Supreme Court of Texas

No. 24-0171

Maya Walnut LLC f/k/a Maya Foods, Inc.,

Petitioner,

v.

Bryan Ly, Walnut Creek Center, Inc., Leng Chiv Ly, and Sao Minh Ly,

Respondents

On Petition for Review from the
Court of Appeals for the Fifth District of Texas

Argued December 2, 2025

JUSTICE BUSBY delivered the opinion of the Court, in which Justice Devine, Justice Bland, Justice Huddle, Justice Young, and Justice Hawkins joined.

CHIEF JUSTICE BLACKLOCK filed an opinion concurring in the judgment, in which Justice Lehrmann and Justice Sullivan joined.

In this fraud suit, a grocery store seeking to renew its expiring lease alleges that its landlord misrepresented that the location was available for re-lease even though the landlord had already agreed to lease the location to the store's competitor. A jury found for the store,

and the trial court rendered judgment on the verdict. The court of appeals reversed and rendered a take-nothing judgment, holding that the existence of red flags negated the store's justifiable reliance on the misrepresentation as a matter of law.

We hold that the store's reliance was not justifiable as a matter of law because the store failed to exercise reasonable diligence in light of a red flag. Accordingly, we affirm the court of appeals' judgment.

BACKGROUND

Petitioner Maya Walnut LLC, which operated a grocery store in the Dallas–Fort Worth area, assumed a lease in 2008 in a shopping center owned by respondent Walnut Creek Center, Inc. The lease was due to expire on September 30, 2019. The lease did not guarantee that it would be renewed, that Walnut Creek would negotiate exclusively with Maya, or that Maya would receive advance notice of non-renewal.

In 2016, Maya began negotiations with Walnut Creek to renew the lease. Progress toward an agreement plateaued in 2018, and Walnut Creek decided to "take a break" from negotiations because "we're going nowhere." That summer, Maya looked for alternative locations. Maya found one other potentially suitable location but concluded that its existing location was the best option, so it did not pursue the other location.

In June 2018, Maya representative Syd Hurley met with Walnut Creek representative Brian Ly. After the meeting, Ly told Hurley that the Walnut Creek owners "just need to get you the final numbers on the lease and get it moving."

In July, Walnut Creek executed an agreement to lease the location to Maya's competitor, El Rancho, upon the expiration of Maya's lease the following year. El Rancho agreed to pay a starting rent of $11.25 per square foot. The parties also signed a non-disclosure agreement (NDA).

On August 1, Ly told Hurley that "because there is ample time remaining," Walnut Creek's owners had "unanimously agreed to renegotiate next year" and "we'll continue discussing the final terms again in the near future." During the summer or fall of 2018, Hamdy Shalabi, one of Maya's owners, heard that El Rancho indicated there would be a "big surprise" coming in June 2019. Suspicious that the "big surprise" may relate to the Walnut Creek location, Shalabi began reaching out to Ly more frequently "to learn if this store was the surprise that El Rancho had in mind." Despite its suspicions, Maya never asked Walnut Creek if it was negotiating a lease with anyone else.

Ly met with Hurley and Shalabi in December 2018. The parties prepared a draft agreement to renew the lease, and Ly indicated at the meeting that the parties agreed on all terms except rent. Walnut Creek requested $7.50 per square foot, while Maya offered $7.25 per square foot. Ly told Hurley and Shalabi that he would discuss rent prices with Walnut Creek's owners and get back to them within a week "with an agreement to agree to 7.50 and/or 7.25."

On January 23, 2019, after Hurley asked Ly for an update, Ly told Hurley by email that the Walnut Creek owners "have their options laid out in front of them, and due to an NDA, [he] can't disclose much else." Hurley responded: "To say that we were caught totally off guard

by the new matters you raised in your email would be an understatement." Hurley referenced the NDA and asked—for the first time—if Ly was negotiating with any other parties.

On January 31, Shalabi learned that El Rancho had posted job opportunities for the Walnut Creek location on its website. Shortly thereafter, Maya obtained a copy of the lease agreement between Walnut Creek and El Rancho. Maya reached out to the alternative location it had previously considered but learned that a lease had just been signed on the property. Shalabi testified that Maya would have pursued the alternative location earlier had it known the Walnut Creek property was no longer available. Maya ceased operations at the Walnut Creek location in October 2019 and has not reopened the store.

Maya sued Walnut Creek, Ly, and Walnut Creek's owners for fraud, negligent misrepresentation, conspiracy to commit fraud, promissory estoppel, and equitable estoppel. A jury found for Maya on its claims and for Walnut Creek on its counterclaim for breach of contract. The trial court awarded Maya a total of $20,855,917 in damages, which included loss of business value and exemplary damages less an offset for Walnut Creek's damages and attorney's fees. Both parties appealed. The court of appeals reversed and rendered judgment that Maya take nothing, holding that Maya's reliance could not be justified as a matter of law under the red flag doctrine. 719 S.W.3d 347, 361, 367-68 (Tex. App.—Dallas 2024). The court also held that sufficient evidence supported Walnut Creek's counterclaim and damages, and it remanded for rendition of a new judgment in favor of Walnut Creek. *Id.*

at 362-67. Maya filed a petition for review challenging the take-nothing judgment, which we granted.

ANALYSIS

The jury was asked whether Walnut Creek committed fraud against Maya, and it answered yes. The question included instructions on two fraud theories: fraudulent misrepresentation and fraudulent nondisclosure. Fraudulent misrepresentation requires (1) a material misrepresentation that (2) was either known to be false when made or was asserted without knowledge of its truth, (3) was intended to be acted upon, (4) was relied upon, and (5) caused injury. *Formosa Plastics Corp. USA v. Presidio Eng'rs & Contractors, Inc.*, 960 S.W.2d 41, 47-48 (Tex. 1998). Both fraudulent misrepresentation and fraudulent nondisclosure require actual and justifiable reliance. *See Roxo Energy Co. v. Baxsto, LLC*, 713 S.W.3d 404, 408 (Tex. 2025).[1]

Maya contends that the court of appeals erred in holding that its reliance on Walnut Creek's misrepresentations and omissions was not justified. Walnut Creek responds that there is no evidence it made any misrepresentations or had a duty to disclose, but that even if there were, Maya's reliance was unjustified. We begin by framing the alleged misrepresentations. We then address why, even assuming their falsity, reliance on them was unjustifiable as a matter of law.[2]

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[1] The court of appeals concluded that Maya's other claims also require proof of justifiable reliance. 719 S.W.3d at 356. Maya's briefing does not address those claims.

[2] We do not separately address whether Walnut Creek owed a duty to disclose because the nondisclosure Maya alleges here (failure to disclose that

I

Walnut Creek contends that it made no misrepresentations that a new lease would be executed or that Walnut Creek was negotiating exclusively with Maya. We agree. Maya cannot complain that Walnut Creek failed to execute a new lease with Maya because "agreements to negotiate toward a future contract are not legally enforceable." *Dallas/Ft. Worth Int'l Airport Bd. v. Vizant Techs.*, 576 S.W.3d 362, 371 (Tex. 2019). Nor can Maya complain about negotiations with another party because Walnut Creek did not represent that it would negotiate exclusively with Maya.

Maya also contends that Ly, on behalf of Walnut Creek, made false representations to Maya that the property was presently available to re-lease and that the parties had reached agreement on all terms except rent even though Walnut Creek had already signed a lease for more rent per square foot with El Rancho. In the analysis of justifiable reliance that follows, we assume without deciding that these representations were false.

II

"'Justifiable reliance usually presents a question of fact' for the jury to decide." *Barrow-Shaver Res. Co. v. Carrizo Oil & Gas, Inc.*, 590 S.W.3d 471, 497 (Tex. 2019) (quoting *JPMorgan Chase Bank, N.A. v. Orca Assets G.P.*, 546 S.W.3d 648, 654 (Tex. 2018)). But the element can be "negated as a matter of law when circumstances exist under which

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the property had been leased to another party as of July 2018) is the converse of the affirmative misrepresentations Maya alleges (Ly's statements in the last quarter of 2018 that the property was available for Maya to re-lease). Accordingly, the reliance analysis is the same for both theories.

reliance cannot be justified," *id.* (quoting *Orca Assets*, 546 S.W.3d at 654), because those circumstances show "it is extremely unlikely that there is actual reliance on the plaintiff's part." *Grant Thornton LLP v. Prospect High Income Fund*, 314 S.W.3d 913, 923 (Tex. 2010) (quoting *Haralson v. E.F. Hutton Grp.*, 919 F.2d 1014, 1026 (5th Cir. 1990)).

We use the "red flag doctrine" to identify such circumstances: "[A] person may not justifiably rely on a representation if there are red flags indicating such reliance is unwarranted." *Id.* (internal quotation marks omitted). This doctrine stems from the Second Restatement of Torts, which provides that a plaintiff "cannot recover if he blindly relies upon a misrepresentation the falsity of which would be patent to him if he had utilized his opportunity to make a cursory examination or investigation." RESTATEMENT (SECOND) OF TORTS § 541 cmt. a (A.L.I. 1976).[3]

We have declined to say how many red flags are sufficient to negate justifiable reliance. *See Orca Assets*, 546 S.W.3d at 655 ("We are not prepared to say that any single one of these [red flags] could preclude justifiable reliance on its own and as a matter of law."). Instead, courts

[3] The Supreme Court of the United States employed this provision of the Restatement in holding that common-law fraud requires justifiable reliance—not reasonable reliance. *Field v. Mans*, 516 U.S. 59, 70-71 (1995). The Fifth Circuit adopted from *Field* the principle that reliance on a fraudulent misrepresentation is not justified if "its falsity is obvious or there are 'red flags' indicating such reliance is unwarranted." *In re Mercer*, 246 F.3d 391, 417-18 (5th Cir. 2001) (emphasis omitted). We adopted the red flag doctrine from the Fifth Circuit in turn. *See Grant Thornton*, 314 S.W.3d at 923. The Restatement does not require the recipient of a misrepresentation to investigate even if "he might have ascertained the falsity of the representation had he made an investigation." RESTATEMENT (SECOND) OF TORTS § 540.

must ask whether, "given a fraud plaintiff's individual characteristics, abilities, and appreciation of facts and circumstances at or before the time of the alleged fraud[,] it is extremely unlikely that there is actual reliance on the plaintiff's part." *Grant Thornton*, 314 S.W.3d at 923 (alteration in original) (quoting *Haralson*, 919 F.2d at 1026). If sufficient red flags exist to alert the recipient to the potential unreliability of the misrepresentation, then the recipient must "protect its own interests through the exercise of reasonable diligence." *Orca Assets*, 546 S.W.3d at 657. A party that fails to exercise reasonable diligence is "charged with knowledge of all facts that would have been discovered by a reasonably prudent person similarly situated." *Id.* at 654 (quoting *AKB Hendrick, LP v. Musgrave Enters.*, 380 S.W.3d 221, 232 (Tex. App.—Dallas 2012, no pet.)).

We first consider whether red flags existed indicating to Maya that the property may no longer be available for re-lease. We then consider whether a reasonably prudent person similarly situated would have discovered information that rendered its reliance unjustifiable.

A. The "big surprise" was a red flag that the property may no longer be available for re-lease.

This Court takes a holistic approach in determining whether sufficient red flags exist. *See id.* at 655-56. Rather than counting red flags, we "view the circumstances in their entirety while accounting for the parties' relative levels of sophistication." *Id.* at 656. A sophisticated party "should be expected to recognize red flags that the less experienced may overlook." *Id.* (internal quotation marks omitted). And a party

engaged in arm's-length negotiations "must exercise ordinary care for the protection of his own interests." *Barrow-Shaver*, 590 S.W.3d at 497.

The court of appeals concluded that five red flags existed, which in aggregate negated justifiable reliance: (1) Maya was a sophisticated party; (2) the parties were engaged in arm's-length negotiations; (3) the existing lease did not require Walnut Creek to lease to or negotiate exclusively with Maya; (4) Ly's statements were too indefinite and vague to justify reliance; and (5) the lengthy and unsuccessful negotiations raised suspicions that the lease was in jeopardy. 719 S.W.3d at 357-360. We reach the same conclusion, though for different reasons.

To be sure, Maya was a sophisticated party engaged in arm's-length negotiations. But these are not red flags in themselves; rather, they are a lens through which we view a party's ability to perceive red flags. As a sophisticated party engaged in arm's-length negotiations, Maya is expected to "recognize 'red flags' that the less experienced may overlook" and to "exercise ordinary care for the protection of [its] own interests" in light of any red flags. *Orca Assets*, 546 S.W.3d at 654, 656 (citations omitted); *see also Barrow-Shaver*, 590 S.W.3d at 497 (requiring ordinary care during arm's-length transactions).

But whether reliance is negated as a matter of law does not turn on whether the court can tally a sufficient number of red flags. Context is determinative, and, in some cases, one red flag alone may negate reliance as a matter of law. Here, as Maya admits, the record shows that the announcement of El Rancho's "big surprise" in the summer or fall of 2018 raised Maya's suspicions that its competitor might be taking over the lease at the Walnut Creek property. In *Orca Assets*, we

determined that an employee's "doubts" that the other party was telling the truth were a red flag. 546 S.W.3d at 656-57. But in that case, those doubts were just one of eight potential red flags. *Id*. at 655. The Court was "not prepared to say that any single one of these factors could preclude justifiable reliance on its own and as a matter of law." *Id*.

Other jurisdictions generally hold that when a sophisticated party becomes aware of facts that could reasonably call into question the veracity of the defendant's representation, a reasonable investigation is required. For example, the Third Circuit has held that a sophisticated party is not justified in relying on a representation that a tax scheme is legal when the party knows it would be claiming losses that it did not suffer. *DDRA Cap., Inc. v. KPMG, LLP*, 710 F. App'x 522, 527 (3d Cir. 2017). This is "a crucial red flag that should have prompted them to conduct further investigation" because it is "a matter of common sense" that the IRS would not allow this transaction. *Id*. at 526-27. Similarly, the Sixth Circuit held that a prospective franchisee could not justifiably rely on the franchisor's statement that other franchisees generate revenue when the prospective franchisee received inconsistent financial documents, some of which indicated the franchisees lost money. *Aron Alan, LLC v. Tanfran, Inc.*, 240 F. App'x 678, 683-84 (6th Cir. 2007). The court concluded that this disparity "creates doubt about which financial document is accurate," making the documents "inherently untrustworthy." *Id*. at 683.

On the other hand, when evidence does not cause an actual or reasonable suspicion that the representation is false, that evidence alone generally is not enough to negate justifiable reliance. The Ninth

Circuit—applying Texas law—recently held that a reasonable jury could find a sophisticated party was justified in relying on representations that a bankrupt construction project was paid off. *Hall CA-NV, LLC v. Ladera Dev. LLC*, Nos. 24-985, 24-1387, 2026 WL 84876, at *2 (9th Cir. Jan. 12, 2026). The court held that an erroneous spreadsheet, a memorandum indicating hotel closures for construction, and the existence of construction fencing did not necessarily negate justifiable reliance because those potential red flags all had rational alternative explanations and "[d]eciding whether these interpretations of the facts are reasonable is up to a jury." *Id.*

This case is similar to *DDRA Capital* and *Aron Alan*. When Maya learned of El Rancho's "big surprise," it recognized that this announcement could relate to the Walnut Creek property. Just as the red flag in *DDRA Capital* should have prompted further investigation, Maya should have investigated when it became suspicious that El Rancho may have leased the Walnut Creek property. *See* 710 F. App'x at 527. Unlike in *Hall CA-NV*, where the plaintiff did not pick up on the potential red flags, which had reasonable alternative explanations, *see* 2026 WL 84876, at *2, Maya recognized that the property might no longer be available for lease upon hearing about the "big surprise." When a sophisticated party engaged in arm's-length negotiations grows suspicious about the truth of a representation, the party must investigate, not blindly rely on that representation.

B. A reasonably prudent person similarly situated would have discovered information that renders reliance unjustifiable.

When red flags exist, a party "must exercise reasonable diligence and ordinary care to protect its interests." *Barrow-Shaver*, 590 S.W.3d at 501 (citing *Orca Assets*, 546 S.W.3d at 657-58). If it fails to do so, the party is "charged with knowledge of all facts that would have been discovered by a reasonably prudent person similarly situated." *Orca Assets*, 546 S.W.3d at 654 (quoting *AKB*, 380 S.W.3d at 232).

In the cases reaching this Court to date, a reasonable investigation would unquestionably have revealed the alleged fraud—often because language in a contract or in public records directly contradicted an oral misrepresentation. *See id.* at 657-58, 660; *Barrow-Shaver*, 590 S.W.3d at 499-500. But this case is different: Walnut Creek's lease with El Rancho was not a matter of public record, nor had the fact of its existence been disclosed to Maya.

In this situation, other jurisdictions generally hold that the plaintiff must at least raise its concern with the counterparty before reliance can be justifiable. The Fifth Circuit's holding in *Jacked Up, L.L.C. v. Sara Lee Corp.* is particularly instructive. 854 F.3d 797 (5th Cir. 2017). While Sara Lee and Jacked Up were negotiating a licensing agreement, Sara Lee raised a red flag by requesting a provision that would terminate the agreement if Sara Lee sold its business. *Id.* at 803. Jacked Up asked Sara Lee whether it intended to sell, and Sara Lee responded that it "had no intent to sell" and that "under no circumstance" would Sara Lee sell and not include the licensing agreement. *Id.* Less than a month later, Sara Lee announced the sale

of its business and terminated the licensing agreement. *Id.* Jacked Up sued Sara Lee for fraud and fraudulent inducement, among other claims. *Id.* at 804. The Fifth Circuit held that justifiable reliance was not negated despite the existence of a red flag because Jacked Up "did the only thing [it] could to investigate—[it] asked Sara Lee executives whether they currently planned to sell the company." *Id.* at 812. Because Jacked Up "could not have learned the truth with reasonable investigation," it was not charged with knowledge of the fraud. *Id.* Other courts have reached similar conclusions.[4]

Here, we conclude that a reasonably prudent person similarly situated would have asked Walnut Creek if the property was still available for re-lease after learning about El Rancho's "big surprise." Having failed to do so, Maya is charged with the knowledge it would have obtained had it asked Walnut Creek this question.

Walnut Creek could have responded to this question in one of at least three ways. First, Walnut Creek could have lied and said the property was not leased to anyone else. This response would have strengthened Maya's reliance argument, all other things being equal. *See id.* Second, Walnut Creek could have disclosed to Maya that it had

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[4] *See, e.g.*, *Paul Morrell, Inc. v. Kellogg Brown & Root Servs., Inc.*, 453 F. App'x 322, 327 (4th Cir. 2011) (holding justifiable reliance not negated where plaintiff "sought additional reassurances" in light of red flags); *In re Whittington*, 530 B.R. 360, 385 (Bankr. W.D. Tex. 2014) (holding justifiable reliance not negated because "Duncan asked a pointed question of Whittington" and Whittington lied in response); *Loreley Fin. (Jersey) No. 3 Ltd. v. Citigroup Glob. Mkts. Inc.*, 987 N.Y.S.2d 299, 306-07 (App. Div. 2014) (holding justifiable reliance not negated because Citigroup "conducted additional due diligence" in light of red flag and received "inaccurate information" in response).

already leased the property to El Rancho. This response likely would have given Maya time to turn to its backup option. Third, Walnut Creek could have told Maya that it could not answer the question due to an NDA.[5] In that event, Maya would not have been justified in relying on Walnut Creek's earlier representations that the property was presently available for re-lease.

Were we to hold that a reasonable investigation would have been fruitless, we would put Maya in a better position by failing to ask the question than it would be in had it asked. Maya contends that it was justified in relying on Walnut Creek's representations of availability despite its doubts because Walnut Creek continued to pursue negotiations. But had Maya simply asked Walnut Creek whether the property remained available to re-lease, its doubts would have been either eliminated or confirmed. Thus, we conclude Maya needed to at least raise its concern about those representations with Walnut Creek before it could justifiably rely on them. Because it did not, Maya's reliance was not justifiable.

In sum, Maya admits it grew suspicious that the property might no longer be available when it learned of El Rancho's big surprise. When a sophisticated party engaged in arm's-length negotiations becomes suspicious that a representation may be false, its blind reliance on that representation without further investigation is per se unjustifiable. *See Orca Assets*, 546 S.W.3d at 657 (sophisticated party that "remained

[5] The record suggests this was the most likely response as Walnut Creek eventually revealed the NDA in response to Maya's continued efforts to negotiate.

skeptical" could not blindly rely on misrepresentation when "its knowledge, experience, and background called for further investigation"). Because Maya easily could have asked Walnut Creek if the property remained available, its reliance on Walnut Creek's misrepresentations was unjustifiable as a matter of law.

CONCLUSION

We affirm the court of appeals' judgment that Maya take nothing on its fraud claim against Walnut Creek. Having resolved Maya's sole challenge to the judgment of the court of appeals, the case is remanded to the trial court for rendition of a new judgment in Walnut Creek's favor on its claim for breach of contract.

J. Brett Busby
Justice

OPINION DELIVERED: June 26, 2026