SUPREME COURT OF ARKANSAS

Tilley v. Malvern National Bank

532 S.W.3d 570 (Ark. 2017) · Decided December 7, 2017

SUMMARY

The Arkansas Supreme Court held that a foreclosure proceeding is equitable, but related legal counterclaims and third-party claims seeking money damages must be submitted to a jury based on the historical nature of the claims. The court further held that predispute contractual jury waivers are unenforceable under the Arkansas Constitution and clarified that the clean-up doctrine was abolished after Amendment 80. The court also overruled a per se new-business rule barring lost-profit damages, holding that the applicable standard is whether the claimant presents a reasonably complete evidentiary basis for the damages.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Karen R. Baker; Baker; Goodson; Kemp; Warren; Womack; Wood
JURISDICTION	Arkansas
DECIDED	December 7, 2017
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Tilley appealed a foreclosure judgment and the adverse disposition of his counterclaims and third-party claims. The Arkansas Supreme Court granted review of the Arkansas Court of Appeals' affirmance and treated the matter as originally filed in the Supreme Court.
STANDARD OF REVIEW	De novo review applies to claims involving the right to a jury trial. The court reviews a circuit court's interpretation of law independently. A ruling on a motion in limine is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; binding precedent in Arkansas.
PARTIES	Kenneth W. Tilley, individually and as trustee of the Kenneth Tilley Family Trust v. Malvern National Bank, Stephen Moore

TOPICS

civil procedure · appellate procedure · contracts · damages · remedies

PRACTICE AREAS

civil procedure · appellate procedure · constitutional law · contracts · damages · real estate · commercial litigation

QUESTIONS PRESENTED

1. Whether Tilley's legal counterclaims and third-party claims arising in a foreclosure action were triable to a jury under Amendment 80 to the Arkansas Constitution and the historical nature of the claims.
2. Whether a predispute contractual waiver of the right to a jury trial is enforceable under the Arkansas Constitution.
3. Whether Tilley's constitutional challenge to the predispute jury-waiver clause was preserved for appellate review.
4. Whether Arkansas applies a per se new-business rule barring recovery of lost profits by a new business venture.

HOLDINGS

1. After Amendment 80, Arkansas abolished the clean-up doctrine. A circuit court must determine whether a claim is legal or equitable by examining the claim's historical nature and the remedies sought. Tilley's claims were historically legal claims seeking money damages and therefore should have been submitted to a jury.
2. Predispute contractual waivers of the right to a jury trial are unenforceable under the Arkansas Constitution.
3. Tilley preserved his argument that predispute contractual jury waivers are unenforceable under the Arkansas Constitution.
4. The reasonably complete figures standard for proving anticipated profits applies even when the alleged lost profits arise from a new business venture. Arkansas therefore has no per se new-business rule barring such damages solely because the business is new.

KEY QUOTATIONS

> *"We take this opportunity to clarify that after the enactment of amendment 80, the clean-up doctrine was abolished."*

> *"Accordingly, we hold that predispute contractual jury waivers are unenforceable under the Arkansas Constitution."*

> *"Thus, we overrule Marvell to the extent that it holds that there is a per se new-business rule preventing lost profits unless the business is an old business."*

FACTUAL BACKGROUND

Tilley entered into a $221,000 loan agreement with Malvern National Bank secured by a mortgage on Garland County real property. The agreement contained a predispute jury-waiver clause. After the bank filed a foreclosure action following Tilley's default, Tilley asserted claims against the bank and its former commercial-lending vice president based on an alleged promise of a larger development loan, seeking damages for contract, estoppel, statutory, tort, negligence, and fraud theories.

PROCEDURAL HISTORY

Malvern National Bank filed a foreclosure and replevin action after Tilley defaulted on a $221,000 loan. Tilley asserted counterclaims and a third-party complaint and demanded a jury trial. The circuit court struck the jury demand, conducted a bench trial, entered judgment for the bank and against Tilley, and denied Tilley's motion for new trial. The Arkansas Court of Appeals affirmed, but the Supreme Court reversed and remanded in part, affirmed in part, and vacated the court of appeals' opinion.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded for proceedings consistent with the holding that Tilley's legal claims must be tried to a jury and that the predispute jury-waiver clause is unenforceable. The lost-profit issue was addressed because it was likely to arise on retrial.

CASES CITED

- Tilley v. Malvern Nat'l Bank, 2017 Ark. App. 127, 515 S.W.3d 636
- Russell v. Russell, 2013 Ark. 372, 430 S.W.3d 15
- Liberty Life Ins. Co. v. McQueen, 364 Ark. 367, 219 S.W.3d 172 (2005)
- First Nat'l Bank of DeWitt v. Cruthis, 360 Ark. 528, 203 S.W.3d 88 (2005)
- Riggin v. Dierdorff, 302 Ark. 517, 790 S.W.2d 897 (1990)
- Douthitt v. Dowthitt, 326 Ark. 372, 930 S.W.2d 371 (1996)
- Colclasure v. Kansas City Life Ins. Co., 290 Ark. 586, 720 S.W.2d 916 (1986)
- Stokes v. Stokes, 2016 Ark. 182, 491 S.W.3d 113
- Nat'l Bank of Ark. v. River Crossing Partners, LLC, 2011 Ark. 475, 385 S.W.3d 754
- Plymate v. Martinelli, 2013 Ark. 194
- Mode v. Barnett, 235 Ark. 641, 361 S.W.2d 625 (1962)
- Venable v. Becker
- Francis v. Protective Life Ins. Co., 371 Ark. 285, 265 S.W.3d 117 (2007)
- Velek v. State (City of Little Rock), 364 Ark. 531, 222 S.W.3d 182 (2006)
- Walker v. First Commercial Bank, N.A., 317 Ark. 617, 880 S.W.2d 316 (1994)
- Marvell Light & Ice Co. v. General Electric Co., 162 Ark. 467, 259 S.W. 741 (1924)
- American Fidelity Fire Ins. v. Kennedy Bros. Constr., Inc., 282 Ark. 545, 670 S.W.2d 798 (1984)

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