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Perthuis v. Baylor Miraca Genetics Labs., LLC

Supreme Court of Texas

February 2, 2022, Argued; May 20, 2022, Opinion Delivered

No. 21-0036

Reporter
645 S.W.3d 228 *; 2022 Tex. LEXIS 423 **; 65 Tex. Sup. J. 1126

Thomas Brandon Perthuis, Petitioner, v. Baylor Miraca Genetics Laboratories, LLC, Respondent

Prior History: [1]** On Petition for Review from the Court of Appeals for the First District of Texas.

Baylor Miraca Genetics Labs., LLC v. Perthuis, 639 S.W.3d 108, 2020 Tex. App. LEXIS 9407, 2020 WL 7062321 (Tex. App. Houston 1st Dist., Dec. 3, 2020)

Core Terms

sales, commissions, procuring-cause, parties, ambiguous, broker, procured, procuring cause, net sales, courts, termination, default, terms, contracts, at-will, contractual, employment agreement, entitlement, negotiated, displace, buyer, contractual relationship, court of appeals, trial court, retention, salary, extrinsic evidence, obligation to pay, post-termination, channel

Case Summary

Overview

HOLDINGS: [1]-In the former employee's breach of contract action against his former employer seeking to recover commission for sales that the employee allegedly procured, the appellate court erred by holding that the procuring-cause doctrine did not apply because the agreement between the parties was silent about any exceptions to the duty to pay commissions for sales that the employee procured. The employment contract promised commissions for sales, neither the at-will provision nor the provision providing that the employee's commission would be 3.5% of his net sales displaced the procuring-cause doctrine, and it was silent about any exceptions to the obligation to pay commissions; the text of the contract did not need to opt-into the procuring-cause doctrine.

Outcome

Judgment reversed and case remanded.

LexisNexis® Headnotes

Business & Corporate Law > Agency Relationships > Duties & Liabilities > Compensation

Real Property Law > Brokers > Brokerage Agreements

Real Property Law > Brokers > Right to Commissions

HN1[] **Duties & Liabilities, Compensation**

When a seller agrees to pay sales commissions to a broker (or other agent), the parties are free to condition the obligation to pay commissions however they like. But if their contract says nothing more than that commissions will be paid for sales, Texas contract law applies a default rule called the "procuring-cause doctrine." Under that rule, the broker is entitled to a commission when a purchaser was produced through the broker's efforts, ready, able and willing to buy the property upon the contracted terms.

Business & Corporate Law > Agency Relationships > Duties & Liabilities > Compensation

Real Property Law > Brokers > Brokerage Agreements

Real Property Law > Brokers > Right to Commissions

HN2[] **Duties & Liabilities, Compensation**

The procuring-cause doctrine provides nothing more than a default, which applies only when a valid agreement to pay a commission does not address questions like how a commission is realized or whether the right to a commission extends to sales closed after the brokerage relationship ends.

Business & Corporate Law > Agency Relationships > Duties & Liabilities > Compensation

Labor & Employment Law > ... > Employment Contracts > Conditions & Terms > Compensation & Benefits

HN3[] **Duties & Liabilities, Compensation**

When a plaintiff seeks to recover commissions under the procuring-cause doctrine, three main questions arise. First, did the parties have the kind of contractual relationship to which the procuring-cause doctrine applies? If so, did the parties displace the doctrine by the terms of their contractual agreement? Finally, if the procuring-cause doctrine applies to the parties' dispute and was not displaced, to what extent does the doctrine impose liability for the specific commission payments that the plaintiff demands.

Business & Corporate Law > Agency Relationships > Duties & Liabilities > Compensation

HN4[] **Duties & Liabilities, Compensation**

If a plaintiff seeks to invoke the procuring-cause doctrine, the initial question is whether the doctrine even applies to the contractual relationship between the parties. And other cases make clear that the minimum prerequisite for the doctrine to apply is an agreement to pay a commission on a sale.

Business & Corporate Law > Agency Relationships > Duties & Liabilities > Compensation

Real Property Law > Brokers > Brokerage Agreements

Real Property Law > Brokers > Right to Commissions

HN5[] **Duties & Liabilities, Compensation**

The function of the procuring-cause doctrine is to credit a broker (or salesman, or other agent) for a commission-generating sale when a purchaser was produced through the broker's efforts, ready, able and willing to buy the property upon the contract terms. Under this doctrine, the broker's entitlement to a commission vests on his having procured the sale, not on his actual involvement in a sale's execution or continued employment through the final consummation of the sale.

Business & Corporate Law > Agency Relationships > Duties & Liabilities > Compensation

Real Property Law > Brokers > Brokerage Agreements

Real Property Law > Brokers > Right to Commissions

HN6[] **Duties & Liabilities, Compensation**

When a broker fully complies with his obligations, the owner receives the full benefit of the broker's effort. Through the diligence of the broker a buyer is produced. Once a broker performs the task of having interested a prospective buyer, an owner cannot deny the broker a fair opportunity of making a sale to him upon the terms authorized. Of course, an owner may always take the matter into his own hands, avail himself of the broker's effort, and close a sale upon satisfactory terms, but if he does, the owner's right to deny the broker's right of compensation, is a proposition not to be countenanced.

Business & Corporate Law > Agency Relationships > Duties & Liabilities > Compensation

HN7[] **Duties & Liabilities, Compensation**

The procuring-cause doctrine is not a judicially created term for commission contracts. It does not add anything to a contract or take anything away. It does not restrict parties' ability to modify their contractual relationships and it does not change the law governing whether parties have entered into such a relationship in the first place. Parties certainly may condition the obligation to pay a commission on something other than procuring the sale—they need only say so. The doctrine provides nothing more than a default rule to enforce parties' existing agreements as set forth in their contract. Functionally, it precludes post hoc efforts to rewrite contracts by adding exceptions under the guise of ambiguity.

Contracts Law > Contract Interpretation > Intent

HN8[] **Contract Interpretation, Intent**

When an agreement's language can be given a certain or definite legal meaning or interpretation, courts determine that meaning as a matter of law. Only if ambiguity remains after applying the pertinent rules of construction" could there be a fact question about intent. For contracts involving commissions, all the usual rules of construction apply, like the familiar presumptions favoring consistent usage, disfavoring surplusage, and using the plain meaning of undefined terms. The procuring-cause doctrine plays the same analytical role: allowing courts to ascertain and honor the parties' intent as expressed in their text. Judicial interpretations of contracts are governed by what the parties said in their contract, not by what one side or the other alleges they intended to say but did not.

Evidence > Inferences & Presumptions > Presumptions > Rebuttal of Presumptions

HN9[] **Presumptions, Rebuttal of Presumptions**

Parties may freely define an ordinary word to have an unusual meaning; when they do, they rebut the presumption of ordinary usage. Without any textually expressed bespoke meaning, however, courts will adopt the ordinary usage as a matter of law. Likewise, parties may freely provide their own rules for paying or withholding commissions. If they do, the procuring-cause doctrine becomes irrelevant. But without such additional terms, courts will not indulge a party's effort to smuggle in limitations on commission payments that parties could have, but did not, textually express.

Labor & Employment Law > ... > Employment Contracts > Conditions & Terms > Compensation & Benefits

HN10[] **Conditions & Terms, Compensation & Benefits**

The procuring-cause doctrine is just a manifestation of our larger refusal to countenance any effort by parties to override the authoritative constructions of contracts. Stability and predictability of contract law, and maintaining parties' incentives to write with clarity, require holding parties to the text as written—and require courts to read text as consistently as possible from case to case. The procuring-cause doctrine contributes to that stability by providing a default rule to understand what it means to promise to pay commissions for procuring a sale. However, the doctrine imposes no substantive limits. Parties remain free to structure commission agreements as they choose.

Business & Corporate Law > Agency Relationships > Duties & Liabilities > Compensation

Civil Procedure > Appeals > Standards of Review > Questions of Fact & Law

HN11[] **Duties & Liabilities, Compensation**

The procuring-cause doctrine fully respects the factfinder's authority and obligation to determine whether the broker's action produced the purchaser, which generally is purely a question of fact.

Business & Corporate Law > Agency Relationships > Duties & Liabilities > Compensation

Governments > Courts > Common Law

HN12 **Duties & Liabilities, Compensation**

Parties dissatisfied with the common-law rule remain free to provide, by contract, for additional or different rules. If they do, they can displace the procuring-cause doctrine, and courts will honor their choice.

Labor & Employment Law > ... > Employment Contracts > Conditions & Terms > Compensation & Benefits

HN13 **Conditions & Terms, Compensation & Benefits**

Departing from the procuring-cause doctrine's default rule requires no magic language. A contract merely needs to provide terms that are inconsistent with the default rule—which is to say, terms that in some way cabin the textually imposed contractual obligation to pay a commission.

Business & Corporate Law > Agency Relationships > Duties & Liabilities > Compensation

HN14 **Duties & Liabilities, Compensation**

When a contract prescribes otherwise-valid binding terms for how to handle post-termination commissions, therefore, the courts will enforce them. Contractual silence, however, leaves the procuring-cause doctrine intact as to those contracts to which the doctrine applies.

Business & Corporate Law > Agency Relationships > Duties & Liabilities > Compensation

HN15 **Duties & Liabilities, Compensation**

The procuring-cause doctrine does not preclude severing the obligation to pay sales commissions from procuring the sales. The doctrine's very function, however, is to deem silence about such an exception to reflect the parties' intent to foreclose such an exception.

Governments > Legislation > Interpretation

HN16 **Legislation, Interpretation**

Parties can define ordinary words to have bizarre meanings, for example; but if they are silent, courts will dismiss as unreasonable any post-litigation effort to give words a peculiar meaning.

Contracts Law > Contract Interpretation > Intent

HN17 **Contract Interpretation, Intent**

Courts give effect to intent as expressed in writing because it is objective, not subjective, intent that controls.

Governments > Legislation > Interpretation

HN18 **Legislation, Interpretation**

A contract has no obligation to expressly define a word to use its ordinary meaning.

Business & Corporate Law > Agency Relationships > Duties & Liabilities > Compensation

Evidence > Burdens of Proof > Allocation

HN19 **Duties & Liabilities, Compensation**

Even when the procuring-cause doctrine applies to a contractual relationship, the plaintiff still must show that he was in fact the procuring cause of specific sales.

Business & Corporate Law > Agency Relationships > Duties & Liabilities > Compensation

Evidence > Burdens of Proof > Allocation

HN20 **Duties & Liabilities, Compensation**

A plaintiff who properly invokes the procuring-cause doctrine to recover sales commissions must prove that the specific sale was the direct and proximate result of the plaintiff 's efforts or services. A plaintiff meets that burden by proving the plaintiff set in motion a chain of events which, without a break in their continuity, cause the buyer and seller to reach agreement on the sale as a primary and direct result of the plaintiff 's efforts. This necessarily requires the plaintiff to be both the proximate and but for cause of those sales.

Business & Corporate Law > Agency Relationships > Duties & Liabilities > Compensation

Real Property Law > Brokers > Right to Commissions

HN21[] **Duties & Liabilities, Compensation**

The procuring-cause doctrine requirements ensure both that a plaintiff recovers commissions that are due and that a defendant is not obligated to pay commissions that are attenuated from the plaintiff 's role. A rule of fairness and right, after all, requires fairness for the defendant as well as the plaintiff. The defendant must be free to show that the causal link was severed. For example, a salesman who made an unsuccessful effort to induce the buyer to purchase the property and had ceased his efforts to accomplish that result, all without fault on the part of the owner, is not the procuring cause when the sale was later made as the result of independent negotiations directly between the owner and the buyer, or through the medium of some other broker.

Business & Corporate Compliance > ... > Contract Formation > Offers > Definite Terms

HN22[] **Offers, Definite Terms**

A binding, multi-year contract that a plaintiff brokered and that generates repeated sales with no material adjustments may require commissions throughout the full term, because all those sales could be attributed to the same labor on the plaintiff 's part.

Contracts Law > ... > Damages > Types of Damages > Consequential Damages

HN23[] **Types of Damages, Consequential Damages**

The courts will not award speculative damages, including for any claim that is too remote and dependent upon too many contingencies. Damages must always be proved with reasonable certainty, a principle that acknowledges the limited competence of courts to track the complex effects of a breach of contract in an interdependent marketplace.

Business & Corporate Law > Agency Relationships > Duties & Liabilities > Compensation

Evidence > Burdens of Proof > Allocation

HN24[] **Duties & Liabilities, Compensation**

Claims of procuring-cause status will usually present a fact question. When they do, trial courts should give juries clear instructions regarding the plaintiff 's burden to show his status as the procuring cause for each sale at issue and the defendant's ability to defeat that showing, in whole or in part, with evidence that the plaintiff 's original role had been overtaken by events and changed circumstances.

Civil Procedure > Appeals > Record on Appeal

HN25[] **Appeals, Record on Appeal**

The standard of review requires courts to view the record in the light most favorable to the jury's verdict.

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For Baylor Miraca Genetics Laboratories, LLC, Respondent: Michelle Stratton, Smyser Kaplan & Veselka, LLP, Houston TX; Garland Murphy IV, Jarod Stewart, Smyser Kaplan & Veselka, L.L.P., Houston TX.

Judges: JUSTICE YOUNG delivered the opinion of the Court, in which Chief Justice Hecht, Justice Lehrmann, Justice Devine, Justice Blacklock, Justice Busby, and Justice Bland joined. JUSTICE HUDDLE filed a dissenting opinion, in which Justice Boyd joined.

Opinion by: Evan A. Young

Opinion

[*231] When a seller agrees to pay sales commissions to a broker (or other agent), the parties are free to condition the obligation to pay commissions however they like. But if their contract says nothing more than that commissions will be paid for sales, Texas contract law applies a default rule called the "procuring-cause doctrine." ***HN1***[↑] Under that rule, the broker is entitled to a commission when "a purchaser [was] produced through [the broker's] efforts, ready, able and willing to buy the property upon the contracted terms . . . ." *Goodwin v. Gunter, 109 Tex. 56, 185 S.W. 295, 296 (Tex. 1916)*. In this case, the agreement **[**2]** between the parties was silent about any exceptions to the duty to pay commissions for sales that petitioner procured. The procuring-cause doctrine therefore applies. Because the court of appeals held otherwise, **[*232]** we reverse its judgment and remand for further proceedings.

I

Respondent Baylor Miraca Genetics Laboratories, LLC (BMGL) made petitioner Brandon Perthuis its Vice President of Sales and Marketing in early 2015. BMGL drafted the two-page employment agreement, which Perthuis signed without alteration. The agreement gave Perthuis an annual base salary of $145,000 and stated that Perthuis's employment would be "at-will." As to Perthuis's commissions, it provided: "Your commission will be 3.5% of your net sales." Nothing more—the employment agreement did not, for example, define "net sales" or place any other parameters on the commission obligation. The employment agreement also noted that Perthuis would be eligible for retention bonuses; it referenced a separate "retention agreement," which Perthuis also signed the same day. The retention agreement expressly conditioned any retention bonus on Perthuis's continued employment.

BMGL develops and analyzes genetic tests. BMGL sells its **[**3]** tests to "channel partners," who return test specimens to BMGL after obtaining orders from physicians. Perthuis served BMGL by pursuing and negotiating contracts with channel partners, the most prominent of which was Natera, Inc. In 2015, Perthuis negotiated such a contract between Natera and BMGL. Natera agreed to purchase a minimum number of tests; in exchange, it received an exclusivity agreement, under which BMGL promised not to perform tests for Natera's direct competitors. Natera, moreover, would pay a penalty and forfeit that

exclusivity if it failed to purchase the stated minimum. Perthuis's role with respect to the sales that flowed from the Natera agreement was then done; he did not, for example, solicit batches of particular test orders, send invoices, or collect payments. But he received commissions on all sales that arose under the Natera agreement. BMGL calculated those commissions by multiplying "net" sales (*i.e.*, gross sales to Natera under the contract, adjusted by a collection rate) by 3.5%.

Although the Natera agreement was drafted to last for five years, Natera completed its minimum-purchase requirement far more quickly. Natera was set to meet that requirement by **[**4]** the end of 2016, at which point Natera would have had no further obligation to continue buying any tests under the agreement (although Natera had the option to continue purchasing a certain number of tests each quarter to retain exclusivity until 2020). BMGL, unsurprisingly, preferred increasing its business with Natera to either losing that business or being forced to retain an exclusive relationship with only minimal ongoing sales.

BMGL therefore directed Perthuis to negotiate a contractual amendment. Perthuis spent months doing so and completed the negotiations in January 2017. The terms of the amended contract substantially increased Natera's minimum-purchase requirement, making it the largest such contract in BMGL's history.

Perthuis relayed his success to BMGL leadership on Thursday, January 19. The CEO immediately requested a meeting with Perthuis, which was set for the following Monday, January 23. The meeting, it turns out, was not to commend Perthuis, but to fire him. The very next day, January 24, BMGL executed the amendment that Perthuis had negotiated.[1]

[*233] BMGL refused to pay Perthuis commissions on any sales that were finalized after his termination, including sales that flowed **[**5]** from the amended Natera contract. Nor did BMGL pay anyone else commissions for those sales. In fact, earlier in January—before Perthuis announced his breakthrough with Natera—BMGL's leadership had sought to cut costs by altering its commission and compensation plans. BMGL rolled out a new commission plan for its junior sales team, which expressly stated that commission fees would only "be made to employee if employed at the end of the commission period." BMGL did not, however, change Perthuis's commission structure.

Perthuis claimed that he was the procuring cause of all sales to Natera and other channel partners that were finalized in the period from his termination through trial in October 2018.[2] He sued BMGL for breach of contract, asserting that he was entitled to a commission on all those sales.[3] BMGL denied having any further commission-related obligations to Perthuis. It argued that the employment agreement's text clearly displaced any role for the procuring-cause doctrine. But even if the contract *were* silent and that doctrine *did* apply, BMGL argued that Perthuis could not meet his burden to show that he qualified as a "procuring cause" of any sales for which he claims unpaid **[**6]** commissions.

The case went to trial, and the court instructed the jury on the procuring-cause doctrine as follows:

> Perthuis' "sales" included all sales for which he was the procuring cause.

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[1] Just over two months after BMGL terminated Perthuis, BMGL and Natera executed another amendment, modifying the pricing terms. Six months later, BMGL and Natera again modified the pricing through a memorandum of understanding.

[2] The parties (and the Court) focus on the sales to Natera because those sales dwarfed those to other channel partners and commissions for them constitute the bulk of the jury's award.

[3] Perthuis also brought other claims, but only his breach-of-contract claim was tried to a jury, and only that claim is before us.

> A "procuring cause" of a sale is the principal and immediate cause of the sale. It need not be the sole cause, and an agent is said to be the procuring cause of a sale when his acts have so contributed to bringing about the sale that but for his acts the sale would not have been accomplished.
> The fact that Mr. Perthuis was discharged by BMGL prior to the time a sale was completed does not bar his right to a commission if he was the procuring cause of the sale.

The jury found for Perthuis as to Natera and other channel partners but did not award him the full amounts that he sought. The trial court rendered judgment on the verdict but declined to award any attorneys' fees to Perthuis.[4]

BMGL appealed; Perthuis cross-appealed to challenge the denial of attorneys' fees. The court of appeals reversed and rendered judgment for BMGL. According to that court, the parties' contract unambiguously entitled Perthuis to commissions only for sales made during his employment, not for procuring potential buyers for sales **[**7]** that closed after he was terminated. The court of appeals thus declined to address BMGL's further challenges to the trial court's judgment. The court upheld the denial of attorneys' fees for Perthuis because Perthuis no longer was the prevailing party.

[*234] II

This Court most clearly articulated the procuring-cause doctrine in *Goodwin v. Gunter* over a century ago, describing it as a "settled and plain" rule. *185 S.W. at 296*. *HN2*[↑] The doctrine provides nothing more than a default, which applies only when a valid agreement to pay a commission does not address questions like how a commission is realized or whether the right to a commission extends to sales closed after the brokerage relationship ends.

HN3[↑] When a plaintiff seeks to recover commissions under the procuring-cause doctrine, as in this case, three main questions arise. First, did the parties have the kind of contractual relationship to which the procuring-cause doctrine applies? If so, did the parties displace the doctrine by the terms of their contractual agreement? Finally, if the procuring-cause doctrine applies to the parties' dispute and was not displaced, to what extent does the doctrine impose liability for the specific commission payments that the plaintiff demands? **[**8]** We address these questions in turn.

A

HN4[↑] If a plaintiff seeks to invoke the procuring-cause doctrine, the initial question is whether the doctrine even applies to the contractual relationship between the parties. *Goodwin* and other cases make clear that the minimum prerequisite for the doctrine to apply is an agreement to pay a commission on a sale. *Id.* The quintessential example of such a contractual relationship is a broker seeking to procure a buyer for real property, as in *Goodwin* itself. Yet in cases far beyond the real-estate industry, Texas

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[4] The judgment awarded Perthuis $962,336.89 in compensatory damages for unpaid commissions, $80,282.63 in prejudgment interest, and postjudgment interest at 5%.

courts,[5] and those of many other jurisdictions,[6] have employed and continue to employ the procuring-cause doctrine.[7]

HN5[↑] The function of the procuring-cause doctrine is to credit a broker (or salesman, or other agent) for a commission-generating sale when "a purchaser [was] produced through [the broker's] efforts, ready, able and willing to buy the property upon the contract terms . . . ." *Goodwin, 185 S.W. at 296*. Under this doctrine, the broker's entitlement to a commission vests on his having *procured* the **[*235]** sale, not on his actual involvement in a sale's execution or continued employment through the final consummation of the sale. *Goodwin*'s analysis rested on **[**9]** the idea that—absent contractual language to the contrary—the contract deems a sale to be the broker's sale if the broker, while under contract with the owner, made the sale possible. The Court's essential holding was that "the commissions are earned and the broker is entitled to their payment according to the contract if, while it is in force, he procures a purchaser to whom the owner directly makes a sale upon terms which are satisfactory to himself . . . ." *Id.*

"This is but a rule of fairness and right," the Court continued. *Id.* *HN6*[↑] After all, when a broker fully complies with *his* obligations, "the owner receives the full benefit of the broker's effort. Through the diligence of the broker a buyer is produced." *Id.* Once a broker performs the task of "[h]aving interested a prospective buyer," an owner cannot deny the broker "a fair opportunity of making a sale to him upon the terms authorized." *Id.* Of course, an owner may always "take the matter into his own hands, avail himself of the broker's effort, [and] close a sale upon satisfactory terms," but if he does, the owner's right to "deny the broker's right of compensation, is a proposition not to be countenanced." *Id.*

We specifically rejected **[**10]** the argument, heavily pressed by BMGL, that eliminating a broker's role immediately before finalizing a sale means that the broker could not have taken the necessary final step to earn a commission:

> It is no answer in such a case to say that a purchaser has not been produced by the broker . . . and the owner is therefore free to deal with the buyer, though produced by the broker, without any liability to the latter. That becomes unimportant in the face of the outstanding fact that it is by the broker the buyer is produced, and, before his negotiation is concluded, a sale is made, as the result of his effort . . . . The owner will therefore be deemed, in such a case, to have waived the terms to which the broker

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[5] Texas lower-court cases have applied the procuring-cause doctrine to contracts involving metal buildings, marine equipment, mules, and rose bushes, to offer but a few non-real-estate examples. *See, e.g.,* *Murphy v. McDermott Inc., 807 S.W.2d 606, 607, 612 (Tex. App.—Houston [14th Dist.] 1991, writ denied)* (marine equipment); *Metal Structures Corp. v. Bigham, 347 S.W.2d 270, 273 (Tex. Civ. App.—Dallas 1961, writ ref 'd n.r.e.)* (metal buildings); ***Ray v. Robinson, 271 S.W.2d 159, 163 (Tex. Civ. App.—Texarkana 1954, no writ)*** (rose bushes); *Gibbens v. Williams, 4 S.W.2d 316, 317 (Tex. Civ. App.—Austin 1928, no writ)* (mules).

[6] To take two examples, *Zelensky v. Viking Equipment Co., 70 Wn.2d 78, 422 P.2d 293, 296-97 (Wash. 1966)*, applied the procuring-cause doctrine to an electronic-device sale and *Gunderson v. North American Life & Casualty Co., 248 Minn. 114, 78 N.W.2d 328, 331-33 (Minn. 1956)*, applied the doctrine to the sale of life insurance. *See also, e.g.,* *Cisne v. Gen. Elec. Cap. Corp., 26 F. App'x 229, 232-33 (4th Cir. 2002)* (sale of vehicle-service program to car dealers); *Mastaba, Inc. v. Lamb Weston Sales, Inc., 23 F. Supp. 3d 1283, 1298-99 (E.D. Wash. 2014)* (frozen potato products).

[7] The doctrine remains in active use in Texas courts. *See, e.g.,* *Logan v. Randall, No. 05-19-00043-CV, 2020 Tex. App. LEXIS 1719, 2020 WL 948381, at *5 (Tex. App.—Dallas Feb. 27, 2020, pet. denied)* (confirming and applying the doctrine's "general rule" in real-estate context); *Cohen-Sagi v. ProFinance Assocs., Inc., No. 04-08-00181-CV, 2009 Tex. App. LEXIS 1572, 2009 WL 540217, at *2 (Tex. App.—San Antonio Mar. 4, 2009, pet. denied)* (describing litigation involving the doctrine in the context of selling businesses). This Court has not needed to address the procuring-cause doctrine since 1952. *Air Conditioning, Inc. v. Harrison-Wilson-Pearson, 151 Tex. 635, 253 S.W.2d 422 (Tex. 1952)*.

> was confined, and the law declares him liable for the commissions fixed by the contract, for the reason that, except as to such waived provision, the broker's part of the contract has been fully performed. . . .

Id. at 296-97; *see also* Keener v. Cleveland, 250 S.W. 151, 152 (Tex. Comm'n App. 1923, judgm't affirmed) (confirming that a broker is entitled to a contractual commission if he was the procuring cause of the sale even if the sale was concluded by the seller or another broker).

HN7[⬆] The procuring-cause doctrine is not a judicially created "term" for commission contracts. **[**11]** It does not add anything to a contract or take anything away. It does not restrict parties' ability to modify their contractual relationships and it does not change the law governing whether parties have entered into such a relationship in the first place. Parties certainly may condition the obligation to pay a commission on something other than procuring the sale—they need only say so. The doctrine provides nothing more than a default rule to enforce parties' existing agreements as set forth in their contract. Functionally, it precludes *post hoc* efforts to rewrite contracts by adding exceptions under the guise of ambiguity.

HN8[⬆] When an agreement's "language can be given a certain or definite legal meaning or interpretation," courts determine that meaning "as a matter of law." El Paso Field Servs., L.P. v. MasTec N. Am., Inc., 389 S.W.3d 802, 806 (Tex. 2012). Only if ambiguity remains "*after* applying the pertinent rules of construction" could there be a fact question about intent. *Id.* (emphasis added; internal quotation omitted). **[*236]** For contracts involving commissions, all the usual "rules of construction" apply, like the familiar presumptions favoring consistent usage, disfavoring surplusage, and using the plain meaning of undefined terms. *See, e.g.*, Great Am. Ins. Co. v. Primo, 512 S.W.3d 890, 892-93 (Tex. 2017) (discussing several **[**12]** of the "well-established rules of contract construction"). The procuring-cause doctrine plays the same analytical role: allowing courts to ascertain and honor the parties' intent as expressed in their text. Judicial interpretations of contracts are "governed by what [the parties] said in [their] contract, not by what one side or the other alleges they intended to say but did not." Gilbert Tex. Constr., L.P. v. Underwriters at Lloyd's London, 327 S.W.3d 118, 127 (Tex. 2010).

HN9[⬆] Thus, by analogy, parties may freely define an ordinary word to have an unusual meaning; when they do, they rebut the presumption of ordinary usage.[8] Without any textually expressed bespoke meaning, however, courts will adopt the ordinary usage as a matter of law. *See, e.g.*, URI, Inc. v. Kleberg County, 543 S.W.3d 755, 764 (Tex. 2018).[9] Likewise, parties may freely provide their own rules for paying or withholding commissions. If they do, the procuring-cause doctrine becomes irrelevant. But without such additional terms, courts will not indulge a party's effort to smuggle in limitations on commission payments that parties could have, but did not, textually express.

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[8] *See, e.g.*, FPL Energy, LLC v. TXU Portfolio Mgmt. Co., L.P., 426 S.W.3d 59, 64 (Tex. 2014) ("We cannot interpret a contract to ignore clearly defined terms . . . .").

[9] The dissent contends that the parties should have been allowed to introduce extrinsic evidence to give meaning to the parties' written agreement. *Post* at 2-3, 12. In *URI*, however, the Court rejected the use of extrinsic evidence to "interpolate constraints not found in the contract's unambiguous language." *543 S.W.3d at 758, 769*. As *URI* makes clear, extrinsic evidence only "elucidates the meaning of the words employed" and cannot prove that "the parties intended additional requirements or constraints that were not expressed in the agreement—such as delivery by 5:00 p.m. or only on Sundays." *Id. at 765-66*. The same reasoning applies in this case, where the use of extrinsic evidence would be to prove a limitation on the commission obligation (specifically, continued employment) that the agreement does not include. Equally important, we reiterated that extrinsic evidence may not be used to "create ambiguity." *Id. at 757* (quoting *Cmty. Health Sys. Prof'l Servs. Corp. v. Hansen, 525 S.W.3d 671, 688 (Tex. 2017)*).

HN10[↑] The procuring-cause doctrine, therefore, is just a manifestation of our larger refusal to countenance any effort by parties to override the authoritative constructions of contracts. Stability **[**13]** and predictability of contract law, and maintaining parties' incentives to write with clarity, require holding parties to the text as written—and require courts to read text as consistently as possible from case to case. The procuring-cause doctrine contributes to that stability by providing a default rule to understand what it means to promise to pay commissions for procuring a sale. We reiterate, however, that the doctrine imposes no substantive limits. Parties remain free to structure commission agreements as they choose.

HN11[↑] To be clear—and as discussed in greater detail in Part II.C—the doctrine fully respects the factfinder's authority and obligation to determine *whether* the broker's action produced the purchaser, which generally is "purely a question of fact." *Goodwin, 185 S.W. at 297*. Under this framework, at least since *Goodwin*, Texas courts have applied the doctrine's rule when it arises.[10]

[*237] Because the employment contract here promises commissions for sales, BMGL and Perthuis's contractual relationship is the kind to which the procuring-cause doctrine applies.[11] We thus proceed to the second question: Did the parties take any steps to displace the doctrine?

B

We must ask the question because the procuring-cause doctrine is merely a default rule. ***HN12***[↑] "As always, parties dissatisfied with the common-law rule we [reaffirm] today remain free to provide, by contract, for additional or different rules . . . ." *Monroe Guar. Ins. Co. v. BITCO Gen. Ins. Corp., 640 S.W.3d 195, 203 n.12 (Tex. 2022)* (Huddle, J.). If they do, they can displace the procuring-cause doctrine, and we will honor their choice.

Departing from the procuring-cause doctrine's default rule requires no magic language. ***HN13***[↑] A contract merely needs to provide terms that are inconsistent with the default rule—which is to say, terms that in some way cabin the textually imposed contractual obligation to pay a commission. The contract could deny the payment of commissions from procured sales absent continued employment; authorize commissions only on sales that close during the employment or brokerage relationship; condition commissions on the money from the sale being received within a particular time frame; provide a time limit after termination beyond which commissions from procured sales will not be paid; or include a myriad of other terms that could displace the procuring-cause doctrine in whole or in part.

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[10] *See, e.g., Frady v. May, 23 S.W.3d 558, 563 (Tex. App.—Fort Worth 2000, pet. denied)* (collecting cases); *see also, e.g., Sec. & Commc'ns Sys., Inc. v. Hooper, 575 S.W.2d 606, 607 (Tex. Civ. App.—Dallas 1978, no writ)*; *Metal Structures, 347 S.W.2d at 273*.

[11] The dissent asserts that the procuring-cause doctrine is inconsistent with a Texas Workforce Commission (TWC) rule on commissions and bonuses. *Post* at 7-8. Neither party to this case has mentioned the TWC. The cited rule seems consistent with the doctrine: "Unless otherwise agreed, the employer shall pay, after separation, commissions or bonuses earned as of the time of separation." ***40 Tex. Admin. Code § 821.26(b)***. The rule contemplates paying commissions "*after* separation." *Id.* (emphasis added). It confirms that commissions "are earned when the employee has met all the required conditions set forth in the applicable agreement with the employer." *Id. § 821.26(a)(1)*. Nothing that we see poses any conflict with our resolution of the common-law question presented here. We reserve to a future day any potential conflict with TWC decisions. That day seems unlikely ever to come, because the statutory scheme administered by the TWC is "an alternative remedy that is cumulative of the common law" and "do[es] not abrogate common law claims against employers for an alleged failure to pay compensation." *Igal v. Brightstar Info. Tech. Grp., Inc., 250 S.W.3d 78, 88 (Tex. 2008)*, *superseded by **[**14]** statute on other grounds*, *Act of Apr. 28, 2009, 81st Leg., R.S., ch. 21, §§ 1-2, 2009 Tex. Gen. Laws 40, 40* (codified at *Tex. Lab. Code § 61.052(b-1)*).

HN14[↑] When a contract prescribes otherwise-valid **[**15]** binding terms for how to handle post-termination commissions, therefore, the courts will enforce them. Contractual silence, however, leaves the procuring-cause doctrine intact as to those contracts to which the doctrine applies.

The parties before us were entitled to freely depart from the procuring-cause doctrine's default rule. The core of BMGL's argument is that the parties *did* displace the doctrine—by signing the employment agreement.[12] BMGL's argument, **[*238]** therefore, depends on finding *something* in the employment agreement's text that addresses whether the parties intended to depart from the default rule. The agreement's at-will provision and its "your net sales" provision are the only textual possibilities, but they cannot displace the procuring-cause doctrine. Nor is there any ambiguity that creates a fact question.

1

First, we cannot agree that the agreement's "at-will" provision displaces the procuring-cause doctrine.[13] This argument is not really based on the text between these two parties; rather, it reflects the far broader position that at-will employment is inherently inconsistent with the default rule. We disagree with that assertion.

Distinctions in employment status—for example, **[**16]** whether Perthuis was an at-will employee or an independent contractor or something else—have nothing to do with the question that implicates the procuring-cause doctrine. That question is whether *commissions* that would flow from sales procured while the employee was employed (or otherwise engaged) may be forfeited solely because, before the commission is paid, the employment ends.

Perthuis's termination certainly generated *other* important consequences for both parties. He was no longer entitled to his salary (because he was an at-will employee) or any retention bonus (because he signed an agreement that expressly disclaimed such a bonus if he was no longer employed). By making Perthuis an employee and paying him a salary—rather than leaving him as an independent contractor—BMGL gained Perthuis's exclusivity. Perthuis, in turn, had received the certainty of at least some income no matter what happened vis-à-vis his sales. The retention bonus played a similar role; it made it more attractive for Perthuis to stay with BMGL. Perthuis's termination ended these mutual benefits and obligations.

Sales commissions, however, function differently. They rewarded the fruits of Perthuis's past labor. **[**17]** While Perthuis was employed by BMGL, he received continuing quarterly commissions as sales flowed in under the contracts he had previously negotiated with Natera and other channel partners. To receive those commissions quarter after quarter, nothing more was necessary *from him*. He did not need to be involved in the details of individual sales or the invoicing and processing of batches of genetic tests. No such roles are inherently necessary for entitlement to sales commissions: "The fact that the owner himself has negotiated the sale does not prevent the broker from being regarded in law as the

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[12] Indeed, BMGL's objection to the jury charge was not to its substance—that is, it did not contend that the trial court misstated the law of the procuring-cause doctrine. BMGL only contended that the procuring-cause instruction should not have been included at all, so BMGL's sufficiency challenge, discussed below, should be evaluated against the jury charge that was given. We thus need express no opinion about the particular language of that charge or the extent to which it would comply with today's opinion.

[13] The employment agreement states: "Your employment will be 'at-will,' which means that you or BMGL may terminate your employment at any time for any reason, with or without cause, and with or without notice."

procuring cause of the transaction." *Hutchings v. Slemons, 141 Tex. 448, 174 S.W.2d 487, 489 (Tex. [Comm'n Op.] 1943)*.[14]

[*239] If the jury could conclude that Perthuis had "fully performed" his "part of the contract" by the time BMGL fired him, *Goodwin, 185 S.W. at 297*, then the termination made no difference. Perthuis presented his role as getting the larger deal done, just as with the original Natera contract. If this in fact reflected his duty to BMGL, then BMGL had extracted from Perthuis essentially everything that it would have gotten from him vis-à-vis the new Natera deal *whether he was fired or not*.[15] BMGL signed that deal the day after it fired Perthuis, without further work.

[18]** Accordingly, Perthuis's termination does not inherently affect his entitlement to commissions. Absent the parties' direction to deviate from the default rule, it is analytically unsound to derive any meaning from the at-will-employment context regarding the obligation to pay commissions for sales procured *before termination*. Just as salary may be owed for days of work completed before termination, so too may commission fees be owed for sales to buyers procured from work completed before termination. So long as Perthuis *was* the procuring cause of any particular sale (a question we address in Part II.C), then he was entitled to a commission absent some contractual language to the contrary.[16]

2

The only other contractual provision that might displace the procuring-cause doctrine is the employment agreement's lone sentence that addresses commission fees: "Your commission will be 3.5% of your net sales." Neither in isolation nor read within the context of the short employment agreement of which it is a part, however, does anything in that spare sentence address whether terminating Perthuis's employment would affect his entitlement to commissions for sales that he procured while still employed.

To the contrary, far from *displacing* the procuring-cause doctrine, the employment agreement's statement that Perthuis would receive a "commission" for his "net sales" is the very text that *implicates* the doctrine. "[Y]our net sales" provides the trigger for paying commissions. The doctrine would not apply without a promise of a commission **[**19]** tethered to sales. The contract defines neither "commission" nor "net sales," and those terms' ordinary meanings do not suggest that firing Perthuis would end any entitlement he had to commissions for sales that his prior work procured.

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[14] BMGL argues that completed "sales" that can generate commissions exist only once tests are "ordered, performed, and billed." But Perthuis does not argue, and we do not hold, that he would be entitled to commissions without sales that were completed that way. Rather, the question is whether Perthuis's work, during the time that he was employed, made him *the procuring cause* of such completed sales. In any event, the jury could reasonably regard the Natera agreement as having greater teeth than BMGL suggests, given Natera's affirmative promise (subject to financial consequences for breach) to buy a minimum number of genetic tests: "Natera shall purchase 36,000 Analytical Services using GeneAware . . . ."

[15] We discuss the arguments in this conditional way because we leave it in the first instance to the court of appeals to review whether the evidence was both legally and factually sufficient. We recognize that the standard of review requires that all inferences favor the jury's verdict. Our point here is to illustrate how the legal analysis applies.

[16] The dissent agrees that the procuring-cause doctrine "makes sense" for broker relationships in the real-estate context but doubts its applicability for at-will employees. *Post* at 6-7. But neither the dissent nor any party has shown any material distinction; no one has shown why offering a (potentially quite small) wage along with (potentially significant) commissions would change the nature *of the commissions*. Neither the dissent nor BMGL cites—and we have not discovered—a case where a court, in Texas or elsewhere, held that at-will status alone forestalls the payment of commissions for sales completed *after* termination but procured from work done *before* termination.

3

Finally, BMGL argues in the alternative that the contract is at least ambiguous about the parties' intent relative to what would happen upon Perthuis's termination. The dissent likewise finds ambiguity by contending that both parties offered **[*240]** "reasonable" interpretations of the commission provision. *Post* at 11-12. We agree that *if* there were insoluble ambiguity about the commission obligation, it would present a fact question for a jury. We cannot agree, however, that any fact question arises here. The contract is *silent* about any *exceptions* to the obligation to pay commissions; it is not ambiguous.

HN15[↑] The procuring-cause doctrine does not preclude severing the obligation to pay sales commissions from procuring the sales. The doctrine's very function, however, is to deem silence about such an exception to reflect the parties' intent to foreclose such an exception. Said another way, it is unreasonable as a matter of law to allow for such an exception when **[**20]** the contract is silent. This analysis reflects how we deploy all other tools of contractual construction, whose function is to reduce the range of interpretations that qualify as "reasonable." ***HN16***[↑] Parties *can* define ordinary words to have bizarre meanings, for example; but if they are silent, we will dismiss as unreasonable any post-litigation effort to give words a peculiar meaning.[17]

Accordingly, there is only one reasonable interpretation here: that BMGL and Perthuis did not agree to cancel, upon termination of Perthuis's employment, commissions he otherwise would be owed. No fact issue on contract interpretation exists. Our conclusion is consistent with our goal of giving effect to the parties' "intent as expressed in the written document." *Piranha Partners v. Neuhoff, 596 S.W.3d 740, 744 (Tex. 2020)*. In no way does it "remake their contract by reading additional provisions into it." *Gilbert Tex. Constr., 327 S.W.3d at 126*. Quite the contrary; the procuring-cause doctrine functions to ensure that *no one* can inject "additional provisions"—including the sort that BMGL suggests.[18] Had BMGL intended continuing employment to be a condition for Perthuis to receive commissions **[*241]** on sales that he had already procured, then "it would have been simple to have said so." *Id. at 127*. If BMGL had **[**21]** done so and Perthuis had accepted it, we would enforce it. Notably, BMGL *did* use such language elsewhere—

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[17] Our disagreement with the dissent largely boils down to this point. The dissent faults the procuring-cause doctrine for not asking a jury to determine "what *these* parties intended *their* contract to mean." *Post* at 13-14 (original emphasis). That objection could apply to any number of tools that courts use to eliminate ambiguity, however. And if we were to endorse that objection and prioritize subjective intent to such a degree, we would surely see a surge in cases where clear contractual text is deemed ambiguous. ***HN17***[↑] We reaffirm, however, that courts give effect to intent as expressed in writing because "it is objective, not subjective, intent that controls." *Matagorda County Hosp. Dist. v. Burwell, 189 S.W.3d 738, 740 (Tex. 2006)* (quotation omitted).

[18] The dissent cites two cases for the proposition that ambiguous commission provisions warrant consideration of extrinsic evidence. *Post* at 7 n.6. We take no position on the correctness of those cases but note that they support rather than undermine our point. In *Tex-Fin, Inc. v. Ducharne*, the contract indicated that the employee would earn a sales bonus if certain conditions were met. *492 S.W.3d 430, 441-42 (Tex. App.—Houston [14th Dist.] 2016, no pet.)*. Continued employment was not one of those conditions, and the court therefore concluded that the "plain language of the agreement [did] not condition earning a sales bonus on any annual employment requirement." *Id.* (holding that the TWC erred in relying on extrinsic evidence that the employer did not intend to pay a bonus based on a partial year of employment but that the TWC appropriately considered extrinsic evidence that bonuses were paid in December). Likewise, in *Vassar Group, Inc. v. Heeseon Ko*, the contract provided that, "[u]pon termination of this Contract," the contractor would be paid "any commission 'earned' in accordance with the [employer's] customary procedures . . . ." *No. 05-18-00814-CV, 2019 Tex. App. LEXIS 6993, 2019 WL 3759467, at *1 (Tex. App.—Dallas Aug. 9, 2019, no pet.)*. The contract expressly invoked those "customary procedures," the parties advanced differing theories on what "'earned' in accordance with the [employer's] customary procedures" meant, and the court considered extrinsic evidence about the employer's usual practices. *2019 Tex. App. LEXIS 6993, [WL] at *5*.

in the retention agreement, which Perthuis signed the same day as the employment agreement, and in the new policy governing more junior employees' commissions, which BMGL announced the very month that it fired Perthuis.

We find no ambiguity. Regardless, latent ambiguity would not change the result. BMGL's counsel drafted the employment agreement, which Perthuis accepted as presented. Even assuming for argument's sake that the words "your net sales" were ambiguous, a court would resolve ambiguity about whether the parties intended to displace the procuring-cause doctrine against BMGL, the drafter of the employment agreement. *See, e.g.*, *Gonzalez v. Mission Am. Ins. Co., 795 S.W.2d 734, 737 (Tex. 1990)* (requiring the construction of contractual ambiguity "against the party who drafted it since the drafter is responsible for the language used"); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 42, 151 (2012) (endorsing "the venerable principle that an ambiguity should be resolved against the party responsible for drafting the document" and "the rule that **[**22]** ambiguities in contracts will be interpreted against the party that prepared the contract").[19]

Accordingly, the court of appeals' error was to misapprehend the consequence of its correct observation that "[n]othing in the language of the [employment agreement] indicated that the parties intended to pay commissions under a procuring-cause standard or that Perthuis was entitled to commissions based solely on the [contracts with the channel partners]."[20] The court was right that the contractual text does not itself *adopt* the procuring-cause standard in the employment agreement. But no such "opt-in" is required. ***HN18***[↑] Likewise, a contract has no obligation to expressly define a word to use its ordinary meaning. In both instances, the default rule requires *opting out*, not the other way around. The legal consequence of silence is that the default rule remains intact.

* * *

We hold that nothing in the agreement between the parties before us displaced the procuring-cause doctrine.

C

We arrive at the third question. ***HN19***[↑] Even when the procuring-cause doctrine applies to a contractual relationship, as it does here, the plaintiff still must show that he was in fact the procuring cause of specific sales. **[**23]**

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HN20[↑] A plaintiff who properly invokes the procuring-cause doctrine to recover sales commissions must prove that **[*242]** the specific sale was the direct and proximate result of the plaintiff 's efforts or

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[19] We need not quarrel with the dissent's contention that use of this tool is a last resort—after all, that is still *before* asking a jury what the parties intended. *See post* at 5 n.2. In any event, we do not rely on the fact that BMGL's counsel drafted and signed the employment agreement—we simply note that this undisputed fact would further undermine any effort to submit a fact question to a jury.

[20] Likewise, the court observed, "Nothing in the parties' agreement . . . indicates that BMGL agreed to compensate him for sales from customers that he had 'procured' even after Perthuis was no longer employed by BMGL. Nothing in the contract indicates that Perthuis was entitled to a commission for procuring channel partners or for negotiating Laboratory Services Agreements like the one with Natera."

services. *See* *Keener, 250 S.W. at 152* (referring to the "general rule" that a broker earns a commission when the broker's "efforts were the primary, proximate, and procuring cause of the deal negotiated" and where "the transaction is directly attributable to the broker" (quotation omitted)).[21] A plaintiff meets that burden by proving the plaintiff set in motion "a chain of events . . . which, without a break in their continuity, cause the buyer and seller to reach agreement on the sale" as a primary and direct result of the plaintiff 's efforts. 49 Am. Jur. *Proof of Facts* 3d 399 § 13 (1998).[22] This necessarily requires the plaintiff to be both the "proximate" and "but for" cause of those sales. *Embrey v. W.L. Ligon & Co., 118 Tex. 124, 12 S.W.2d 106, 108 (Tex. [Comm'n Op.] 1929)*.[23]

A plaintiff could satisfy this standard by proving that he was the procuring cause of a single contract that, without further negotiations or modifications, produced a stream of sales. Or he could show that any changes to the contract were immaterial and his role was still the primary and direct cause of the sales. But it would not be enough for a plaintiff **[**24]** to simply identify and claim credit for a general relationship, like BMGL's relationship with Natera.

HN21[↑] These requirements ensure both that a plaintiff recovers commissions that are due and that a defendant is not obligated to pay commissions that are attenuated from the plaintiff 's role. A "rule of fairness and right," *Goodwin, 185 S.W. at 296*, after all, requires fairness for the defendant as well as the plaintiff. The defendant must be free to show that the causal link was severed. As this Court has explained, for example, a salesman who "made an unsuccessful effort to induce the buyer to purchase the property and had ceased his efforts to accomplish that result, all without fault on the part of the owner," is not the procuring cause when the sale was later made "as the result of independent negotiations directly between the owner and the buyer, or through the medium of some other broker." *Air Conditioning, Inc. v. Harrison-Wilson-Pearson, 151 Tex. 635, 253 S.W.2d 422, 425 (Tex. 1952)* (quotation omitted); *see also, e.g.*, *Shepard v. Wesson, 266 S.W.2d 393, 395 (Tex. Civ. App.—Amarillo 1953, no writ)* (upholding the jury's finding that the broker was the procuring cause of the sale when there was no intervening act between the broker's actions and the sale).

Another manifestation of this principle is almost the reverse scenario—where the jury could find that the passage of time **[**25]** eventually severs the causal link between a plaintiff 's initially *successful* role as broker or agent and some later sale. Even if the defendant must pay commissions for earlier sales, therefore, that defendant can defeat commissions beyond a given point by showing that, from then on, the plaintiff was at best only a remote and attenuated **[*243]** cause of the later sales, not a primary and direct cause. ***HN22***[↑] A binding, multi-year contract that a plaintiff brokered and that generates repeated sales with no material adjustments may require commissions throughout the full term, because all those sales could be attributed to the same labor on the plaintiff 's part. But significant maintenance may be required for other contractual relationships to endure. If the efforts of others were indispensable to salvaging or

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[21] Indeed, "[a]s used in that branch of the law relating to brokers' commissions, the terms 'procuring cause,' 'efficient cause,' and 'proximate cause' have substantially, if not quite, the same meaning and are often used interchangeably." 12 C.J.S. *Brokers* § 258 (2015).

[22] *See* also 12 C.J.S. *Brokers* § 257 ("A sale or other transaction must be the direct and proximate result, or the immediate causal connection, of the broker's efforts or services, as distinguished from one that is indirect and remote, between the introduction of the broker and the consummation of the transaction." (footnotes omitted)).

[23] By contrast, the ordinary contractual causation standard requires a plaintiff to show that "the damage sued for has resulted from the conduct of the defendant." *McKnight v. Hill & Hill Exterminators, Inc., 689 S.W.2d 206, 209 (Tex. 1985)*.

preserving a foundering contractual relationship, or if the contract itself must be reworked, a jury could conclude that the entitlement to commissions no longer existed.

Likewise, a defendant could sever the causal link by establishing that no commissions would be due to the plaintiff *even if she had remained employed*. A plaintiff who *lacks* continuing employment could not recover commissions **[**26]** under the procuring-cause doctrine if the same person would not be entitled to them if still employed.

HN23[↑] These consequences follow from the basic principle that the courts will not award speculative damages, including for any claim that is "too remote and depend[ent] upon too many contingencies . . . ." *Signature Indus. Servs., LLC v. Int'l Paper Co., 638 S.W.3d 179, 187 (Tex. 2022)* (quotation omitted). Damages must always be "proved with reasonable certainty," *id. at 186* (quotation omitted), a principle that "acknowledges the limited competence of courts to track the complex effects of a breach of contract in an interdependent marketplace." *Id. at 187*.

HN24[↑] Claims of procuring-cause status will usually present a fact question.[24] When they do, trial courts should give juries clear instructions regarding the plaintiff 's burden to show his status as the procuring cause for each sale at issue and the defendant's ability to defeat that showing, in whole or in part, with evidence that the plaintiff 's original role had been overtaken by events and changed circumstances.[25]

2

The jury in this case found that Perthuis was in fact the procuring cause of at least some of BMGL's sales. ***HN25***[↑] The standard of review requires courts to view the record in the light most favorable to the jury's **[**27]** verdict. *See, e.g.*, *Ingram v. Deere, 288 S.W.3d 886, 893 (Tex. 2009)*.

But Perthuis must show his entitlement to commissions on sales even as the BMGL—Natera relationship evolved in various phases. At a certain point, even Perthuis acknowledges the theoretical possibility that his contribution could have become too attenuated to qualify as a "procuring cause" for any further sales. Both in his briefing and at oral argument, Perthuis agreed that if an entirely new contract with Natera had to be negotiated (at least for reasons other than a bad-faith attempt to escape the commission obligation), then Perthuis could claim no further commissions despite his central and significant role in maintaining the BMGL— **[*244]** Natera relationship early on. That is, Perthuis concedes that it would not be enough to say something like, "Without my efforts, Natera's business would have been lost forever, so I am still the procuring cause under a totally new contract."

Perthuis contended that the nature of the contractual relationship did *not* materially change, and that he remained the procuring cause of sales to Natera all the way up to trial. BMGL, of course, strenuously

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[24] That is, while the question of the doctrine's *applicability* is typically a legal question, whether the plaintiff actually had the *status* of a procuring cause generally requires factual assessment of the plaintiff 's contribution to the sale at issue.

[25] We accordingly find greatly overstated BMGL's repeatedly expressed concern that a plaintiff who establishes her direct and primary role in causing *some* sales might, by that mere fact, establish a "lifetime" commission on all future sales involving that buyer. Perthuis himself advocated no such rule, and our decision precludes recovery of such claimed commissions absent sufficient evidence regarding every sale for which the plaintiff claims to be the procuring cause.

argued the opposite. The jury refused to award the full amounts that Perthuis requested, **[**28]** which suggests that at least some of BMGL's arguments regarding Perthuis's decreasing causal link to later sales persuaded the jury.

The court of appeals has not yet undertaken its sufficiency analysis under the proper legal framework because it reversed the judgment for Perthuis for an independent reason: its conclusion that the procuring-cause doctrine did not apply to the parties' contract. The court of appeals' disposition made it unnecessary for that court to reach the remainder of BMGL's arguments that are predicated on the evidence presented at trial. Our decision today requires consideration of those arguments.

We therefore reverse the judgment of the court of appeals and remand the case to that court for further proceedings, including assessing any further challenges to the trial court's judgment that BMGL has preserved. We express no opinion on whether each or any of the relevant contractual amendments, or anything else, was sufficiently substantial to sever any causal link between Perthuis and sales to Natera (or other channel partners). We leave to the court of appeals in the first instance to determine the proper disposition of this case, and we disclaim any intention to **[**29]** limit the court of appeals' resolution of the case on remand.[26]

III

The court of appeals' judgment is reversed and the case is remanded to the court of appeals for further proceedings.

Evan A. Young

Justice

OPINION DELIVERED: May 20, 2022

Dissent by: Rebeca A. Huddle

Dissent

Parties frequently agree to written contracts that are incomplete, unclear, or both. When disputes over such contracts arise, Texas courts have long applied a settled methodology for discerning what the parties' agreement actually was. If a written contract is susceptible to two or more reasonable interpretations, it is deemed ambiguous, and the parties may introduce extrinsic evidence to shed light on its meaning. Following this methodology allows courts to enforce the contract upon which the parties actually agreed, even if they were less than perfect scriveners. This, in turn, allows courts to hew as closely as possible to our ideal of freedom of contract: the notion that parties are allowed to make—and a Texas court should enforce—any legal contract to which the parties saw fit to agree.

[26] Depending on its resolution of Perthuis's entitlement to commissions, the court of appeals should consider his cross-appeal with respect to attorneys' fees.

Today the Court replaces this well-settled methodology with a default rule—the procuring-cause doctrine—which our Court has barely mentioned in a century. **[**30]** The majority dusts it off, imports it from the broker context, and, for the first time, applies it in the at-will-employment context. The Court's adoption of this default rule threatens the expectations of at-will employers and employees who have agreed **[*245]** to a commission structure but, for whatever reason, failed to reduce it to writing with perfect clarity. They will be surprised to learn that, under the default rule the Court adopts today, an at-will salesperson is entitled to commissions for any sale—here, perhaps hundreds or thousands of sales—a jury determines the salesperson "set in motion." And they will be stunned to learn that, under the default rule, the entitlement to commissions may extend *years* after their employment relationship ended.

Today's decision is at odds with our precedents for resolving contractual disputes and with the common understanding of the nature of at-will relationships. And it is far-reaching: while reported decisions on commission disputes are relatively few, the Texas Workforce Commission adjudicates as many as 20,000 wage claims, including claims for unpaid commission, *each year*. I would not be so quick to expand the procuring-cause doctrine to the **[**31]** at-will-employment context. I would instead remand to the trial court for a new trial in which a jury would determine the meaning of the parties' agreement that Perthuis's commission "will be 3.5% of [his] net sales" based on the parties' extrinsic evidence regarding their own contract negotiations, the employer's policies and practices, and common industry practice. Because the Court does otherwise, I respectfully dissent.

I

Time and again, this Court has reiterated its commitment to protecting freedom of contract.[1] As stewards of this "paramount public policy," *Energy Transfer Partners, L.P. v. Enter. Prods. Partners, L.P., 593 S.W.3d 732, 738 (Tex. 2020)* (quoting *Wood Motor Co. v. Nebel, 150 Tex. 86, 238 S.W.2d 181, 185 (Tex. 1951)*), we have made clear that "courts will not rewrite agreements to insert provisions parties could have included or to imply restraints for which they have not bargained." *In re Marriage of I.C. & Q.C., 551 S.W.3d 119, 124 (Tex. 2018)* (quoting *Tenneco Inc. v. Enter. Prods. Co., 925 S.W.2d 640, 646 (Tex. 1996)*).

Our primary goal in interpreting any contract is, of course, to give effect to the parties' intent as expressed in the contract itself. *Monroe Guar. Ins. Co. v. BITCO Gen. Ins. Corp., 640 S.W.3d 195, 198-99 (Tex. 2022)*. To do so, we look first to the contract's text. *See U.S. Metals, Inc. v. Liberty Mut. Grp., Inc., 490 S.W.3d 20, 23 (Tex. 2015)*. We consider the writing in its entirety, harmonizing and giving effect to all its provisions so that none will be rendered meaningless. *Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am., 341 S.W.3d 323, 333 (Tex. 2011)*. And we interpret each provision with reference to the entire

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[1] The examples are recent and abundant. *E.g.*, *Waste Mgmt. of Tex., Inc. v. Stevenson, 622 S.W.3d 273, 286 (Tex. 2021)* ("'Texas strongly favors parties' freedom of contract,' under which parties may 'bargain for mutually agreeable terms and allocate risks as they see fit.'" (quoting *Gym-N-I Playgrounds, Inc. v. Snider, 220 S.W.3d 905, 912 (Tex. 2007)*)); *Bombardier Aerospace Corp. v. SPEP Aircraft Holdings, LLC, 572 S.W.3d 213, 230 (Tex. 2019)* ("We have long recognized the strongly embedded public policy favoring freedom of contract. And, absent a compelling reason, courts must respect and enforce the terms of a contract that the parties have freely and voluntarily made." (citations omitted)); *Endeavor Energy Res., L.P. v. Discovery Operating, Inc., 554 S.W.3d 586, 595 (Tex. 2018)* ("[T]he law's 'strong public policy favoring freedom of contract' compels courts to 'respect and enforce' the terms on which the parties have agreed." (quoting *Phila. Indem. Ins. Co. v. White, 490 S.W.3d 468, 471 (Tex. 2016)*)).

agreement, as opposed to giving one provision **[**32]** controlling effect. *Moayedi v. Interstate 35/Chisam Rd., L.P., 438 S.W.3d 1, 7 (Tex. 2014)*.

[*246] When parties disagree about the meaning of their written contract (as they often do), we apply a well-settled methodology to resolve the dispute. The first step is to determine whether the contract is ambiguous. *See* *Cook Composites, Inc. v. Westlake Styrene Corp., 15 S.W.3d 124, 131 (Tex. App.—Houston [14th Dist.] 2000, pet. dism'd by agr.)* ("There are two steps to an ambiguity analysis. First, we apply the applicable rules of construction and decide if the contract is ambiguous." (citing *Coker v. Coker, 650 S.W.2d 391, 393 (Tex. 1983)*)). Whether a contract is ambiguous is a question of law, *Nettye Engler Energy, LP v. BlueStone Nat. Res. II, LLC, 639 S.W.3d 682, 690 (Tex. 2022)*, and the parties need not plead ambiguity for the court to determine that a contract is ambiguous. *See* *Progressive Cnty. Mut. Ins. Co. v. Kelley, 284 S.W.3d 805, 808 (Tex. 2009)* (holding a contract ambiguous despite neither party arguing ambiguity).

The majority recognizes that a contract is unambiguous if its language can be "given a certain or definite legal meaning or interpretation." *Ante* at 9 (quoting *El Paso Field Servs., L.P. v. MasTec N. Am., Inc., 389 S.W.3d 802, 806 (Tex. 2012)*). But our law also recognizes that, alas, some contracts *are* ambiguous. *See, e.g.*, *J.M. Davidson, Inc. v. Webster, 128 S.W.3d 223, 232 (Tex. 2003)* ("[W]e conclude that the arbitration agreement is ambiguous."). An ambiguity exists when a contract is subject to two or more reasonable interpretations after applying the pertinent rules of construction. *Id. at 229*. If a contract is ambiguous, our precedents make clear that the parties may introduce extrinsic evidence to shed light on its **[**33]** meaning, which becomes a fact issue for the jury. *Barrow-Shaver Res. Co. v. Carrizo Oil & Gas, Inc., 590 S.W.3d 471, 480 (Tex. 2019)*.

II

The majority offers various rationales for applying the procuring-cause doctrine rather than considering extrinsic evidence. First, it concludes the agreement is not ambiguous but merely silent about which sales constitute Perthuis's "net sales." *Ante* at 18. Next, it deems the procuring-cause doctrine itself to be a principle of contract construction that "reduce[s] the range of interpretations that qualify as 'reasonable.'" *Id.* Finally, it asserts that even if the agreement were ambiguous, there would be no need for extrinsic evidence because it should be construed against its drafter.[2] *Id.* at 20. The upshot, under any of these theories, is that we never reach the point at which the parties offer competing evidence of what their imperfectly drafted commission agreement actually meant, because the procuring-cause doctrine supplies the answer.

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[2] Texas courts have noted the doctrine of *contra proferentem* is one of last resort, *Evergreen Nat'l Indem. Co. v. Tan It All, Inc., 111 S.W.3d 669, 676 (Tex. App.—Austin 2003, no pet.)*, and have applied it mostly in the insurance context. *See, e.g.*, *Gonzalez v. Mission Am. Ins. Co., 795 S.W.2d 734, 737 (Tex. 1990)*. I harbor serious doubts that it would apply to resolve an ambiguity here. *See* *Horizon Pools & Landscapes, Inc. v. Sucarichi, No. 01-15-01079-CV, 2016 Tex. App. LEXIS 13024, 2016 WL 7164025, at *3 (Tex. App.—Houston [1st Dist.] Dec. 8, 2016, no pet.)* ("The ostensible rule of construction that ambiguities in a contract should be construed against its drafter plays no role 'in making a fact finding about what the parties intended.'" (quoting *GTE Mobilnet of S. Tex. Ltd. P'ship v. Telecell Cellular, Inc., 955 S.W.2d 286, 291 (Tex. App.—Houston [1st Dist.] 1997, writ denied)*)).

The majority, like Perthuis, relies on *Goodwin v. Gunter*[3] and *Keener v. Cleveland*.[4] **[*247]** But those cases involved seller—broker relationships in the nature of an independent-contractor relationship, each formed to consummate the sale of a single piece of real property. **[**34]** The procuring-cause doctrine makes sense in that context, and I do not suggest disturbing *Goodwin* or *Keener*. But the doctrine is a misfit in the employment-at-will context, in which the parties likely (1) understand their obligations to one another to end when their employer—employee relationship does, absent an express agreement to the contrary; and (2) adhere to established policies or industry practices, or both, in determining how commissions are paid, regardless of whether those policies or practices were reduced to writing upon hiring. Under the majority's approach, these considerations are meaningless if not fully set out in the parties' agreement. The procuring-cause doctrine trumps them. This is, in my view, a significant and ill-advised departure from both the at-will employment doctrine and the notion that Texas courts should enforce and not rewrite the terms of the parties' bargain.

My view that the procuring-cause doctrine is a misfit in the at-will employment context is borne out by Texas authorities in two respects. First, there are few Texas cases applying the doctrine in the last century, and courts that have applied it usually have done so in the context of real-estate **[**35]** brokers who were engaged on a one-time basis to sell a single piece of real property.[5] By contrast, courts adjudicating commissions of employees do not apply the procuring-cause doctrine but instead follow our established methodology in which the factfinder considers extrinsic evidence to discern the meaning of ambiguous commission agreements.[6]

Second, the Texas Workforce Commission, which adjudicates approximately 20,000 wage claims per year,[7] does not employ the procuring-cause doctrine. Instead, TWC rules reflect that, unless otherwise agreed, an employer must pay commissions "earned as of the time of separation."[8] Thus, to the extent TWC's rules can be said to articulate a default rule, it is not the procuring-cause doctrine. It is that the end of the at-will relationship is the line of demarcation by which commissions, if they will ever be owed, must be earned and identifiable. In TWC's view, commissions **[*248]** do not become payable—i.e., can no longer be earned—*after* separation.

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[3] ***109 Tex. 56, 185 S.W. 295, 296 (Tex. 1916)*** (noting that for a real estate broker to earn a commission, "a purchaser must have been produced through his efforts, ready, able and willing to buy the property upon the contract terms").

[4] *250 S.W. 151, 152 (Tex. Comm'n App. 1923)* (stating "when a real estate broker is instrumental in bringing together the seller and a purchaser who is acceptable to him, and they consummate a sale," the agent is "the procuring cause of the sale" and "is entitled to the commission agreed upon").

[5] *See, e.g., Frady v. May, 23 S.W.3d 558, 565 (Tex. App.—Fort Worth 2000, pet. denied)*; *Ramesh v. Johnson, 681 S.W.2d 256, 259 (Tex. App.—Houston [14th Dist.] 1984, writ ref'd n.r.e.)*.

[6] *See, e.g., Tex-Fin, Inc. v. Ducharne, 492 S.W.3d 430, 443-44 (Tex. App.—Houston [14th Dist.] 2016, no pet.)* (considering extrinsic evidence to determine that substantial evidence supported the trial court's reversal of TWC's rejection of a salesperson's claim for post-termination compensation under a bonus/commission agreement); *Vassar Grp., Inc. v. Ko, No. 05-18-00814-CV, 2019 Tex. App. LEXIS 6993, 2019 WL 3759467, at *5 (Tex. App.—Dallas Aug. 9, 2019, no pet.)* (concluding an employment agreement where the parties had "differing theories as to when a commission is 'earned' and payable post termination" was "susceptible to at least two reasonable interpretations" and therefore "ambiguous, creating a fact issue on the parties' intent").

[7] *Igal v. Brightstar Info. Tech. Grp., Inc., 250 S.W.3d 78, 82 (Tex. 2008)* ("According to TWC, it receives approximately 20,000 wage claims per year for initial decision . . . .").

[8] ***40 Tex. Admin. Code § 821.26(b)***.

TWC rules also contemplate that the agreement made when the employee was first hired may not address all the particulars and that a determination of commissions due post-termination should consider **[**36]** "*any* special agreement" made upon separation.[9] This use of "any" signals that TWC would consider agreements that elucidate the terms of an earlier agreement, whether the agreement made upon separation is express or implicit, written or oral, industry-specific or not.

III

Here, BMGL offered Perthuis a position as its Vice President of Sales and Marketing in a two-page offer letter. As the court of appeals noted, the terms relating to commission are "sparse." *639 S.W.3d 108, 114 (Tex. App.—Houston [1st Dist.] 2020)*. The contract stated:

> Your annual base salary at the time of close will be $133,000. Provided the transaction has closed, your annual base salary will be $145,000 effective April 1, 2015. *Your commission will be 3.5% of your net sales*. You will also be eligible to participate in the BMGL [long-term incentive] plan effective April 1, 2015 with an LTI target of 40% of your annual base salary with BMGL. . . . In addition, you will be eligible to receive a retention bonus. [Emphasis added.]

The offer letter did not elaborate on the commission structure beyond the statement that Perthuis would be paid 3.5 percent of "your net sales." It did state that Perthuis's employment would be "at-will" and that he would be entitled to various employment **[**37]** benefits, including medical, dental, and life insurance, as well as a sponsored 401(k) plan.

Perthuis contends that the agreement entitles him to commissions on post-termination sales, while BMGL says it does not. The logical starting point, then, is to ask whether the agreement granting Perthuis a 3.5 percent commission on "your net sales" definitively answers that question. If its language unambiguously shows that Perthuis is (or isn't) entitled to commissions on sales after his termination, then we construe the contract as a matter of law. *See El Paso Field Servs., 389 S.W.3d at 806*. But if Perthuis and BMGL have both proffered reasonable interpretations of the provision in question, then the agreement is ambiguous and the trial court should have tasked the jury with determining its meaning.

Neither party in this case pleaded ambiguity. Instead, each argued that the agreement's text unambiguously supported their respective interpretations. The thrust of Perthuis's argument was that a commission is compensation for sales procured and thus the employment agreement's promise to pay him a 3.5 percent commission on "[his] net sales" entitles him to the sales he procured under the Natera deal and others, including those that **[**38]** postdate his departure. Perthuis also pointed out that the employment agreement did not contain any limiting language conditioning commission payments on continued employment with BMGL.[10]

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[9] *Id.* ***§ 821.26(c)*** (emphasis added).

[10] *Cf. JCB, Inc. v. Horsburgh & Scott Co., No. 6:16-CV-146-RP, 2017 U.S. Dist. LEXIS 218472, 2017 WL 6805045, at *3 (W.D. Tex. Oct. 25, 2017)* (rejecting argument that plaintiff was entitled to commissions on post-termination sales because the agreement specified that commissions would be earned only "on sales from orders received by the Company *on or before the effective date of termination*" (emphasis added)), *vacated in part on other grounds*, *941 F.3d 144 (5th Cir. 2019)*.

[*249] BMGL, on the other hand, maintains the contract unambiguously does *not* entitle Perthuis to commissions on post-termination sales. It urges us to interpret the commission obligation in light of the employment agreement in its entirety.[11] BMGL notes Perthuis conceded at trial that the other benefits outlined in his employment agreement, including salary, health insurance, and the 401(k) contribution, ended the moment BMGL terminated his at-will employment, even when the contract did not say so explicitly. The commission provision, BMGL argues, should be interpreted the same way: once Perthuis's employment ended, BMGL's obligation to pay commissions on any sales ceased. And because Natera sales did not occur during the term of employment, Perthuis's termination preceded the "commission-earning event." The court of appeals agreed with BMGL's interpretation, concluding "the plain language of the **[**39]** commission agreement indicates that it was intended as compensation for Perthuis's continued employment with BMGL." *639 S.W.3d at 115*.

The trial court could have found the provision ambiguous and submitted it to the jury even if neither party pleaded ambiguity. *See Kelley, 284 S.W.3d at 808*. Both parties contemplated such a finding. Indeed, Perthuis's counsel discussed this possibility with the trial court at the pretrial conference:

> If you're arguing different meanings, then . . . *the Court is supposed to determine, is it ambigu[ous] or not*. [Emphasis added.]

And at the charge conference, BMGL argued the procuring-cause doctrine should not have been submitted and alternatively asked the trial court to submit the meaning of "Your commission will be 3.5% of your net sales" to the jury, drawing the proposed question from *Texas PJC 101.8* on ambiguous contracts. By submitting the procuring-cause doctrine—and decoupling at-will employment with BMGL from Perthuis's entitlement to commissions—the trial court leapfrogged the central contractual dispute in the case: did the parties intend Perthuis to earn commissions only on sales completed while he was employed with BMGL? Or on sales to customers he procured while employed by BMGL, for so long **[**40]** as they remained customers of BMGL? For a year following his separation? Or something else? Under the procuring-cause doctrine, it doesn't matter. No one need bother with what the parties intended and thought they had agreed.

I would hold that both parties proffered reasonable interpretations of the commission provision and thus it is ambiguous with respect to whether Perthuis is entitled to commissions on post-termination sales.[12] The agreement states that "Your commission will be 3.5% of your net sales." It provides no guidance on the meaning of "commission" on "*your* net sales," and it is not clear when a sale becomes *Perthuis's* sale such that he earns a commission. One possibility—the theory Perthuis advances—is that "your net sales" encompasses all sales Perthuis "set in motion" or had some hand in procuring, even if they were not placed, invoiced, or paid for until **[*250]** after BMGL terminated him. *Ante at* 22. But it is also reasonable to interpret the commission provision as entitling Perthuis to commissions only on "net sales" finalized (i.e., sales for which an order had been placed, invoice had been sent, or payment had been received) during the term of his employment.

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[11] *See Frost Nat'l Bank v. L & F Distribs., Ltd., 165 S.W.3d 310, 312 (Tex. 2005)* (stating we interpret contractual provisions "with reference to the whole agreement" and "bearing in mind the particular business activity sought to be served" (quoting *Reilly v. Rangers Mgmt., Inc., 727 S.W.2d 527, 530 (Tex. 1987)*)).

[12] *See Vassar Grp., Inc., 2019 Tex. App. LEXIS 6993, 2019 WL 3759467, at *5* (finding ambiguous an employment agreement where the parties had "differing theories as to when a commission is 'earned' and payable post termination").

In short, **[**41]** both sides advance contract-interpretation arguments that are reasonable. I would thus hold the commission provision ambiguous and remand for a new trial in which a jury would determine whether, considering the extrinsic evidence, the parties intended that BMGL would pay Perthuis commissions on post-termination sales.[13] *See* *Barrow-Shaver, 590 S.W.3d at 480* ("When a court determines that a contract is ambiguous, the meaning becomes a fact issue for the jury and extraneous evidence may be admitted to help determine the language's meaning.").

* * *

The parties had many drafting options at their disposal. BMGL could have obtained its desired outcome by specifying in the agreement that Perthuis was entitled to commissions only on sales orders received while Perthuis was employed by BMGL. By the same token, Perthuis, a sophisticated sales executive, could have bargained for a tail provision, under which he would continue to be paid commissions for an agreed-upon period of time post-termination for sales to customers he procured during the term of his employment.[14] Skilled practitioners could no doubt think of countless other mechanisms by which to unambiguously specify the "sales" for which a salesperson is owed commission. **[**42]** And Texas courts would enforce any such provisions to the letter, all toward the end of effectuating precisely the deal the parties struck.

The problem with the majority's approach today is that it abandons the worthy goal of effectuating parties' intended meaning whenever a human drafter falls short of describing the agreement with perfect precision. In that case, says the majority, all bets are off: we dispense with the work of ascertaining and enforcing the agreement's true meaning, and instead apply the procuring-cause doctrine, regardless of whether it has any relation to what *these* parties intended *their* contract to mean.[15] Because I cannot bless this methodological shortcut, I respectfully dissent.

Rebeca A. Huddle

Justice

OPINION DELIVERED: May 20, 2022

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[13] This approach would, of course, require a jury to determine the meaning of the ambiguous contract, but the majority's approach yields the same result: a jury trial in every case in which the procuring-cause doctrine applies. *Ante* at 11 (noting that the procuring-cause doctrine "fully respects the factfinder's authority and obligation to determine *whether* the broker's action produced the purchaser, which generally is 'purely a question of fact'" (quoting *Goodwin, 185 S.W. at 297*)). Under my approach, the jury would resolve the meaning of a contract term, a fairly discrete task. Under the majority's, the jury will have to determine for which individual sales—out of potentially hundreds or thousands—a salesperson was the "procuring cause," a far more amorphous and potentially cumbersome task.

[14] *See, e.g.*, *Indus. III, Inc. v. Burns, No. 14-13-00386-CV, 2014 Tex. App. LEXIS 9447, 2014 WL 4202495, at *12 (Tex. App.—Houston [14th Dist.] Aug. 26, 2014, pet. denied)* (rejecting plaintiff's claim that it was entitled to a fee for introducing the parties to a transaction because the transaction closed after the six-month tail lapsed).

[15] The majority emphasizes that the procuring-cause doctrine contributes to the "[s]tability and predictability of contract law." *Ante* at 11. While those are worthy goals, we have also recently held that predictability through the use of mechanical default rules sometimes must yield to an intent-focused inquiry. *See* *Wenske v. Ealy, 521 S.W.3d 791, 792 (Tex. 2017)* (discouraging reliance on "default or arbitrary rules" and "reaffirming the paramount importance of ascertaining and effectuating the parties' intent"); *Hysaw v. Dawkins, 483 S.W.3d 1, 4 (Tex. 2016)* ("Though **[**43]** we acknowledge the call for more certain and predictable guidance, we reject bright-line rules of interpretation that are arbitrary and, thus, inimical to an intent-focused inquiry.").

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