

SUPREME COURT OF MISSISSIPPI

Lone Star Industries, Inc. v. McGraw

90 So. 3d 564 (Miss. 2012) · Decided June 7, 2012

SUMMARY

The Mississippi Supreme Court held that the trial court properly allowed McGraw to file his First Amended Complaint because his motion for leave was filed before the original defendants were dismissed with prejudice. The court held that the Second Amended Complaint was improper because McGraw added a new defendant without obtaining court approval under Mississippi Rules of Civil Procedure 15 and 21. The court rejected arguments based on election of remedies, judicial estoppel, and claim-splitting, affirmed in part, reversed in part, and remanded.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Chandler, Justice; Waller, C.J.; Carlson, P.J.; Randolph, J.; Pierce, J.; Kitchens, J.; King, J.
JURISDICTION	Mississippi
DECIDED	June 7, 2012
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The defendants petitioned for interlocutory appeal from the circuit court's order denying their motion for summary judgment or, alternatively, motion to strike the Second Amended Complaint and dismiss the First Amended Complaint.
STANDARD OF REVIEW	The grant or denial of leave to amend a complaint is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Clark Sand Company, Inc., Mississippi Valley Silica Co., Inc., Precision Packaging, Inc., Custom Aggregates and Grinding, Inc., American Optical Corporation, Lonestar Industries, Inc., Specialty Sand Company, Pearl Sands, Inc., Pearl Specialty Sand, Inc., Dependable Abrasives, Inc. v. Charles Larry McGraw

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PRACTICE AREAS

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Remedies

QUESTIONS PRESENTED

1. Whether the trial court properly allowed McGraw to file the First Amended Complaint adding new defendants after settlement discussions with the original defendants had begun but before the original parties were dismissed with prejudice.
2. Whether McGraw was required to obtain court approval before filing the Second Amended Complaint that added Dependable Abrasives, Inc.
3. Whether the doctrines of election of remedies, judicial estoppel, or claim-splitting barred McGraw's amended claims against the new defendants.
4. Whether the striking of the Second Amended Complaint required remand for determination of whether McGraw could properly effect service of process.

HOLDINGS

1. The trial court did not abuse its discretion in granting McGraw leave to file the First Amended Complaint because his motion for leave was filed before any original party had been dismissed with prejudice, and Rule 15 permits amendment when justice so requires.
2. The trial court abused its discretion in allowing McGraw to file the Second Amended Complaint because adding Dependable Abrasives, Inc. required court approval under Mississippi Rules of Civil Procedure 15 and 21.
3. The doctrine of election of remedies did not apply because the case involved one action in one court, and McGraw asserted consistent theories of liability against the manufacturers rather than inconsistent remedies.
4. Judicial estoppel did not bar McGraw's amended claims because the case was not a separate action and the record did not show that his allegedly inconsistent statements were willfully false.
5. There was no claim-splitting because McGraw pursued only one complaint and one action.

KEY QUOTATIONS

“We find that the trial court abused its discretion in allowing McGraw to file his Second Amended Complaint, because he was required to obtain court approval. However, we find that the trial court did comply with Rule 15 when it allowed McGraw to file his First Amended Complaint, because McGraw filed his motion before all of the original parties were dismissed with prejudice.” (90 So. 3d at 564-65)

“because the Second Amended Complaint added new defendants, it also included an amendment which required court approval pursuant to Rule 21.” (90 So. 3d at 569)

FACTUAL BACKGROUND

McGraw alleged that exposure to silica-containing sand used in sandblasting caused him to develop silicosis and related lung injuries. He initially sued four sand suppliers, but after the case proceeded to trial and the parties reached a settlement, he moved to add additional defendants. The trial court granted leave to file the First Amended Complaint, but McGraw later filed a Second Amended Complaint adding Dependable Abrasives without obtaining court approval; that second complaint was the pleading served on the newly added defendants.

PROCEDURAL HISTORY

McGraw filed a personal-injury action in the Circuit Court of Claiborne County against four sand suppliers. After the case proceeded to trial and the parties reached a settlement, McGraw sought leave to amend to add his wife and additional defendants. The trial court allowed the First Amended Complaint but denied the defendants' motion to strike the Second Amended Complaint, which added Dependable Abrasives without court approval. The Mississippi Supreme Court affirmed denial of the motion to dismiss the First Amended Complaint, reversed denial of the motion to strike the Second Amended Complaint, and remanded for further proceedings concerning service of process.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Strike the Second Amended Complaint and remand to the trial court to determine whether McGraw may properly effectuate service of process. The case should otherwise proceed consistently with the opinion, including the First Amended Complaint.

CASES CITED

- Moeller v. Am. Guarantee & Liab. Ins. Co., 812 So. 2d 953, 961 (Miss. 2002)
- White v. Stewman, 932 So. 2d 27, 39 (Miss. 2006)
- Estes v. Starnes, 732 So. 2d 251, 252 (Miss. 1999)
- Wilner v. White, 929 So. 2d 315, 318-19 (Miss. 2006)
- Veal v. J.P. Morgan Trust Co., N.A., 955 So. 2d 843, 847-48 (Miss. 2007)
- O'Briant v. Hull, 208 So. 2d 784, 786 (Miss. 1968)
- Mississippi Power & Light Co. v. Cook, 832 So. 2d 474, 482 (Miss. 2002)
- Beyer v. Easterling, 738 So. 2d 221, 227 (Miss. 1999)
- Adams v. Baptist Mem'l Hosp.-DeSoto, Inc., 965 So. 2d 652, 655 (Miss. 2007)