v. Aransas County*, 947 F.3d 281, 287 (5th Cir. 2020)). Summary judgment is proper where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). "We resolve factual controversies in favor of the nonmoving party, but only when there is an actual controversy, that is, when both parties have submitted evidence of contradictory facts." *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc). "Thus, absent proof, we do not 'assume that the nonmoving party could or would prove the necessary facts' to survive

¹ The parties consented to proceed before a magistrate judge.

No. 25-11330

summary judgment.” *Searles*, 180 F.4th at 845 (quoting *Ratliff*, 948 F.3d at 287).

Ztar and Haddad raise two principal issues on appeal. They argue that the district court’s grant of summary judgment was in error because (1) genuine issues of material fact exist as to Ztar and Haddad’s fraudulent inducement defense to the breach claims against them, and (2) genuine issues of material fact exist as to Ztar’s fraud defense to the breach claim against it. Neither argument is availing.

A

The Loan Agreement and its amendments are governed by Texas law. Under Texas law, “[a] contract is subject to avoidance on the ground of fraudulent inducement.” *Wyrick v. Business Bank of Tex., N.A.*, 577 S.W.3d 336, 347 n.7 (Tex. App.—Houston [14th Dist.] 2019, no pet.) (quoting *Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am.*, 341 S.W.3d 323, 331 (Tex. 2011)). “[A] plaintiff claiming fraud in the inducement [of a contract] must show: (1) the defendant knowingly or recklessly made a material representation; (2) the representation was false; (3) the defendant intended the plaintiff to act on the representation; (4) the plaintiff actually and justifiably relied on the representation; and (5) the plaintiff thereby suffered an injury.” *Binh Hoa Le v. Exeter Fin. Corp.*, 990 F.3d 410, 416 (5th Cir. 2021) (citing *Italian Cowboy Partners*, 341 S.W.3d at 337).

B

The Court begins with Haddad and Ztar’s fraudulent inducement defense. Haddad claims that Walker’s statement to him, during the negotiation of the Loan Agreement, that “we can remove” the guaranty constitutes fraudulent inducement. This claim fails as a matter of law because any reliance by Haddad on this statement was not justifiable.

No. 25-11330

“The issue of justifiable reliance is generally a question of fact.” *Prize Energy Res., L.P. v. Cliff Hoskins, Inc.*, 345 S.W.3d 537, 584 (Tex. App.—San Antonio 2011, no pet.), *abrogated on other grounds, Nath v. Tex. Children’s Hosp.*, 576 S.W.3d 707 (Tex. 2019). “Texas courts have repeatedly held [that] a party to a written contract cannot justifiably rely on oral misrepresentations regarding the contract’s unambiguous terms.” *Nat’l Prop. Holdings, L.P. v. Westergren*, 453 S.W.3d 419, 424 (Tex. 2015); *see also Jacked Up, L.L.C. v. Sara Lee Corp.*, 854 F.3d 797, 811 (5th Cir. 2017) (holding that a party may not justifiably rely on oral representations that were “clearly contradicted by the . . . agreement itself”); *JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C.*, 546 S.W.3d 648, 660 & n.2 (Tex. 2018) (holding that a “direct contradiction” between a prior oral representation and a contract “can negate justifiable reliance as a matter of law”).

“Moreover, ‘a person may not justifiably rely on a representation’”—whether written or oral—“if there are ‘red flags’ indicating such reliance is unwarranted.” *Grant Thornton LLP v. Prospect High Income Fund*, 314 S.W.3d 913, 923 (Tex. 2010) (quoting *Lewis v. Bank of Am.*, 343 F.3d 540, 546 (5th Cir. 2003)). “In an arm’s length transaction, the party alleging fraud must have exercised ordinary care to protect its own interests and cannot blindly rely on the defendant’s reputation, representations, or conduct where the plaintiff’s knowledge, experience, and background warrant investigation.” *Mercedes-Benz USA, LLC v. Carduco, Inc.*, 583 S.W.3d 553, 563 (Tex. 2019). “A party who signs a document is presumed to know its contents.” *In re Int’l Profit Assocs., Inc.*, 286 S.W.3d 921, 923 (Tex. 2009). Accordingly, a party may not justifiably rely on a party’s prior representation, rather than reading the language in a proposed contract, merely because they were “in a hurry.” *Westergren*, 453 S.W.3d at 425. Nor is a failure to read a contract before signing it “excused by mere confidence in the honesty and integrity of the other party.” *Thigpen v. Locke*, 363 S.W.2d 247, 251 (Tex.

No. 25-11330

1962). “[W]hen a plaintiff asserts reliance on a misrepresentation that the written contract directly and unambiguously contradicts,” therefore, “the existence of such a conflict is itself a large red flag” which supports a finding that there could be no justifiable reliance on that misrepresentation as a matter of law. *Carduco*, 583 S.W. at 559; *see Orca Assets*, 546 S.W.3d at 658.

As Haddad’s counsel conceded at the hearing on summary judgment, “the reality is . . . there are signed documents.” It is undisputed that Haddad and BANA operated under an arms-length business relationship, and that Haddad had the opportunity to review the written Loan Agreement. He simply chose not to do so before signing it. If the removal of the personal guaranty provision was an essential precondition to executing the Loan Agreement, ordinary care required Haddad to review the agreement to ensure that provision was removed before signing it. Instead, he relied on a representation of BANA’s negotiating position made more than seven months earlier—that BANA “can remove” the provision—without inquiring as to whether BANA *did* remove the provision in the final proposed agreement.² As a matter of law, then, he may not justifiably rely on Walker’s prior statement for a fraudulent inducement defense.³ For the same reason,

² Though *Westergren*—upon which BANA primarily relies—dealt with a previous *oral* misrepresentation, 453 S.W.3d at 422, it makes no difference that Walker’s prior representation was in writing, as the conflict between that representation and the terms of the written contract were so clear as to constitute a “large red flag” that any reliance on that representation would not be justified. *Carduco*, 583 S.W. at 559.

³ Moreover, Haddad and Ztar have not established that BANA, through Walker, made a knowingly false or recklessly false material misrepresentation. “In order for fraudulent inducement to exist, there must be a promise of some future performance ‘made with a present intent not to perform.’” *Perdido Props. LLC ex rel. Bremer v. Devon Energy Prod. Co., L.P.*, 669 S.W.3d 535, 564 (Tex. App.—Eastland 2023, pet. denied) (quoting *Anderson v. Durant*, 550 S.W.3d 605, 614 (Tex. 2018)). Appellants argue that Walker’s email “unquestionably stated a falsity,” namely “that BANA would not obligate Haddad to guarantee the Loan Agreement.” They also argue that BANA’s internal memorandum stating that it would require a personal guaranty from Haddad—dated a month later—

No. 25-11330

Ztar cannot assert a fraudulent inducement defense based on this prior statement.

Next, Appellants argue that Walker’s oral promise in October 2021—that BANA would extend the term of the loan facility for another year—supports a separate fraudulent inducement defense to BANA’s breach claim against Ztar. This representation occurred after the parties executed the Loan Agreement but before the third amendment to that agreement was executed, which extended the maturity date from January 31, 2022 to March 31, 2022. But because this oral representation conflicts with the unambiguous language of the executed third amendment, Ztar and Haddad could not justifiably rely upon it. *Westergren*, 453 S.W.3d 419, 424.

Even assuming that this representation could support a defense that Haddad and Ztar were fraudulently induced into entering into the third amendment, however, it would not serve as a defense to BANA’s claim that Ztar breached its repayment obligations under the Loan Agreement. In general, the remedies available to a party claiming fraudulent inducement “are to either (1) fully rescind the contract or (2) affirm the contract and recover any monetary damages for its injuries.” *Bear Ranch, LLC v. HeartBrand Beef, Inc.*, 2013 WL 6190253, at *4 (S.D. Tex. Nov. 26, 2013) (Costa, J.); see *Perenco Nigeria Ltd. v. Ashland, Inc.*, 242 F.3d 299, 306 (5th Cir. 2001) (same). We have also said, in an unpublished opinion, that “rescission” is the “only option” where a party to a contract asserts

“creates a fact issue” as to the truth of Walker’s statement when it was made. But a statement of a tentative negotiating position—that the guaranty “can” be removed—is not a commitment that the guaranty *will* be removed. And, as BANA points out, Walker’s August statement appears to indicate that the guaranty “can” be removed because the loan will be fully secured by the Canadian collateral, whereas the September memorandum implies that a guaranty will be required because the loan, at that point, would not be fully secured by that collateral.

No. 25-11330

“fraudulent inducement as a defense” to a breach claim, rather than as a “claim for affirmative relief.” *Bailey v. Bailey*, 731 F. App’x 272, 281 (5th Cir. 2018). That is because the defense of fraudulent inducement is an argument that the “fraudulent conduct precludes the requisite mutual assent” for contract formation. *Lyn-Lea Travel Corp. v. Am. Airlines, Inc.*, 283 F.3d 282, 289 (5th Cir. 2002) (citing RESTATEMENT (SECOND) OF CONTRACTS § 164 (1979)).

Any rescissionary remedy here would only extend to the third amendment to the Loan Agreement, because that is the only contract which post-dates this instance of alleged fraudulent inducement. *See, e.g., Haaze v. Glazner*, 62 S.W.3d 795, 797–98 (Tex. 2001) (noting that “a fraudulent inducement claim presupposes that a party has been induced to enter a contract”). But a rescission of that amendment would only return the maturity date to that previously established by the second amendment, and would not, therefore, relieve Ztar of the obligation to repay the amount due under the Loan Agreement—which is the basis for BANA’s breach claim.⁴

The judgment of the district court is AFFIRMED.

⁴ Finally, Appellants imply that Walker’s October 2021 statement supports a separate affirmative defense of fraud in addition to a fraudulent inducement defense. But “[f]raudulent inducement is a particular species of fraud that arises only in the context of a contract,” and to assert a fraudulent inducement defense, “the elements of fraud must be established as they relate to an agreement between the parties.” *Haase*, 62 S.W.3d at 798–99. Appellants do not explain how their fraud defense differs from their fraudulent inducement defense. It thus fails for the same reasons.