

SUPREME COURT OF ALABAMA

CARFAX, Inc. v. Browning

982 So. 2d 491 (Ala. 2007) · No. 1050291 · Decided September 21, 2007

SUMMARY

The Alabama Supreme Court dismissed Carfax's interlocutory appeal after determining that permission to appeal under Rule 5 had been improvidently granted. The case concerned the enforceability of an outbound forum-selection clause in an Internet contract and whether inconvenience and litigation expense would effectively deprive the consumer of his day in court.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Murdock, Justice; Cobb, Chief Justice; Lyons, Justice; Stuart, Justice; Bolin, Justice
JURISDICTION	Alabama
DECIDED	September 21, 2007
DOCKET	1050291
DISPOSITION	dismissed
PROCEDURAL POSTURE	Carfax obtained permission under Rule 5, Ala. R. App. P., to pursue an interlocutory appeal from an order denying its motion to dismiss based on an outbound forum-selection clause. The Supreme Court of Alabama dismissed the appeal after determining that permission had been improvidently granted.
STANDARD OF REVIEW	The court did not reach the merits of the forum-selection-clause ruling because the permissive appeal did not present a controlling question of law under Rule 5(a), Ala. R. App. P.
PRECEDENTIAL VALUE	Published opinion; binding Alabama Supreme Court decision on the limits of Rule 5 permissive interlocutory appeals.
PARTIES	CARFAX, Inc. v. Tom Browning

TOPICS

- interlocutory appeal
- appellate procedure
- forum non conveniens
- contracts
- consumer protection

PRACTICE AREAS

civil procedure

appellate procedure

contracts

consumer protection

QUESTIONS PRESENTED

1. Whether the certified questions concerning the enforceability of an Internet-based forum-selection clause and whether inconvenience or impracticability can render such a clause unconscionable were controlling questions of law appropriate for a Rule 5 permissive appeal.
2. Whether the Supreme Court of Alabama should reach the merits of whether the trial court correctly applied the seriously inconvenient-forum standard.

HOLDINGS

1. Neither certified question constituted a controlling question of law because the parties did not dispute that Internet contracts may be binding and enforceable, and neither party disputed that more than mere inconvenience or impracticability is required to invalidate an outbound forum-selection clause.
2. The appeal was dismissed because the Supreme Court's permission to appeal had been improvidently granted and the dispositive merits question was not properly before the court.

KEY QUOTATIONS

"We have determined that our permission to appeal was improvidently granted, and we therefore dismiss the appeal." (494)

"Neither of the two issues certified for appeal by the trial court constitutes a "controlling question of law."" (494)

FACTUAL BACKGROUND

Browning purchased a vehicle-history report from Carfax over the Internet before buying a used vehicle. He alleged that the report failed to disclose a collision and extensive repairs and that Carfax misrepresented or suppressed information concerning the report. The online agreement contained a mandatory outbound forum-selection clause requiring related litigation to be filed in Virginia; Browning asserted that litigating there would be economically and practically impossible because he and his witnesses were in Alabama and he lacked bargaining power.

PROCEDURAL HISTORY

Browning sued Carfax in the Jefferson Circuit Court for fraud, misrepresentation, suppression, and negligence arising from an online vehicle-history-report transaction. The circuit court denied Carfax's motion to dismiss, finding that Virginia would be so inconvenient that enforcement of the forum-selection clause would deprive Browning of his day in court, and certified two questions for permissive interlocutory appeal. The Supreme Court of Alabama concluded that neither certified question was a controlling question of law and dismissed the appeal.

DISPOSITION

dismissed

CASES CITED

- Ex parte Rymer, 860 So. 2d 339, 341 (Ala. 2003)
- Professional Ins. Corp. v. Sutherland, 700 So. 2d 347, 351 (Ala. 1997)
- Ex parte D.M. White Construction Co., 806 So. 2d 370, 372 (Ala. 2001)
- M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 18 (1972)

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