

SUPREME COURT OF ARKANSAS

Seeco, Inc. v. Stewmon

2016 Ark. 435 (2016) · No. CV-15-198 · Decided December 8, 2016

SUMMARY

The Arkansas Supreme Court affirmed an order certifying a class of Arkansas residents who entered into natural-gas leases with SEECO containing provisions permitting deductions for gathering, compression, treatment, and marketing costs. The court rejected SEECO’s arguments that a competing class action barred the case, that the class definition required an impermissible merits determination, and that the evidence was insufficient to satisfy Arkansas Rule of Civil Procedure 23. The court also declined to exercise superintending control over the competing lawsuits and addressed the scope of the interlocutory appeal.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Josephine Linker Hart, Associate Justice; Bob Estes, Special Justice; Scott P. Richardson, Special Justice; M. Scott Willhite, Special Justice
JURISDICTION	Arkansas
DECIDED	December 8, 2016
DOCKET	CV-15-198
DISPOSITION	affirmed
PROCEDURAL POSTURE	Interlocutory appeal from an order of the St. Francis County Circuit Court certifying a class under Arkansas Rule of Civil Procedure 23 and approving Stephanie DeVazier as a substitute class representative after Sara Stewmon died.
STANDARD OF REVIEW	Class certification is reviewed for abuse of discretion. The circuit court's findings concerning the Rule 23 requirements are reviewed for clear error.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential.
PARTIES	SEECO, Inc., DeSoto Gathering Company, LLC, Southwestern Midstream Services Company v. Sara Stewmon, et al.

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the interlocutory appeal from class certification permitted review of SEECO's arguments concerning competing class actions, claim preclusion, due process, and other matters beyond the class-certification order.
2. Whether the class definition was sufficiently definite and ascertainable without requiring a determination of the merits.
3. Whether the record supported the Rule 23 requirements of numerosity, commonality, typicality, adequacy, predominance, and superiority.
4. Whether Stephanie DeVazier was properly substituted and qualified to serve as class representative after Stewmon's death.
5. Whether DeVazier's participation in other litigation and potential lease defenses made her claims atypical or rendered class counsel inadequate.
6. Whether the death of the original class representative required dismissal or vacatur of the class-certification order.

HOLDINGS

1. An interlocutory appeal under Arkansas Rule of Appellate Procedure—Civil 2(a)(9) is limited to issues directly related to class certification; a party may not obtain review of unrelated issues by characterizing them as challenges to certification.
2. The competing Snow and Stewmon class actions were not subject to dismissal under Arkansas Rule of Civil Procedure 12(b)(8) because they had different lead plaintiffs and different participants, and therefore did not involve the same parties.
3. A class is sufficiently ascertainable when membership can be determined administratively by objective criteria, such as Arkansas residency and possession of a SEECO lease containing the specified deduction clause, without resolving the ultimate merits.
4. In deciding whether to certify a class, an Arkansas circuit court may consider the totality of the materials in the record, including pleadings, affidavits, deposition testimony, documents, and even emails; the record here adequately supported certification.
5. The evidence supported the Rule 23 requirements because the standardized leases and alleged uniform upcharging practice created common questions, a potentially large class made joinder impracticable, the complaint alleged a common wrong, and class treatment promoted judicial economy despite other related actions.

6. The Supreme Court and circuit court acted lawfully in substituting DeVazier as class representative after Stewmon's death, even though no specific procedural mechanism fully addressed the circumstances.
7. DeVazier was an adequate and typical class representative because her claim arose from the same alleged upcharging practice and standardized lease provision affecting the class, and her potential notice-of-breach defense was common to the class rather than a unique defense threatening to dominate the litigation.
8. The death of the original class representative did not require dismissal or vacatur of the class-certification order where a qualified substitute representative was approved.

KEY QUOTATIONS

“This court has made it clear that it will not entertain other issues in an interlocutory appeal pursuant to Rule 2(a)(9) under the guise of a challenge to class certification.” (at 7)

“In our view, there is no such “doctrine.” Rather, it is a legal response to the situation in which there are two actions between the same parties on the same subject that test the same rights.” (at 8)

“A class must be susceptible to precise definition.” (at 9)

“These two facts are easily proved by proof of residence and a copy of the gas lease. Both constitute objective criteria.” (at 11)

“In spite of the fact that there are three class actions, they represent a substantial amount of judicial economy when there are over 16,000 gas leases potentially involved.” (at 15)

“Our focus in reviewing typicality is, therefore, the extent to which the lead plaintiff’s claim is similar to the other potential class members, not how it is different.” (at 20)

FACTUAL BACKGROUND

SEECO used standardized natural-gas leases that permitted deductions from royalty payments for reasonable gathering, compression, treatment, and marketing expenses. The landowners alleged that SEECO and affiliated entities manipulated or upcharged those expenses and used natural gas without authorization or compensation. The proposed class consisted of Arkansas residents who had signed SEECO leases containing the relevant deduction provision before September 27, 2013. The circuit court relied on leases, check stubs, affidavits, deposition testimony, a field-services agreement, and materials from a related class action in certifying the class.

PROCEDURAL HISTORY

Landowners sued SEECO-related entities concerning deductions from natural-gas royalty payments under standardized leases. The circuit court certified the class. During the interlocutory appeal, Stewmon died; the Arkansas Supreme Court temporarily remanded the matter for substitution, and the circuit court approved DeVazier as the substitute representative. The Supreme Court affirmed the class-certification order and the substitution, declining to reach issues outside the scope of the interlocutory appeal.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

No further remand was ordered in the final disposition. The earlier temporary remand for substitution had already permitted the circuit court to approve DeVazier as class representative.

CASES CITED

- SEECO, Inc. v. Snow, 2016 Ark. 444
- Foster v. Hill, 372 Ark. 263, 275 S.W.3d 151 (2008)
- Edwards v. Nelson, 372 Ark. 300, 275 S.W.3d 158 (2008)
- Lenders Title Co. v. Chandler, 353 Ark. 339, 107 S.W.3d 157 (2003)
- United American Insurance Co. v. Smith, 2010 Ark. 468, 371 S.W.3d 685
- Askew v. Murdock Acceptance Corp., 225 Ark. 68, 279 S.W.2d 557 (1955)
- Southwestern Bell Yellow Pages, Inc. v. Pipkin Enterprises, Inc., 359 Ark. 402, 198 S.W.3d 115 (2004)
- Ferguson v. Kroger Co., 343 Ark. 627, 37 S.W.3d 590 (2001)
- BPS Inc. v. Richardson, 341 Ark. 834, 20 S.W.3d 403 (2000)
- SEECO v. Hales, 330 Ark. 402, 954 S.W.2d 234 (1997)
- Kersten v. State Farm Mutual Automobile Insurance Co., 2013 Ark. 124, 426 S.W.3d 455
- Beverly Enters.-Ark., Inc. v. Thomas, 370 Ark. 310, 259 S.W.3d 445 (2007)
- The Money Place, LLC v. Barnes, 349 Ark. 518, 78 S.W.3d 730 (2002)
- DIRECTV, Inc. v. Murray, 2012 Ark. 366, 423 S.W.3d 555
- Diamante, LLC v. Dye, 2013 Ark. 501, 430 S.W.3d 710
- Tortorich v. Tortorich, 324 Ark. 128, 923 S.W.2d 858 (1996)
- Smith v. Simes, 2013 Ark. 477, 430 S.W.3d 690