

The Texas Lawbook

Free Speech, Due Process and Trial by Jury

Fourteenth Court of Appeals: References to Racial, Gender Bias Mandate New Trial

AUGUST 18, 2026 | **BY MICHELLE CASADY**

In a breach of contract case where comments before the jury implied certain parties were racist, sexist or even akin to Nazi Joseph Goebbels, a new trial must take place, the Fourteenth Court of Appeals determined Tuesday.

A Harris County jury that heard six weeks of testimony in 2023 determined Mid Main Properties was entitled to \$32.5 million in damages, which Judge Rabeea Sultan Collier reduced to about \$9.6 million in an April 2024 final judgment (not including conditional appellate fees and post-judgment interest). But comments made in front of the jury, both during trial and in closing arguments, mean there must be a do-over, a three-justice panel decided.

“Trial counsel should be given wide latitude in arguing the evidence and the reasonable inferences from the evidence to the jury,” the panel held. “Still, we will not disregard the incurably harmful effect of repeated references to racial or gender prejudices when the evidence upon which they are based is ultimately determined to have been erroneously admitted.”

Justice Kevin Jewell authored the panel’s 50-page opinion, joined by Chief Justice Tracy Christopher and Justice Tonya McLaughlin. Justice Jewell wrote that while some of the statements the court detailed “may be considered permissibly hyperbolic, most are comparable to those that courts have held to be so inherently prejudicial and inflammatory that no instruction could have cured them.”

“After reviewing the entire record, we

hold that the ‘strong medicine’ of a new trial is warranted,” the court concluded.

According to court documents, Mid Main hired Patriot Contracting in 2014, which is owned by Stephen J. Friedman, to serve as the general contractor on the project to construct four residential towers and a parking garage.

The fallout over the project spilled into Harris County District Court in March 2017. Patriot originally sued over allegedly shoddy work performed by its subcontractors, HERC Solutions and Scaffold Solutions, then Mid Main filed counterclaims as a third-party defendant, and Travelers Casualty and Surety Company of America was named as a third-party defendant, too.

Mid Main alleged Patriot’s work was defective, that it had been overcharged and that Patriot abandoned the project.

On appeal, Patriot, its owner, Friedman, and Travelers alleged that certain comments made by Mid Main’s trial counsel, John Zavitsanos, and counsel for HERC and Scaffold Solutions, William F. Harmeyer, had “repeatedly injected unfairly prejudicial matters into the trial proceedings by way of irrelevant evidence and improper witness questions, culminating in incurably harmful jury argument,” according to the opinion. Specifically, the comments stem from four emails in evidence that “paint Friedman and Patriot employees as racist or sexist,” according to the opinion.

Zavitsanos questioned a Patriot superintendent about whether Friedman had a problem with the project’s architect, a Black man. He later asked

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the superintendent whether Friedman had “a problem with Hispanics and threatening to call immigration” to the work site, whether he had “problems with Muslims,” and whether Friedman also had “a real problem with women that have their own mind” or “speak their own mind.”

According to the opinion, Harmeyer, when cross-examining a Patriot project manager “drew a connection to Nazi Germany.” The following exchange is quoted in the court’s opinion:

Q. Do you know what propaganda is?

A. I think you’re about to tell me.

Q. That’s when you tell a lie loud enough and often enough that people start to believe it. Joseph Goebbels, Hitler’s chief propagandist, World War II, led to the slaughter of millions of people. If you tell a lie loud enough and often enough, people will believe you, correct?

A. That’s called gaslighting, as well, so yes.

The appellate panel wrote that the emails should have been excluded from evidence, because they are irrelevant to the breach of contract and tortious interference claims being litigated and because “the obvious danger of unfair prejudice substantially outweighed any relevance.”

“The challenged emails added nothing probative to support or refute those claims,” the panel wrote. “According to Mid-Main, they were relevant to proving that Patriot breached the contract by understaffing the crews and mismanaging the work, which happened because Friedman was prejudiced against Mexican workers and women. We disagree such a theory supports the relevance of these emails to Mid-Main’s claim.”

“To prove breach of contract, the plaintiff has to show that a breach occurred; why the breach occurred is not something that must be proven to prevail.”

The panel also noted that during closing arguments, counsel for Mid Main referred to Friedman as a “petty, vindictive, racist, mean little man” and wrote that calling someone “racist” during closing arguments “is not a mere incidental reference to race; it is a characterization specifically designed to induce the jury to view the defendant through a racial lens and feel animus toward him.”

Zavitsanos is the only lawyer involved in the case who responded to The Texas Lawbook’s request for comment Tuesday.

“I’m disappointed, to say the least,” Zavitsanos said. “Like anybody would be, I’m disappointed. I mean, look, there were layers upon layers of issues and evidence that ... is pretty overwhelming that there was a breach.”

He said the firm stands ready to try the case again “because that’s what we do” and that he has “the utmost respect for the courts.”

“This project went off the rails for a number of reasons, including the fact that this man had threatened to call the immigration authorities on Hispanic workers and that there was a subcontractor company run by a woman and he had problems with that,” he said. “There were all kinds of comments that he made that affected the progress of the work.”

Mid Main is represented by Kelsi Stayart White and Emily Adler of Ahmad, Zavitsanos & Mensing.

Friedman is represented by David Keltner, Jacob deKeraty and Lindsey Teklitz of Kelly Hart & Hallman and Michael Essmyer of Houston.

Travelers Casualty and Surety Company of America is represented by Dale Wainwright and Justin Bernstein of Greenberg Traurig.

Travelers issued a statement to The Lawbook through counsel Thursday.

“Travelers is pleased that the court of appeals carefully reviewed the evidence and issues in the case and issued a fair and just opinion,” the statement reads.

Patriot Contracting is represented by Razvan Ungureanu and Larry Veselka of

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HERC and Scaffold Solutions are
represented by William F. Harmeyer and
Richard H. Edelman.

The case number is 14-24-00395-CV.