

SUPREME COURT OF ALABAMA

Leon C. Baker, P.C., and Leon C. Baker v. Merrill Lynch, Pierce,
Fenner & Smith, Inc.

821 So. 2d 158 (Ala. 2001) · No. 1992139 · Decided August 31, 2001

SUMMARY

The Alabama Supreme Court affirmed a permanent injunction barring Leon C. Baker and Leon C. Baker, P.C. from arbitrating claims against Merrill Lynch before the NASD. The court held that the trial court, rather than the arbitrators, properly decided whether collateral estoppel applied, and that prior Alabama litigation conclusively established that the Merrill Lynch account was Baker’s personal account and that Merrill Lynch was not liable for transferring the assets. The court also rejected arguments that Merrill Lynch waived its collateral-estoppel defense or that dismissal was required on forum non conveniens grounds.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Woodall, Justice; Moore, C.J.; Houston, J.; Lyons, J.; Johnstone, J.; Woodall, J.
JURISDICTION	Alabama
DECIDED	August 31, 2001
DOCKET	1992139
DISPOSITION	affirmed
PROCEDURAL POSTURE	Baker and Leon C. Baker, P.C. appealed from a Jefferson Circuit Court order permanently enjoining their NASD arbitration against Merrill Lynch. The Alabama Supreme Court affirmed.
STANDARD OF REVIEW	Abuse of discretion for the trial court's ruling on whether the right to resist arbitration was waived; the opinion otherwise reviews the trial court's legal conclusions concerning collateral estoppel and forum non conveniens.
PRECEDENTIAL VALUE	Published Alabama Supreme Court opinion; precedential.
PARTIES	Leon C. Baker, P.C., Leon C. Baker v. Merrill Lynch, Pierce, Fenner & Smith, Inc.

TOPICS

arbitration

civil procedure

forum non conveniens

commercial litigation

injunctions

PRACTICE AREAS

Civil procedure

Arbitration

Commercial litigation

Remedies

QUESTIONS PRESENTED

1. Whether a court or an arbitrator must decide the preclusive effect of a prior judicial determination on claims later asserted in arbitration.
2. Whether collateral estoppel barred Baker's and the PC's NASD arbitration claims based on the prior Alabama judgment.
3. Whether the PC was in privity with Baker such that it was bound by the prior judgment despite not being a named party.
4. Whether Merrill Lynch waived its right to resist arbitration by previously moving to compel arbitration in the Florida action.
5. Whether Alabama Code § 6-5-430 required dismissal on forum non conveniens grounds.

HOLDINGS

1. The court, not the arbitrator, decides whether a prior judicial determination has collateral-estoppel effect on claims subsequently asserted in arbitration.
2. Collateral estoppel barred the claims because the dispositive issue—whether the Merrill Lynch account was Baker's personal account—was identical to an issue actually litigated and necessarily decided in the prior Alabama action.
3. The PC was in privity with Baker and therefore was bound by the prior judgment for collateral-estoppel purposes.
4. Merrill Lynch did not waive its right to assert collateral estoppel or resist the later arbitration.
5. Section 6-5-430 did not apply because the cause of action arose in Alabama, where Merrill Lynch disclosed the account to the Jefferson Circuit Court and complied with that court's transfer order.

KEY QUOTATIONS

"No matter what, courts have the power to defend their judgments as res judicata, including the power to enjoin or stay subsequent arbitrations." (164)

"In short, this is not a cause of action that 'has arisen outside of this state.'" (169)

FACTUAL BACKGROUND

Baker owned and was the sole shareholder of Leon C. Baker, P.C., a New York law corporation. A Merrill Lynch brokerage account was titled in Baker's name, although Baker claimed it belonged to the PC; the Jefferson Circuit Court found it was Baker's personal account and ordered Merrill Lynch to transfer assets to satisfy the

Bennetts' judgment and contempt assessment. After related Florida litigation was dismissed, Baker and the PC filed NASD arbitration claims alleging that Merrill Lynch negligently disclosed the account and breached fiduciary duties. The Alabama trial court permanently enjoined the arbitration, concluding that the prior Alabama judgment collaterally estopped both Baker and the PC.

PROCEDURAL HISTORY

The Bennetts obtained and enforced an Alabama judgment against Baker. In related Alabama litigation, the Jefferson Circuit Court found that a Merrill Lynch account was Baker's personal account and held Merrill Lynch not liable for transferring and liquidating the account; that judgment became final on January 13, 1995. Baker's PC later pursued related claims in Florida, where Merrill Lynch obtained an order compelling arbitration, but the Florida action was dismissed in toto with prejudice. In 1999, the PC filed NASD arbitration claims against Merrill Lynch. Merrill Lynch then sought injunctive relief in Alabama based on collateral estoppel, and the Jefferson Circuit Court permanently enjoined the arbitration.

DISPOSITION

affirmed

CASES CITED

- Baker v. Bennett, 603 So. 2d 928 (Ala. 1992), cert. denied, 507 U.S. 912 (1993)
- State Farm Fire & Cas. Co. v. Owen, 729 So. 2d 834 (Ala. 1998)
- Baker v. Bennett, 644 So. 2d 901 (Ala. 1994)
- Baker v. Bennett, 660 So. 2d 980 (Ala. 1995)
- Baker v. Bennett, 667 So. 2d 743 (Ala. 1995) (table)
- Baker v. Bennett, 633 So. 2d 91 (Fla. Dist. Ct. App. 1994), review denied, 641 So. 2d 1344 (Fla. 1994), cert. denied, 513 U.S. 1018 (1994)
- Leon C. Baker, P.C. v. Bennett, 942 F. Supp. 171 (S.D.N.Y. 1996)
- Wheeler v. First Alabama Bank of Birmingham, 364 So. 2d 1190, 1199 (Ala. 1978)
- John Hancock Mut. Life Ins. Co. v. Olick, 151 F.3d 132, 139 (3d Cir. 1998)
- In re Y & A Group Sec. Litigation, 38 F.3d 380, 382-83 (8th Cir. 1994)
- Kelly v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 985 F.2d 1067 (11th Cir. 1993)
- C & O Dev. Co. v. American Arbitration Ass'n, 48 N.C. App. 548, 552, 269 S.E.2d 685, 687 (1980)
- Waterfront Marine Constr., Inc. v. North End 49ers Sandbridge Bulkhead Groups A, B & C, 251 Va. 417, 432, 468 S.E.2d 894, 903 (1996)
- Consolidation Coal Co. v. United Mine Workers of America, Dist. 12, Local Union 1545, 213 F.3d 404 (7th Cir. 2000)
- Chiron Corp. v. Ortho Diagnostic Sys., Inc., 207 F.3d 1126 (9th Cir. 2000)
- National Union Fire Ins. Co. of Pittsburgh v. Belco Petroleum Corp., 88 F.3d 129 (2d Cir. 1996)
- United States Fire Ins. Co. v. National Gypsum Co., 101 F.3d 813, 816 (2d Cir. 1996), cert. denied, 521 U.S. 1120 (1997)

- Telephone Workers Union of New Jersey v. New Jersey Bell Tel. Co., 584 F.2d 31, 31-32 (3d Cir. 1978)
- Local 103 of the International Union of Elec., Radio, and Mach. Workers v. RCA Corp., 516 F.2d 1336, 1340 (3d Cir. 1975)
- McMillian v. Johnson, 878 F. Supp. 1473, 1520 (M.D. Ala. 1995), rev'd in part on other grounds, 88 F.3d 1554 (11th Cir. 1996), cert. denied, 521 U.S. 1121 (1997)
- Hughes v. Martin, 533 So. 2d 188, 191 (Ala. 1988)
- Dairyland Ins. Co. v. Jackson, 566 So. 2d 723, 726 (Ala. 1990)
- Jordache Enters., Inc. v. National Union Fire Ins. Co. of Pittsburgh, 204 W. Va. 465, 479 n.16, 513 S.E.2d 692, 706 n.16 (1998)
- ConnTech Dev. Co. v. University of Conn. Educ. Properties, Inc., 102 F.3d 677, 685 (2d Cir. 1996)
- Fortune, Alsweet & Eldridge, Inc. v. Daniel, 724 F.2d 1355, 1357 (9th Cir. 1983)
- Owen-Williams v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 907 F. Supp. 134, 137 (D. Md. 1995)
- International Longshoremens Ass'n v. West Gulf Maritime Ass'n, 594 F. Supp. 670, 674 (S.D.N.Y. 1984)
- Inter-Connect, Inc. v. Gross, 644 So. 2d 867, 868 (Ala. 1994)
- Price v. Price, 360 So. 2d 340, 343 (Ala. Civ. App. 1978)
- Wise v. Watson, 286 Ala. 22, 236 So. 2d 681 (1970)
- Reeder v. Reeder, 356 So. 2d 202 (Ala. Civ. App. 1978)
- Sisco v. Empiregas, Inc., 286 Ala. 72, 237 So. 2d 463 (1970)
- Thompson v. Skipper Real Estate Co., 729 So. 2d 287 (Ala. 1999)
- Companion Life Ins. Co. v. Whitesell Mfg., Inc., 670 So. 2d 897, 899 (Ala. 1995)
- Ex parte McKinney, 515 So. 2d 693 (Ala. 1987)
- Carrell v. Masonite Corp., 775 So. 2d 121, 125 (Ala. 2000)