By Stephen Gibson[1]

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***Fraud*: Contract documents limiting rights allegedly misrepresented preclude, as a matter of law, reasonable reliance on the alleged misrepresentations.**

Fraud has always been a recognized exception to the parol evidence rule so that contract documents cannot be used to shield an underlying misrepresentation inducing the transaction. *Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am*., 341 S.W.3d 323, 331 (Tex. 2011); *Dallas Farm Mach. Co. v. Reaves*, 158 Tex. 1, 307 S.W.2d 233, 239 (Tex. 1957). However, even if the alleged misrepresentation or misleading circumstances are admissible, the plaintiff must still prove reasonable reliance causing injury. In *Mercedes-Benz USA, LLC v. Carduco, Inc.*, the court held in a unanimous opinion by Justice Devine that the contract documents themselves established, as a matter of law, that the plaintiff could not have reasonably relied on the alleged misrepresentations. As a result, the court reversed the judgment in favor of the plaintiff and rendered judgment that plaintiff take nothing.

The U.S. distributor for Mercedes-Benz automobiles became dissatisfied with its dealership in Harlingen and discussed its relocation to McAllen. The move never happened and the dealership owner later pleaded guilty to the felony offence of failing to report a cash transaction for more than $10,000. To prevent Mercedes from terminating the dealership, the owner agreed to sell its dealership to Carduco, a business owned and operated by his father, who was an experienced new car dealer in the area. Carduco submitted its application to Mercedes to operate the franchise at its current location in Harlingen.

While that application was pending, Mercedes representatives suggested to Carduco that if it wanted to move the dealership to McAllen as discussed with the previous dealer, it should submit an alternative plan in addition to its proposal to continue operations at the Harlingen location. Although Mercedes representatives accompanied Carduco's principal to inspect possible locations for a McAllen dealership, Carduco failed to submit an alternative plan for relocating to McAllen. Mercedes did not disclose to Carduco that it was negotiating with another dealer who was ultimately awarded the McAllen franchise.

Carduco learned another dealer would be operating in McAllen after it signed xhe Harlingen franchise agreement. That agreement specifically provided that the dealer had "no right or interest in any [franchise territory] and that [Mercedes] may add new dealers to or relocate dealers into [the d]ealer's [franchise territory]." Mercedes later rejected Carduco's request to relocate to the McAllen franchise territory.

Carduco sued Mercedes and recovered $15.3 million in actual damages on the theory that Mercedes fraudulently induced Carduco to enter into the Harlingen franchise agreement by leading it to believe that operation could be relocated to McAllen. The opinion begins with a return to last year's decision in *JP Morgan Chase Bank v. Orca Assets* in which it deemed credulity a misrepresentation defense when no reasonable person could have believed a representation in light of the "red flags" that the representation could not be true. One of the factors that Mercedes cited was the requirement that the franchisee invest millions in the Harlingen facilities – something that was

[1] The opinions expressed are solely those of the author. They do not necessarily represent the views of Munsch, Hardt Kopf & Harr, P.C. or its clients.

nonsensical if the dealership was to relocate to McAllen. Moreover, the notion that the dealership would be permitted to move was contradictory to the franchise agreement's specification that the dealer had no right to move and that Mercedes controlled dealer relocations.

Under the Texas Occupations Code, the automaker-dealer franchise agreement cannot give the automaker first refusal rights over the transfer of a dealership from one franchisee to another or to unreasonably object to dealership relocation. According to the opinion, these statutory rights "underscore" that Carduco should have insisted on the right to relocate in the written agreement instead of signing a contrary written agreement.

The evidence established that Carduco's principal had "decades of experience" as a new car dealer and understood the nature of the business and was, therefore, a sophisticated party notwithstanding that he'd no prior experience working with Mercedes. He claimed that Mercedes' actions suggested to him that he would be able to relocate the dealership to McAllen even though he acknowledged that Mercedes never promised to hold that territory open for Carduco. In light of the principal's knowledge about auto dealership agreements and terms of the agreement he signed on Carduco's behalf, Carduco could not have reasonably relied on his interpretation or perception of Mercedes' actions as a promise that Carduco would be able to relocate the dealership.

Consistent with its holding earlier this month in *Bombardier*, the opinion noted that a duty to disclose only arises from a fiduciary relationship or a partial disclosure that is misleading if not corrected. Here, Carduco was not an existing franchisee and had no relationship with Mercedes when the alleged suggestions about the dealership in McAllen were made. Further, Carduco conceded that Mercedes never made any representations that Carduco would be able to move the dealership. Consequently, the partial disclosure aspect of fraudulent concealment never came into play and the court reserved judgment about whether Texas law recognized §551 of the Restatement (Second) of Torts concerning the circumstances that trigger a duty to disclose.

The opinion concludes that the absence of reasonable reliance was conclusively established. As a result, the court reversed the judgment against Mercedes and rendered judgment that Carduco take nothing.