



Texas Supreme Court to Further Examine Disclaimer of Reliance Clauses

The Texas Supreme Court is scheduled to review reliance disclaimer clauses and their enforceability in December 2018 and may provide further guidance on these issues.

The Texas Supreme Court recently granted review in *Mercedes-Benz USA LLC, et al. v. Carduco, Inc. d/b/a Cardenas Metroplex*, Case No. 16-0644, setting oral argument for December 2018. In a far-ranging opinion, the court of appeals in part affirmed a jury verdict for the plaintiff for fraudulent inducement, despite the existence of a contractual disclaimer of reliance clause. Plaintiff Carduco alleged Mercedes fraudulently induced the company into purchasing a dealership by leading Carduco to believe that the dealership could be moved to McAllen, Texas, but concealing that Mercedes planned to give that area to another dealer. While Mercedes asserted several grounds for review, and the plaintiff sought review over a reduction of punitive damages, one central legal issue is the reliance element of fraud and whether it was negated as a matter of law based on contractual terms.

The appellate court held the relevant contract's disclaimer of reliance was unenforceable. Mercedes' "Standard Provisions," incorporated by reference into the contract, read: "no representations outside of the contract were made by MBUSA" and "no such representations or statements were relied upon by Carduco in executing the contract." The court held this was not a clear and unequivocal disclaimer of reliance as: (i) the parties were not in a dispute at the time; (ii) the standard terms were not negotiated; and (iii) the disclaimer did not state that Carduco was relying on its own judgment. The court of appeals also noted that Carduco's reliance was sufficiently justified. According to the court, the terms of the contract stating that Carduco did not have an exclusive right to sell in its area and that moving required prior written consent were not in direct conflict with the oral representations.

Mercedes asked the Texas Supreme Court to resolve a claimed conflict between the lower court's decision and other courts of appeal in Texas that have enforced similar disclaimers. Importantly, the Texas Supreme Court's ruling may provide guidance both on the drafting of such reliance disclaimer clauses and their enforceability, which is an oft-litigated issue in Texas.



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