

SUPREME COURT OF THE STATE OF ALASKA

Alaska Fur Gallery, Inc. v. First National Bank Alaska

Opinion No. 6986 (Alaska Mar. 13, 2015) · No. S-14856/14875 · Decided March 13, 2015

SUMMARY

The Alaska Supreme Court affirmed judgments arising from a family of business owners' claims that First National Bank Alaska negligently and fraudulently induced investments in a hotel project. The court held that alleged inconsistencies in bank officers' testimony did not constitute fraud upon the court, although the bank's litigation conduct supported an award of enhanced attorney's fees for the first trial. The opinion also addresses standards of review, attorney's fees, jury issues, evidence, equitable estoppel, and civil rules.

CASE DETAILS

COURT	Supreme Court of the State of Alaska
WRITING FOR THE COURT	Bolger, Justice; Stowers, Justice; Eastaugh, Senior Justice
JURISDICTION	Alaska
DECIDED	March 13, 2015
DOCKET	S-14856/14875
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiffs appealed and the Bank cross-appealed from a superior court judgment entered after a second jury trial. The appeal challenged rulings concerning fraud upon the court, directed verdict and JNOV motions, evidentiary limitations, the verdict form, the statute of limitations, mootness, attorney fees, costs, and offers of judgment.
STANDARD OF REVIEW	Fraud upon the court, denial of a new trial, admission or exclusion of evidence, attorney-fee awards, prevailing-party determinations, and equitable-estoppel factual findings were reviewed under deferential standards identified in the opinion; directed verdict and JNOV rulings were reviewed under an objective reasonable-juror test; jury instructions and civil-rule interpretation were reviewed de novo or under independent judgment; unobjected-to jury instructions and verdict forms were reviewed for plain error; mootness was reviewed under ordinary appellate principles.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES

Alaska Fur Gallery, Inc., Hernandez and Associates, LLC, The Inn at Whittier, LLC v. First National Bank Alaska

TOPICS

fraud attorney fees offer of judgment mootness civil procedure

PRACTICE AREAS

civil procedure appellate procedure commercial litigation torts remedies evidence

QUESTIONS PRESENTED

1. Whether the Bank's allegedly inconsistent testimony and litigation conduct constituted fraud upon the court.
2. Whether the superior court properly denied directed-verdict and JNOV motions concerning whether McGrew acted solely as a federally permitted bank finder.
3. Whether the superior court abused its discretion by excluding or limiting evidence concerning the McCullough Report.
4. Whether the special verdict form and related jury instructions produced plain error or a double reduction of damages.
5. Whether the Bank's statute-of-limitations defense was barred by equitable estoppel based on McGrew's alleged assurances of replacement financing.
6. Whether the issue of whether an interest in the Inn was a security was moot.
7. Whether the awards of attorney fees and costs, including enhanced fees, were proper and whether the Bank's offers of judgment complied with Alaska Civil Rule 68.

HOLDINGS

1. Fraud upon the court may be found only in the most egregious circumstances involving corruption of the judicial process itself, and the plaintiffs did not prove that standard by clear and convincing evidence based on the Bank's allegedly misleading testimony in either trial or on appeal.
2. The superior court did not abuse its discretion by awarding enhanced attorney fees for the plaintiffs' work relating to the first trial while denying enhanced fees for the second trial.
3. The superior court properly denied directed-verdict and JNOV motions because reasonable jurors could differ on whether McGrew acted solely as a permitted bank finder.
4. The superior court did not abuse its discretion by excluding the McCullough Report and limiting McCullough's testimony.
5. The special verdict form did not produce plain error or a double reduction of damages.
6. The plaintiffs' common-law tort claims were not barred by the statute of limitations because the Bank was equitably estopped from asserting the defense.

7. The question whether the Inn investment was a security was moot, and the collateral-consequences exception did not apply.
8. The plaintiffs were the prevailing party and were properly awarded attorney fees and costs; the contractual fee provision did not govern, the Bank's Rule 68 offers were invalid, and costs did not require further apportionment.

KEY QUOTATIONS

“fraud upon the court may only be found in the most egregious circumstances involving a corruption of the judicial process itself.” (at 8-9)

“a party should be charged with knowledge of the fraudulent misrepresentation or concealment only when it would be utterly unreasonable for the party not to be aware of the deception.” (at 27-29)

“With few exceptions, the party who obtains an affirmative recovery is considered prevailing.” (at 39)

FACTUAL BACKGROUND

Members of the Hernandez family, through Alaska Fur Gallery and Hernandez & Associates, borrowed money from First National Bank Alaska to invest in the Inn at Whittier hotel project. They alleged that Bank loan officer William McGrew used a position of trust to induce the investment and repeatedly promised to obtain replacement financing or otherwise relieve them of their loan obligations. After a second trial, the jury found negligence but assigned 45% fault to the Hernandezes, 41% to another investor, Edward Cronick, and 14% to the Bank, resulting in a \$94,500 judgment against the Bank.

PROCEDURAL HISTORY

The plaintiffs sued First National Bank Alaska over alleged fraudulent inducement and related common-law tort and Alaska Securities Act claims arising from hotel-project financing. After a 2008 trial, the superior court ordered a new trial. At the 2010 retrial, the jury found only for the plaintiffs on negligence, determined total damages of \$675,000, allocated 14% fault to the Bank, and judgment was entered for \$94,500 plus interest, attorney fees, and costs. The Alaska Supreme Court affirmed the superior court in all respects.

DISPOSITION

affirmed

CASES CITED

- *Mallonee v. Grow*, 502 P.2d 432, 438-40 (Alaska 1972)
- *Murray v. Ledbetter*, 144 P.3d 492, 497-99 (Alaska 2006)
- *Pumphrey v. K.W. Thompson Tool Co.*, 62 F.3d 1128, 1129-32 (9th Cir. 1995)
- *State v. Alaska Continental Development Corp.*, 630 P.2d 977, 991 (Alaska 1980)
- *Turner v. Municipality of Anchorage*, 171 P.3d 180, 185 (Alaska 2007)
- *Wal-Mart, Inc. v. Stewart*, 990 P.2d 626, 631-32 (Alaska 1999)

- Cartee v. Cartee, 239 P.3d 707, 712 (Alaska 2010)
- Fred Meyer of Alaska, Inc. v. Bailey, 100 P.3d 881, 887-88 (Alaska 2004)
- Cummins, Inc. v. Nelson, 115 P.3d 536, 541 (Alaska 2005)
- Gefre v. Davis Wright Tremaine, LLP, 306 P.3d 1264, 1274-77 (Alaska 2013)
- Palmer v. Borg-Warner Corp., 838 P.2d 1243, 1247, 1251 (Alaska 1992)
- Waage v. Cutter Biological Division of Miles Laboratories, Inc., 926 P.2d 1145, 1149 (Alaska 1996)
- Valdez Fisheries Development Ass'n v. Alyeska Pipeline Service Co., 45 P.3d 657, 672 (Alaska 2002)
- Fairbanks Fire Fighters Ass'n, Local 1324 v. City of Fairbanks, 48 P.3d 1165, 1167 (Alaska 2002)
- In re Mark V., 324 P.3d 840, 843 (Alaska 2014)
- Anderson v. Alyeska Pipeline Service Co., 234 P.3d 1282, 1286 (Alaska 2010)
- John's Heating Service v. Lamb, 46 P.3d 1024, 1042 (Alaska 2002)
- Day v. Moore, 771 P.2d 436, 437 (Alaska 1989)
- Alaska Center for the Environment v. State, 940 P.2d 916, 921 (Alaska 1997)
- Parish v. City of Kodiak, 986 P.2d 201, 202-04 (Alaska 1999)
- Christianson v. First National Bank Alaska, Mem. Op. & J. No. 1445, 2012 WL 6062124 (Alaska Dec. 5, 2012)

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