

COURT OF CIVIL APPEALS OF TEXAS, EL PASO

Kenneth Barnett et al. v. Houston Natural Gas Co. et al.

617 S.W.2d 305 (Tex. Civ. App.—El Paso 1981) · No. No. 7068 · Decided May 13, 1981

SUMMARY

The Texas Court of Civil Appeals considered whether an amended petition naming HNG Oil Company related back to the filing of an earlier suit mistakenly brought against Houston Natural Gas Company. Because HNG Oil Company was a distinct corporation and was not served or otherwise placed on notice before the two-year limitations period expired, the court held that limitations was not tolled and affirmed summary judgment for HNG Oil Company.

CASE DETAILS

COURT	Court of Civil Appeals of Texas, El Paso
WRITING FOR THE COURT	Osborn, Justice
JURISDICTION	Texas
DECIDED	May 13, 1981
DOCKET	No. 7068
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from a summary judgment entered for Houston Natural Gas Corporation and HNG Oil Company on limitations grounds. Barnett appealed only as to HNG Oil Company.
STANDARD OF REVIEW	Because Barnett filed no response to the summary-judgment motion, he could challenge on appeal only the legal sufficiency of the grounds expressly raised by the movant, but he could still argue that the movant's proof was legally insufficient to establish the asserted grounds as a matter of law.
PRECEDENTIAL VALUE	published opinion
PARTIES	Kenneth Barnett et al. v. Houston Natural Gas Company et al.

TOPICS

[statute of limitations](#)[summary judgment](#)[appellate procedure](#)[civil procedure](#)[personal injury](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the two-year limitations period applied to Barnett's claim against HNG Oil Company.
2. Whether a fact issue existed concerning application of the two-year statute of limitations.
3. Whether Barnett could challenge the summary judgment on appeal despite filing no response to the motion.

HOLDINGS

1. Filing suit against Houston Natural Gas Corporation did not interrupt limitations as to HNG Oil Company, a distinct corporation that owned and operated the well and was not served with the original petition.
2. A nonmovant who filed no response may challenge the legal sufficiency of the movant's expressly raised grounds and may argue that the movant's proof failed to establish those grounds as a matter of law.

KEY QUOTATIONS

“The critical issue is whether the party claimed to be responsible was in fact put on notice as to the claim being made against it in the pending suit.” (617 S.W.2d at 306-07)

“The test seems to be whether or not the right person was sued and whether or not he was put on notice that he, and not some other person, had been sued.” (617 S.W.2d at 307)

FACTUAL BACKGROUND

Kenneth Barnett was injured on February 24, 1976, while working for Devonian Well Service, Inc., at a well in Winkler County. He filed suit against Houston Natural Gas Company on February 21, 1978, but the corporation named in the suit, Houston Natural Gas Corporation, had never owned or operated the well. HNG Oil Company, the entity that owned and operated the well, was not joined until February 20, 1979, more than two years after the accident, and was not served before limitations expired.

PROCEDURAL HISTORY

Barnett sued Houston Natural Gas Company three days before expiration of the two-year limitations period for injuries sustained in a workplace accident. The correct corporate defendant, HNG Oil Company, was added by amended petition approximately three years after the accident and asserted limitations. The trial court granted summary judgment for both defendants, and the court of appeals affirmed as to HNG Oil Company.

DISPOSITION

affirmed

CASES CITED

- City of Houston v. Clear Creek Basin Authority, 589 S.W.2d 671 (Tex. 1979)
- Fantastic Homes, Inc. v. Combs, 596 S.W.2d 502 (Tex. 1979)
- Stokes v. Beaumont, Sour Lake & Western Railway Co., 161 Tex. 240, 339 S.W.2d 877 (1960)
- Cormier v. Texas Employers' Insurance Association, 564 S.W.2d 177 (Tex. Civ. App.—Beaumont 1978, writ ref'd n.r.e.)
- Thomas v. Cactus Drilling Corporation of Texas, 405 S.W.2d 214 (Tex. Civ. App.—Austin 1966, no writ)
- Price v. Estate of Anderson, 522 S.W.2d 690 (Tex. 1975)
- Continental Southern Lines, Inc. v. Hilland, 528 S.W.2d 828 (Tex. 1975)

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