

SUPREME COURT OF KANSAS

Moore v. Bird Engineering Co., P.A., 273 Kan. 2

41 P.3d 755 (2002) · No. No. 83,302 · Decided March 8, 2002

SUMMARY

The Supreme Court of Kansas reviewed a dispute arising from the design and construction of a bridge on the plaintiff's residential property. The court held that professional engineering services fall within the Kansas Consumer Protection Act and that a deceptive representation under K.S.A. 50-626(b)(1) does not require intent to deceive when the supplier knew or had reason to know the representation was false. The court addressed the engineering company's liability for breach of contract, breach of warranty, negligence, and violation of the KCPA.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Allegretti, J.
JURISDICTION	Kansas
DECIDED	March 8, 2002
DOCKET	No. 83,302
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Bird Engineering appealed after a bench trial judgment for Moore on breach of contract, breach of express warranty, violation of the Kansas Consumer Protection Act, and negligence. The Kansas Court of Appeals affirmed in part, reversed in part, and vacated in part, including reversing the KCPA judgment. The Kansas Supreme Court granted Moore's petition for review and Bird Engineering's cross-petition.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo, or with unlimited appellate review. In reviewing the district court's factual findings after a bench trial, the court does not reweigh conflicting evidence, assess credibility, or redetermine factual questions; substantial competent evidence supports the findings.
PRECEDENTIAL VALUE	Published Kansas Supreme Court opinion; precedential
PARTIES	Bird Engineering Company, P.A. v. William P. Moore III

TOPICS

consumer protection deceptive trade practices construction law statutory interpretation contracts

PRACTICE AREAS

consumer protection construction law contracts torts statutory interpretation

QUESTIONS PRESENTED

1. Whether professional engineering services supplied by Bird Engineering to Moore constituted a consumer transaction covered by the Kansas Consumer Protection Act.
2. Whether a plaintiff must prove intent to deceive to establish a deceptive act under K.S.A. 50-626(b)(1).

HOLDINGS

1. Engineering services supplied by Bird Engineering to Moore fell within the KCPA because Moore was a consumer, Bird Engineering was a supplier, and the sale of engineering services was a consumer transaction under the statute.
2. Intent to deceive is not an element of a deceptive act under K.S.A. 50-626(b)(1); it is sufficient that the representation was made knowingly or with reason to know that the property or services had characteristics or qualities they did not have, or materially differed from the representation.

KEY QUOTATIONS

“Interpretation of a statute is a question of law in which appellate review is unlimited.” (at 10)

“Here, the district court correctly held that intent was not required.” (at 17)

FACTUAL BACKGROUND

Moore hired Bird Engineering to design a bridge providing access to his residential property across Wolf Creek, including access during heavy rain and for emergency vehicles. Bird represented that the bridge had a 32,000-pound load capacity, but designed it to carry only approximately 8,000 pounds. During construction, the bridge abutment cracked and moved because of inadequate design, design detail, and embedding of vertical steel rods, and a later proposed repair was also inadequate.

PROCEDURAL HISTORY

The district court entered judgment for Moore following a bench trial. The Court of Appeals held that Bird Engineering's engineering services could be assumed to fall within the KCPA but concluded that intent to deceive was required under K.S.A. 50-626 and reversed the KCPA judgment. The Supreme Court held that the KCPA applies to the engineering services and that intent to deceive is not required under K.S.A. 50-626(b)(1), thereby reversing the Court of Appeals in part and affirming the district court.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Court of Appeals' judgment was affirmed in part and reversed in part, and the district court's judgment was affirmed. The source does not state a separate remand instruction beyond restoring the district court's judgment.

CASES CITED

- Garvey Elevators, Inc. v. Kansas Human Rights Comm'n, 265 Kan. 484, 496-97, 961 P.2d 696 (1998)
- Kansas Dept. of SRS v. Paillet, 270 Kan. 646, 16 P.3d 962 (2001)
- In re Marriage of Killman, 264 Kan. 33, 42-43, 955 P.2d 1228 (1998)
- Vort v. Hollander, 257 N.J. Super. 56, 607 A.2d 1339 (1992)
- Fenwick v. Kay Am. Jeep, Inc., 72 N.J. 372, 371 A.2d 13 (1977)
- Neveroski v. Blair, 141 N.J. Super. 365, 358 A.2d 473 (1976)
- In re Li Volsi, 85 N.J. 576, 583, 428 A.2d 1268 (1981)
- Alexander v. Certified Master Builders Corp., 268 Kan. 812, 1 P.3d 899 (2000)
- Gonzales v. Associates Financial Serv. Co. of Kansas, 266 Kan. 141, 166, 967 P.2d 312 (1998)
- Porras v. Bell, 18 Kan. App. 2d 569, 857 P.2d 676 (1993)
- Remco Enterprises, Inc. v. Houston, 9 Kan. App. 2d 296, 677 P.2d 567, rev. denied, 235 Kan. 1042 (1984)

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