

Recent Cases on The Recovery of Attorney's Fees

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RECENT CASES INVOLVING RECOVERY OF ATTORNEYS' FEES

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RECENT CASES INVOLVING CHAPTER 38 OF TEXAS CIVIL PRACTICES AND REMEDIES CODE

***Smith v. Patrick W.Y. Tam Trust*, 296 S.W.3d 545 (Tex. 2009)**

This case is based on a dispute between Tam Trust, the owner of a shopping center, and the Smiths, guarantors of Plano Pets in a lease agreement between the Trust and Plano Pets. After Plano Pets stopped making payments for a leased space a jury awarded the Trust \$65,000 of the requested \$215,391.50 in damages, but no attorney's fees. The trial court rendered judgment notwithstanding the verdict on attorney's fees, awarding \$7,500 for fees incurred and up to \$15,000 for success in appeals. The court of appeals vacated the \$7,500 attorney's fee award and rendered judgment for \$47,438.75, the full amount the Trust's attorney testified at trial would be a reasonable fee. The appeals court reasoned that the trial judge abused his discretion in awarding the lesser amount because the Trust presented competent and uncontroverted evidence of the amount of, and its right to, attorney's fees under chapter 38.

Before the Supreme Court landlord Tam Trust argued that the testimony they provided as to appropriate attorney's fees was undisputed and that by failing to request a jury instruction on factors affecting attorney's fees the Smiths waived their right to later contest the fee award. The Texas Supreme Court reversed the judgment as to attorney's fees and remanded to determine

reasonable fees under Chapter 38. The court found no evidence to support the jury's refusal to award any attorney's fees, but the fact that the amount was undisputed did not mean that the fee was reasonable. The Court found that the amount requested by the Trust in attorney's fees "was unreasonable in light of the amount involved and the results obtained, and in the absence of evidence that such fees were warranted due circumstances unique to this case." *Smith*, 296 S.W.3d at 548.

***Midland Western Building v. First Service Air Conditioning Contractors, Inc.*, 300 S.W.3d 738 (Tex. 2009)**

An air conditioning contractor brought an action on a sworn account against a building owner alleging failure to pay for air conditioning services. The jury awarded First Service \$14,645.10, over two-thirds of the requested amount of money damages, yet awarded no attorney's fees despite uncontradicted testimony by an expert witness attorney as to reasonable fees. On appeal, the Court of Appeals awarded First Service the entire amount of attorney's fees requested at trial, \$24,000.

The Supreme Court, relying on its recent holding in *Smith v. Patrick W.Y. Tam Trust*, 296 S.W.3d 545, held that the Court of Appeals could not hold as a matter of law that First Service was entitled to attorney's fees when its award was not supported by uncontradicted testimony. This was especially so since the expert witness admitted on cross-examination that some of the fees sought involved claims against parties other than defendant.

However, neither was there sufficient evidence to support the jury's finding of no attorney's fees in the absence of evidence affirmatively showing that no attorney's services were needed at all or that any services provided were of no value. Therefore the case was remanded for a new trial on attorney's fees.

***Medical City Dallas, Ltd. v. Carlisle Corp.*, 251 S.W.3d 55 (Tex. 2008)**

The Texas Supreme Court held that the

¹ *Mackenzie Meador worked diligently on the previous draft of this paper.*

prevailing building-owner in this breach of warranty case was entitled to attorney's fees under Chapter 38. When Medical City experienced repeated leaks in its roof, which was under a 20-year warranty, it sued for damages, attorney's fees and costs. After a jury verdict, the court awarded Medical City damages and \$121,277.04 in attorney's fees.

On appeal, the Dallas court rendered a take nothing judgment on the attorney's fees issue, asserting that a breach of warranty claim does not entitle a party to attorney's fees under Chapter 38. *See Carlisle Corp. v. Medical City Dallas, Ltd.*, 196 S.W.3d 855 (Tex. App. – Dallas 2006).

The Supreme Court reinstated the trial court's award of attorney's fees, concluding that breach of an express warranty is a "claim based on an oral or written contract" under §38.001(8). Tracing the history and purpose of attorney's fees awards in Texas, the court noted that the Uniform Commercial Code (UCC), which governs express warranty claims, is silent on the issue of attorney's fees. The court found it appropriate to look to the statute in a sale of goods case in the absence of a provision in the UCC addressing recovery of fees. The court ruled that Chapter 38, allowing recovery of attorney's fees for a claim based on an oral or written contract, applied to this breach of warranty case, particularly because the damages were economic.

***Fleming & Associates, L.L.P. v. Barton*, 2014 WL 783772 (Tex. App.-- Houston [14th Dist.] 2014 (Feb. 27, 2014), no pet.)**

This is a breach of contract involving referral fees between law firms, or to be more precise, between a law firm and a *partnership*. It was determined that the law firm breached the contract and was awarded to pay damages and attorney's fees under Chapter 38. On appeal, the partnership argued that fees could not be awarded against it under Chapter 38, because it was a partnership and not an "individual" or a corporation. The Fourteenth Court of Appeals agreed based upon the statute's language that a "person" may recover attorney's fees from "an individual or a corporation." Tex. Civ. Prac. & Rem. Code §38.001(8).

The Court concluded "Thus, under the plain language of section 38.001(8), a person may not recover attorney's fees against a partnership. *Cf. Ganz v. Lyons P'ship, L.P.*, 173 F.R.D. 173, 176 (N.D.Tex.1997) (holding that TCPRC section 38.001(8) authorizing recovery of attorney's fees against "individual or corporation" does not provide for award of attorney's fees against limited partnership). Without any other authority for the award of attorney's fees to the Barton Group in this case, we conclude that the trial court erred in making such an award" *Id. at* *14.

***Wallace Roofing, Inc. v. Benson*, No. 03-11-00055-CV, 2013 Tex. App. LEXIS 14453, *41 (Tex. App.—Austin Nov. 27, 2013) (mem. op.)**

A roofing repair company brought suit for nonpayment on a contract. The trial court denied attorney's fees on the grounds that the company never presented a demand for payment, as required under Tex. Civ. Prac. & Rem. Code § 38.002, which requires that the opponent "failed to pay the just amount owed" after presentment of its contract claim.

The court of appeals affirmed, but on slightly different grounds. The court concluded that the roofing company had consistently demanded \$5,220.10, satisfying the presentment requirement. Yet, at trial, the roofing company admitted that it had accidentally overcharged the opponent by \$2,349.33. Since the roofing company never showed that it presented the correct amount to its opponent, the opponent never had an opportunity to accede to the correct demand. Accordingly, the Austin court of appeals affirmed, holding that the trial court still had discretion to deny attorneys' fees.

***Ramirez v. Coca-Cola Refreshments USA, Inc.*, No. 01-13-00278-CV, 2013 Tex. App. LEXIS 13110, 8-9 (Tex. App.—Houston [1st Dist.] Oct. 22, 2013) (mem. op.)**

The Houston court of appeals reversed a summary judgment award of attorney's fees to the successful party in an \$8,051.37 breach of contract claim under Tex. Civ. Prac. & Rem. Code

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