ALABAMA COURT OF CIVIL APPEALS

City of Birmingham v. Orbitz, LLC

93 So. 3d 932 (Ala. Civ. App. 2012) · Decided April 18, 2012

SUMMARY

The Alabama Supreme Court considered whether online travel companies were liable for municipal lodgings taxes on amounts they charged customers for online booking services. The court held that the companies were not engaged in the business of renting or furnishing hotel rooms under the applicable Alabama statutes and municipal ordinances, and therefore were not subject to the taxes. It affirmed summary judgment for the online travel companies and adopted the trial court's reasoning.

CASE DETAILS

COURT	Alabama Court of Civil Appeals
WRITING FOR THE COURT	Main, Justice; Malone, C.J.; Woodall, J.; Bolin, J.; Main, J.; Murdock, J.
JURISDICTION	Alabama
DECIDED	April 18, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	The municipalities and the Birmingham-Jefferson Civic Center Authority appealed a summary judgment entered for online travel companies in a declaratory-judgment action concerning liability for municipal lodgings taxes.
STANDARD OF REVIEW	Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published appellate opinion

PARTIES	City of Birmingham, City of Huntsville, City of Decatur, City of Auburn, City of Madison, City of Anniston, City of Opelika, City of Fairhope, City of Gulf Shores, Birmingham-Jefferson Civic Center Authority v. Orbitz, LLC, Internetwork Publishing Corp. d/b/a Lodging.com, Trip Network, Inc. d/b/a CheapTickets, Travelocity.com LP, Site59.com, LLC, Hotels.com, L.P., Hotels.com GP, LLC, Hotwire, Inc., TravelNow.com, Inc., Expedia, Inc., priceline.com Incorporated, Lowestfare.com, Incorporated n/k/a Lowestfare.com LLC, Travelweb LLC

TOPICS

tax · municipal law · statutory interpretation · summary judgment · civil procedure

PRACTICE AREAS

state and local taxation · municipal law · statutory interpretation · civil procedure

QUESTIONS PRESENTED

1. Whether online travel companies that facilitate hotel reservations and retain a service charge are engaged in the business of renting or furnishing hotel rooms or accommodations under Alabama's lodgings-tax statutes and municipal ordinances.
2. Whether the undisputed facts established that the online travel companies were entitled to summary judgment.
3. Whether an alleged agency relationship created a genuine issue of material fact precluding summary judgment.

HOLDINGS

1. The online travel companies are not engaged in the business of renting or furnishing hotel rooms or accommodations and therefore are not subject to the municipalities' lodgings taxes on the amounts they retain for online services.
2. Summary judgment for the online travel companies was proper because the undisputed facts showed that they were entitled to judgment as a matter of law.
3. The municipalities did not present evidence supporting an agency relationship sufficient to create a genuine issue of material fact.

KEY QUOTATIONS

> *"The plain language of the statute and the [municipal plaintiffs'] ordinances compels the court to the conclusion that the [OTCs] are not engaged in the business of renting or furnishing any room or rooms in any hotel."* (at 937)

> *"It is therefore ordered and adjudged that the [OTCs'] motion for summary judgment is granted."* (at 937)

FACTUAL BACKGROUND

The municipalities had ordinances imposing lodgings taxes on persons engaged in renting or furnishing hotel rooms or accommodations. The online travel companies provided Internet-based travel information and reservation services, charged customers the hotel room amount, a lodgings-tax recovery charge, and an additional service amount, and remitted the room charge and tax-recovery charge to the hotels. The municipalities sought to tax the additional amount retained by the online travel companies for their services.

PROCEDURAL HISTORY

The municipalities filed a declaratory-judgment complaint alleging that online travel companies were engaged in renting or furnishing hotel accommodations and therefore owed municipal lodgings taxes on amounts charged for their online services. The trial court denied the defendants' Rule 12(b)(6) motion, permitted discovery, and then granted the defendants' motion for summary judgment, declaring that the online travel companies were not subject to the municipal lodgings tax. The Alabama Court of Civil Appeals affirmed and adopted the trial court's summary-judgment order in its entirety.

DISPOSITION

affirmed

CASES CITED

- City of Mobile v. GSF Properties, Inc., 531 So. 2d 833, 836 (Ala. 1988)
- DeKalb County LP Gas Co. v. Suburban Gas, Inc., 729 So. 2d 270, 275-76 (Ala. 1998)
- Blue Cross & Blue Shield v. Nielsen, 714 So. 2d 293, 296 (Ala. 1998)
- IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992)
- Ex parte T.B., 698 So. 2d 127, 130 (Ala. 1997)
- Ex parte National Western Life Insurance Co., 899 So. 2d 218 (Ala. 2004)