SUPREME COURT OF ALASKA

Alaska Interstate Construction, LLC v. Pacific Diversified Investments, Inc.

279 P.3d 1156 (Alaska 2012) · Decided February 10, 2012

SUMMARY

The Alaska Supreme Court reviews disputes arising from the management of Alaska Interstate Construction, LLC by Pacific Diversified Investments, Inc., including aircraft leases, alleged fraudulent billing, fiduciary-duty claims, and the parties' operating agreement. The court holds that the Alaska Unfair Trade Practices Act applies because the Federal Aviation Administration regulations did not specifically regulate or prohibit the alleged fraudulent conduct. It also holds that the jury's findings of fraud and willful misconduct required a finding of material breach as a matter of law, reverses related post-trial rulings, and vacates the prevailing-party, attorney-fee, and prejudgment-interest determinations.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Christen, Justice; Carpeneti; Christen; Fabe; Stowers
JURISDICTION	Alaska
DECIDED	February 10, 2012
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal and cross-appeal from post-trial orders and judgments entered by the Alaska Superior Court following a jury verdict involving fraud, breach of fiduciary duty, conversion, breach of contract, Unfair Trade Practices Act claims, and related counterclaims.
STANDARD OF REVIEW	JNOV rulings are reviewed by determining whether, viewing the evidence in the light most favorable to the nonmoving party, reasonable persons could not differ in their judgment; legal questions involved in JNOV rulings are reviewed de novo. Findings that an issue was tried by consent and that it was raised in a directed-verdict motion are reviewed for abuse of discretion. The point at which a statute of limitations begins to run is reviewed as a factual determination under the clearly erroneous standard. Discovery orders are reviewed for abuse of discretion; jury instructions are reviewed for independent

	judgment, with reversal for instructional error only if the error was prejudicial.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Alaska Interstate Construction, LLC, Peak Alaska Ventures, Inc., Nabors Alaska Services Corporation v. Pacific Diversified Investments, Inc., John Ellsworth, individually, Anchorage Aviation Center, LLC

TOPICS

deceptive trade practices · consumer protection · material breach · fraud · appellate procedure

PRACTICE AREAS

consumer protection · contracts · torts · corporate law · construction law · commercial litigation · appellate procedure

QUESTIONS PRESENTED

1. Whether Pacific Diversified Investments's defense that its aircraft-lease conduct was exempt from the Alaska Unfair Trade Practices Act was timely and supported by the evidence.
2. Whether the Alaska Unfair Trade Practices Act applies to commercial transactions between related corporate entities and fiduciaries.
3. Whether the jury's findings of fraud and willful misconduct required a finding that Pacific Diversified Investments materially breached the operating agreement as a matter of law.
4. Whether the evidence supported judgment notwithstanding the verdict on John Ellsworth's fraudulent-inducement claim concerning the operating agreement's noncompetition provision.
5. Whether Alaska Interstate Construction's aircraft-lease claims were barred by the statute of limitations.
6. Whether the superior court properly denied discovery of attorney-client communications sought to support Pacific Diversified Investments's abuse-of-process claim.
7. Whether the clear-and-convincing-evidence standard applied to Pacific Diversified Investments's quasi-estoppel defense.
8. Whether the prevailing-party, attorney-fee, and prejudgment-interest rulings should stand after the appellate disposition.

HOLDINGS

1. A party may not obtain JNOV on an exemption theory that was not raised in the directed-verdict motion and was first advanced after the jury was discharged. Pacific Diversified Investments therefore was not entitled to JNOV on the ground that the aircraft-lease conduct was exempt from the UTPA.

2. The UTPA exemption for acts or transactions regulated under other laws applies only when a separate and distinct statutory scheme regulates the conduct and prohibits the unfair practices at issue. Pacific Diversified Investments failed to establish that the FAA, Federal Aviation Regulations, or Airline Deregulation Act specifically regulated and prohibited the alleged fraudulent billing, double billing, billing for services not received, excessive termination fees, and unrelated charges.
3. The UTPA can apply to transactions between related corporate entities and to conduct by a fiduciary when the parties also engage in arms-length commercial transactions. Pacific Diversified Investments's aircraft leases and support services were commercial transactions within the UTPA.
4. Under the circumstances of this case, the jury's findings that Pacific Diversified Investments engaged in repeated fraud, self-dealing, conversion, and willful misconduct required a conclusion that it materially breached the operating agreement as a matter of law.
5. The superior court should have granted JNOV against Ellsworth's fraudulent-inducement claim because he presented no evidence that he misapprehended the written agreement or was induced by deception to sign the agreement's personal noncompetition provision.
6. The superior court did not clearly err in determining that Alaska Interstate Construction's aircraft-lease claims were tolled until it obtained access to information revealing the alleged fraud after Pacific Diversified Investments was removed from management.
7. The superior court did not abuse its discretion by denying Pacific Diversified Investments discovery of Alaska Interstate Construction's attorney-client communications. The issue was also waived when Pacific Diversified Investments dismissed its abuse-of-process claim.
8. The superior court properly instructed the jury that Pacific Diversified Investments had to establish its quasi-estoppel defense by clear and convincing evidence.
9. The superior court's prevailing-party determination, attorney-fee award, and prejudgment-interest award had to be vacated because the appellate reversals required entry of a new judgment.

KEY QUOTATIONS

> “*We agree with the Iowa Supreme Court that honesty of the parties to a management agreement is an integral component of the agreement, and we specifically reject the view that fraud cannot constitute a material breach just because the defrauded party still makes a profit.*” (1174)

> “*On the facts of this case, the jury's finding that PDI committed fraud compels the conclusion that PDI materially breached the operating agreement as a matter of law; given the nature of the parties' relationship and the jury's findings regarding PDI's conduct, reasonable persons could not differ on this question.*” (1175)

> “*The UTPA exemption only applies where: (1) "the business ... is regulated elsewhere"; and (2) "the unfair acts and practices are therein prohibited."*” (1167)

FACTUAL BACKGROUND

Alaska Interstate Construction was owned 40 percent each by Peak Alaska Ventures and Nabors Alaska Services Corporation and 20 percent by Pacific Diversified Investments, which also managed the company through its owner, John Ellsworth. Pacific Diversified Investments leased aircraft to Alaska Interstate Construction and provided related support services, receiving more than $20 million under the aircraft arrangements. The jury found extensive fraudulent billing, nondisclosure, conversion, breach of fiduciary duty, and breach of the covenant of good faith and fair dealing, including millions of dollars in overcharges and charges for services not provided.

PROCEDURAL HISTORY

The jury awarded Alaska Interstate Construction approximately $7.3 million on its Unfair Trade Practices Act claims and the same amount on fraud and breach-of-fiduciary-duty claims, while finding that Pacific Diversified Investments did not materially breach the operating agreement. The superior court granted judgment notwithstanding the verdict eliminating the UTPA award, denied judgment notwithstanding the verdict on material breach and fraud in the inducement, awarded Pacific Diversified Investments attorney's fees and costs, and entered other post-trial rulings. The Alaska Supreme Court affirmed some rulings, reversed the UTPA exemption ruling and the material-breach and fraud-in-the-inducement rulings, and vacated prevailing-party, attorney-fee, and prejudgment-interest determinations.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Enter a new judgment consistent with the appellate rulings; grant the appropriate JNOV on the UTPA exemption issue, material breach, and Ellsworth's fraud-in-the-inducement claim; reconsider the prevailing-party determination and attorney-fee award; and make detailed findings supporting any prejudgment-interest calculation. The statutory and contractual indemnity claims are moot.

CASES CITED

- Roderer v. Dash, 233 P.3d 1101, 1108 (Alaska 2010)
- Sisters of Providence in Wash. v. A.A. Pain Clinic, Inc., 81 P.3d 989 (Alaska 2003)
- Richey v. Oen, 824 P.2d 1371, 1374 (Alaska 1992)
- Western Star Trucks, Inc. v. Big Iron Equipment Services, Inc., 101 P.3d 1047, 1048-49 (Alaska 2004)
- Odom v. Fairbanks Memorial Hospital, 999 P.2d 123, 132 (Alaska 2000)
- State v. O'Neill Investigations, Inc., 609 P.2d 520, 528 (Alaska 1980)
- Smallwood v. Central Peninsula General Hospital, 151 P.3d 319, 329 (Alaska 2006)
- Sara Lee Corp. v. Carter, 351 N.C. 27, 519 S.E.2d 308, 312 (1999)
- White v. Thompson, 364 N.C. 47, 691 S.E.2d 676, 678 (2010)
- Coffel v. Steward, 611 P.2d 543, 545-46 (Alaska 1980)
- Larken, Inc. v. Larken Iowa City LP, 589 N.W.2d 700, 704-05 (Iowa 1999) (en banc)
- Wirum & Cash, Architects v. Cash, 837 P.2d 692, 708 (Alaska 1992)
- Johnson v. Curran, 633 P.2d 994, 997-98 (Alaska 1981)

- Palmer v. Borg-Warner Corp., 838 P.2d 1243, 1251 (Alaska 1992)
- Hutton v. Realty Executives, Inc., 14 P.3d 977, 980 (Alaska 2000)
- Uncle Joe's Inc. v. L.M. Berry & Co., 156 P.3d 1113, 1120-21 (Alaska 2007)
- Greywolf v. Carroll, 151 P.3d 1234, 1243-44 (Alaska 2007)
- Dressel v. Weeks, 779 P.2d 324, 329-31 (Alaska 1989)
- Progressive Corp. v. Peter ex rel. Peter, 195 P.3d 1083, 1092 (Alaska 2008)
- K & K Recycling, Inc. v. Alaska Gold Co., 80 P.3d 702, 725 n. 71 (Alaska 2003)
