
Interoffice Memorandum of Law

Texas Jurisprudence: Third Edition

TO: Mr. Dudley Knox; Advanced Legal Research and Writing LGLA-2331-53500
FROM: Mr. Chris Rainbolt
DATE: February 26, 2015
IN RE: *Argo Data Resource Corp. v. Shagrithaya*, 380 S.W.3d 249 (Tex.App.—Dallas 2012).
15 Tex. Jur. 3d *Corporations* § 239 (2013).
14 Tex. Jur. 3d *Contracts* § 11 (2013).

Assignment: To research the two main issues from *Argo v. Shagrithaya* in the Texas Jurisprudence Legal Encyclopedia.

I. Minority Shareholder Oppression

A. Headnote #5 - Corporations and Business Organizations 1526(5)

“Depending on the facts of the case, conduct found by the jury in an action for minority shareholder oppression could be oppressive under either or both definitions of oppression, which occurs when majority shareholder conduct substantially defeats minority’s expectations that were both reasonable under the circumstances and central to minority shareholder’s decision to join venture and when conduct is burdensome, harsh, or wrongful. V.T.C.A., Business Organizations Code § 11.404.” *Argo v. Shagrithaya*, 380 S.W.3d 249 (Tex.App.—Dallas 2012).

B. § 239. Harm to Individual Shareholders—Personal Causes of Action—Minority Shareholder “Oppression”

“Minority shareholders have standing to sue majority shareholders for ‘shareholder oppression’ based on allegations that the majority shareholders unfairly dealt with the minority shareholders.¹ Texas recognizes two nonexclusive definitions for shareholder oppression:²

- (1) majority shareholders’ conduct that substantially defeats the minority’s expectations that, objectively viewed, were both reasonable under the circumstances and central to the minority shareholder’s decision to join the venture; or
- (2) burdensome, harsh or wrongful conduct, a lack of probity and fair dealing in the company’s affairs to the prejudice of some members, or a visible departure from the standards of fair dealing and a violation of fair play on which each shareholder is entitled to rely.

When examining whether a minority shareholder’s reasonable expectations were substantially defeated, as would support a claim for minority shareholder oppression, courts distinguish between specific reasonable expectations and general reasonable expectations.

¹ *Redmon v. Griffith*, 202 S.W.3d 225 (Tex. App. Tyler 2006).

The fact that a majority shareholder received compensation of \$1 million per year for a two-year period despite a lack of approval from the board of directors did not constitute minority shareholder oppression as there was not indication that the majority shareholder’s compensation amounted to de facto dividend or affected the minority shareholder’s interests as a shareholder, and the board’s resolution on executive compensation was made retroactive to the date on which the majority shareholder first set his compensation unilaterally. *Argo Data Resource Corp. v. Shagrithaya*, 380 S.W.3d 249 (Tex. App. Dallas 2012), reh’g overruled, (Oct. 30, 2012) and petition for review filed, (Dec. 14, 2012).

² *Argo Data Resource Corp. v. Shagrithaya*, 380 S.W.3d 249 (Tex. App. Dallas 2012), reh’g overruled, (Oct. 30, 2012) and petition for review filed, (Dec. 14, 2012); *Ritchie v. Rupe*, 339 S.W.3d 275 (Tex. App. Dallas 2011), reh’g overruled, (Apr. 27, 2011) and review denied, (Aug. 12, 2011) and reh’g of petition for review granted, (Mar. 2, 2012) and order vacated, (Mar. 2, 2012) and review granted, (Oct. 26, 2012).

‘General reasonable expectations’ are those that arise from the mere status of being a shareholder.³ A shareholder’s ‘specific reasonable expectations’ are those specifically agreed to or expected as part of the transactions forming a particular corporation or that may develop over time among the shareholders of a particular corporation.⁴ Specific reasonable expectations require proof of specific facts giving rise to the expectation in a particular case and that the expectation was reasonable under the circumstances and central to the decision to join the venture.⁵ Specific facts must be adduced giving rise to the expectation in a particular case and a showing that the expectation was reasonable under the circumstances of the case as well as central to the minority shareholder’s decision to join the venture.⁶ 15 Tex. Jur. 3d *Corporations* § 239 (2013).

II. Sufficiency of Evidence of Existence of Implied Contract

A. Headnote #43 – Corporations and Business Organizations 🗝️ 1530, 1578

“There was legally insufficient evidence of a legally enforceable agreement that majority shareholder and minority shareholder would receive same annual compensation while they remained active in corporation to support jury’s verdict in favor of minority shareholder in minority shareholder’s action for breach of implied contract; that shareholders had received same annual compensation in the past did not demonstrate agreement to continue same compensation scheme in the future, there was no indication that shareholders had any meeting of the minds over any other terms of minority shareholder’s employment, such as his specific job obligations or duration of employment, and agreement to ‘remain active’ was not sufficiently clear and definite.” *Argo v. Shagrithaya*, 380 S.W.3d 249 (Tex.App.—Dallas 2012).

B. § 11. Implied-In-Fact Contracts—Elements; Character and Manner of Proof

“The element of mutual intent to contract⁷ or actual assent⁸ is an essential element of a contract implied in fact just as in the case of an express contract.⁹ With but one fundamental exception, the same elements that are essential to the existence of an express contract are also necessary to constitute a contract implied in fact.¹⁰ The exception involved is that, in the case of an express contract, the parties’ agreement is expressly stated,¹¹ but in the case of an implied-

³ *Argo Data Resource Corp. v. Shagrithaya*, 380 S.W.3d 249 (Tex. App. Dallas 2012), reh’g overruled, (Oct. 30, 2012) and petition for review filed, (Dec. 14, 2012).

⁴ *Ritchie v. Rupe*, 339 S.W.3d 275 (Tex. App. Dallas 2011), reh’g overruled, (Apr. 27, 2011) and review denied, (Aug. 12, 2011) and reh’g of petition for review granted, (Mar. 2, 2012) and order vacated, (Mar. 2, 2012) and review granted, (Oct. 26, 2012).

⁵ *Ritchie v. Rupe*, 339 S.W.3d 275 (Tex. App. Dallas 2011), reh’g overruled, (Apr. 27, 2011) and review denied, (Aug. 12, 2011) and reh’g of petition for review granted, (Mar. 2, 2012) and order vacated, (Mar. 2, 2012) and review granted, (Oct. 26, 2012).

⁶ *Argo Data Resource Corp. v. Shagrithaya*, 380 S.W.3d 249 (Tex. App. Dallas 2012), reh’g overruled, (Oct. 30, 2012) and petition for review filed, (Dec. 14, 2012).

⁷ *Farley v. Clark Equipment Co.*, 484 S.W.2d 142, 11 U.C.C. Rep. Serv. 71 (Tex. Civ. App. Amarillo 1972), writ refused n.r.e., (Nov. 15, 1972).

⁸ *Farmers’ State Bank & Trust Co. v. Gorman Home Refinery*, 273 S.W. 694 (Tex. Civ. App. El Paso 1925), writ granted, (Nov. 18, 1925) and aff’d, 3 S.W.2d 65 (Tex. Comm’n App. 1928).

⁹ *Marr-Piper Co. v. Bullis*, 1 S.W.2d 572 (Tex. Comm’n App. 1928); *Buxani v. Nussbaum*, 940 S.W.2d 350 (Tex. App. San Antonio 1997).

As to express contracts defined, see § 9.

As to the necessity of assent to the formation of contracts generally, see §§ 67 et seq.

¹⁰ *Fordtran v. Stowers*, 52 Tex. Civ. App. 226, 113 S.W. 631 (1908), writ refused.

¹¹ *Haws & Garrett General Contractors, Inc. v. Gorbett Bros. Welding Co.*, 480 S.W.2d 607 (Tex. 1972); *E-Z Mart Stores, Inc. v. Hale*, 883 S.W.2d 695 (Tex. App. Texarkana 1994), writ denied, (May 4, 1995).

in-fact contract, the agreement must be inferred from the circumstances of the transaction.¹² In other words, the only real difference between an express and an implied-in-fact contract in in the character¹³ and manner of proof required to establish them.¹⁴ In the former case, the agreement is proved by direct evidence; in the latter case, it is shown by indirect evidence.¹⁵ However, both types of contract are equally binding, except where the agreement must be in writing.¹⁶

A person who seeks to recover on an implied-in-fact contract must establish the particular facts and circumstances from which the law will imply a promise.¹⁷ No implied-in-fact contract can exist where the evidence presented is wholly inconsistent with an implied contract or where an express contract would be contrary to law.¹⁸ In determining whether an implied contract has been formed, the conduct and circumstances surrounding the transaction must be from a reasonable person's interpretation at that particular point in time.¹⁹

When it is clear that performance expressly promised by one party is such that it cannot be accomplished until a second party has first performed, the law will deem the second party to have impliedly promised to perform the necessary action.²⁰ 14 Tex. Jur. 3d *Contracts* § 11 (2013).

¹² *Haws & Garrett General Contractors, Inc. v. Gorbett Bros. Welding Co.*, 480 S.W.2d 607 (Tex. 1972); *Buxani v. Nussbaum*, 940 S.W.2d 350 (Tex. App. San Antonio 1997).

¹³ *Haws & Garrett General Contractors, Inc. v. Gorbett Bros. Welding Co.*, 480 S.W.2d 607 (Tex. 1972); *E-Z Mart Stores, Inc. v. Hale*, 883 S.W.2d 695 (Tex. App. Texarkana 1994), writ denied, (May 4, 1995).

¹⁴ *Haws & Garrett General Contractors, Inc. v. Gorbett Bros. Welding Co.*, 480 S.W.2d 607 (Tex. 1972); *Buxani v. Nussbaum*, 940 S.W.2d 350 (Tex. App. San Antonio 1997).

¹⁵ *Haws & Garrett General Contractors, Inc. v. Gorbett Bros. Welding Co.*, 480 S.W.2d 607 (Tex. 1972); *E-Z Mart Stores, Inc. v. Hale*, 883 S.W.2d 695 (Tex. App. Texarkana 1994), writ denied, (May 4, 1995).

¹⁶ *Farmers' State Bank & Trust Co. v. Gorman Home Refinery*, 273 S.W. 694 (Tex. Civ. App. El Paso 1925), writ granted, (Nov. 18, 1925) and aff'd, 3 S.W.2d 65 (Tex. Comm'n App. 1928).

As to contracts required to be in writing generally, see Tex. Jur. 3d, *Frauds*, Statute of §§ 1 et seq.

¹⁷ *San Antonio Machine & Supply Co. v. Central Texas Power & Transmission Co.*, 295 S.W. 229 (Tex. Civ. App. Waco 1927).

¹⁸ *Stone Co. v. Carminati*, 317 S.W.2d 78 (Tex. Civ. App. Fort Worth 1958).

As to illegality of contracts generally, see §§ 168 et seq.

¹⁹ *Parker Drilling Co. v. Romfor Supply Co.*, 316 S.W.3d 68 (Tex. App. Houston 14th Dist. 2010), review denied, (Apr. 1, 2011).

²⁰ *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844 (Tex. 2009).