

SUPREME COURT OF MISSISSIPPI

Inn By the Sea Homeowner's Association, Inc. v. SeaInn, LLC, Drace Construction Corp., Carubba Engineering, Southern Cross Construction Company, Harry Baker Smith Architects II, PLLC and Greg Stewart

170 So. 3d 496 (Miss. 2015) · No. 2013-CA-02013-SCT · Decided July 30, 2015

SUMMARY

The Supreme Court of Mississippi affirmed summary judgment for defendants in a condominium construction-defect action. The court held that the trial court did not abuse its discretion by excluding expert damages testimony because one expert failed to adequately disclose the methodology and calculations supporting repair-cost estimates, while another admitted he was not qualified to provide cost estimates. Without admissible evidence of damages, summary judgment was proper.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Chandler, Justice; Waller, C.J.; Chandler, J.; King, J.
JURISDICTION	Mississippi
DECIDED	July 30, 2015
DOCKET	2013-CA-02013-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	The homeowner's association appealed from a Harrison County Circuit Court order granting summary judgment to the defendants after excluding the plaintiff's expert testimony concerning construction damages.
STANDARD OF REVIEW	Summary judgment is reviewed de novo, with evidence viewed in the light most favorable to the nonmoving party. Expert-admissibility rulings are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Mississippi Supreme Court opinion; precedential.
PARTIES	Inn By the Sea Homeowner's Association, Inc. v. SeaInn, LLC, Drace Construction Corp., Carubba Engineering, Southern Cross

TOPICS

construction defects

construction law

summary judgment

expert testimony

daubert standard

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by excluding Alfred Hayes's expert testimony concerning construction repair costs.
2. Whether the trial court abused its discretion by excluding Ashton Avegno's expert testimony concerning cost damages.
3. Whether summary judgment was proper after exclusion of the plaintiff's damages experts.

HOLDINGS

1. The trial court did not abuse its discretion by excluding Hayes's testimony because he failed to disclose the basis, methodology, and calculations supporting nearly all of his cost opinions despite being given additional time and an express order to supplement.
2. The trial court did not abuse its discretion by excluding Avegno's cost-damage opinions because Avegno expressly stated that he was not a qualified cost estimator and that more accurate estimates required a licensed contractor or cost estimator.
3. Summary judgment for the defendants was proper because, after the expert testimony was excluded, the association had no admissible evidence of damages.

KEY QUOTATIONS

“What matters on a case-by-case basis is adherence to the principles of Mississippi Rule of Evidence 702 and Mississippi Rule of Civil Procedure 26, and, in particular, adherence to the requirement that experts disclose the basis of their opinions with sufficient specificity to allow defendants to prepare a defense and avoid trial by ambush.” (170 So. 3d at 501)

“But merely disclosing that a five-year-old RS Means manual is the general basis for the conclusory estimates on twenty-two of twenty-three items of alleged structural damages amounting to several million dollars does not provide a sufficient disclosure of data for a trier of fact to determine that the estimates have been calculated with reasonable accuracy or for a defendant to meet the evidence.” (170 So. 3d at 503)

“We affirm the trial court’s grant of summary judgment on the grounds that the plaintiff failed to present admissible expert opinions on damages.” (170 So. 3d at 506)

FACTUAL BACKGROUND

Inn By the Sea Condominiums began exhibiting significant structural problems within a year after a 2009 certificate of occupancy following reconstruction after Hurricane Katrina. The association's experts identified alleged design and construction defects and offered broad repair-cost estimates totaling millions of dollars. One expert, Ashton Avegno, expressly stated that he was not a qualified estimator and could not guarantee the accuracy of his estimates; the other, Alfred Hayes, supplemented his report with detailed calculations for only one of twenty-three or twenty-four cost items.

PROCEDURAL HISTORY

The association sued the developer, contractors, engineer, architect, and other parties for alleged design and construction defects in reconstructed condominiums. The circuit court excluded Ashton Avegno's damages testimony because he admitted he was not a qualified cost estimator, later excluded Alfred Hayes's damages testimony for inadequate disclosure and unreliable methodology, and granted summary judgment to all defendants for lack of admissible damages evidence. The Mississippi Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Smith ex rel. Smith v. Gilmore Mem'l Hosp., Inc., 952 So. 2d 177, 181 (Miss. 2007)
- Bowie v. Montfort Jones Mem'l Hosp., 861 So. 2d 1037, 1041 (Miss. 2003)
- Miss. Transp. Comm'n v. McLemore, 863 So. 2d 31, 37, 40 (Miss. 2003)
- Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579 (1993)
- Utz v. Running & Rolling Trucking, Inc., 32 So. 3d 450, 457 (Miss. 2010)
- Hyundai Motor Am. v. Applewhite, 53 So. 3d 749, 758 (Miss. 2011)
- Sumrall Church of Lord Jesus Christ v. Johnson, 757 So. 2d 311 (Miss. Ct. App. 2000)
- Hoover v. United Servs. Auto. Ass'n, 125 So. 3d 636, 645 (Miss. 2013)
- Traco Steel Erectors, Inc. v. Control, Inc., 222 P.3d 1164 (Utah 2009)
- Hale v. Big H Constr., Inc., 288 P.3d 1046 (Utah Ct. App. 2012)
- Kumho Tire Co. v. Carmichael, 526 U.S. 137, 152 (1999)
- Edmonds v. State, 955 So. 2d 787, 792 (Miss. 2007)
- Ekornes-Duncan v. Rankin Med. Cir., 808 So. 2d 955, 958 (Miss. 2002)
- Bailey Lumber & Supply Co. v. Robinson, 98 So. 3d 986, 992 (Miss. 2012)
- Worthy v. McNair, 37 So. 3d 609, 616 (Miss. 2010)
- R. McKnight & Son v. C. & I Entm't, 100 So. 3d 1022 (Miss. Ct. App. 2012)
- Univ. of Miss. Med. Ctr. v. Pounders, 970 So. 2d 141, 146 (Miss. 2007)