SUPREME COURT OF TEXAS

First United Pentecostal Church of Beaumont v. Parker

514 S.W.3d 214 (Tex. 2017) · Decided March 17, 2017

SUMMARY

The Texas Supreme Court reviewed summary judgment in a dispute concerning the misappropriation of church funds entrusted to a law firm. The Court held that the church could pursue equitable relief for an alleged breach of fiduciary duty without proving causation and actual damages, but affirmed judgment for the attorney on the civil conspiracy and aiding-and-abetting claims. The Court also addressed preservation of the aiding-and-abetting claim and the requirements for conspiracy liability.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Justice Johnson
JURISDICTION	Texas
DECIDED	March 17, 2017
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The church appealed summary judgment in favor of Parker on claims for breach of fiduciary duty, civil conspiracy, aiding and abetting, and joint venture. The court of appeals affirmed in a split decision, and the Supreme Court of Texas granted review.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The reviewing court takes as true all evidence favorable to the nonmovant, indulges every reasonable inference in the nonmovant's favor, and resolves doubts in the nonmovant's favor. When both no-evidence and traditional motions are filed, the no-evidence motion is considered first.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	First United Pentecostal Church of Beaumont v. Leigh Parker

TOPICS

summary judgment · breach of trust · equitable relief · civil procedure · appellate procedure

PRACTICE AREAS

civil procedure · appellate procedure · fiduciary litigation · trusts · remedies · commercial litigation

QUESTIONS PRESENTED

1. Whether the church needed evidence that Parker's alleged breach of fiduciary duty caused actual damages to survive summary judgment when it sought equitable remedies such as fee forfeiture or disgorgement.
2. Whether the church waived its claim for equitable remedies by failing to use the terms equitable, forfeiture, or disgorgement in its appellate briefing.
3. Whether the summary-judgment evidence raised a genuine issue of material fact that Parker conspired with Lamb to steal or cover up the misappropriation of the church's money.
4. Whether the church preserved an aiding-and-abetting claim and presented evidence that Parker knowingly and wrongfully assisted or encouraged Lamb's theft.
5. Whether the evidence raised a genuine issue of material fact that Parker and Lamb formed a joint venture to misappropriate or conceal the church's money.

HOLDINGS

1. A client seeking equitable remedies for an attorney's breach of fiduciary duty, including forfeiture of fees or disgorgement of improper benefits, need not prove causation or actual damages. A client seeking actual damages must provide evidence that the fiduciary's conduct caused those damages.
2. The church did not waive its claim for equitable remedies because its appellate briefing fairly included the subsidiary issue, even though it did not use the words equitable, forfeiture, or disgorgement.
3. The church did not present evidence raising a genuine issue of material fact that Parker specifically intended to agree with Lamb to steal the church's money or that any later agreement to conceal the theft caused the church's damages.
4. The church failed to preserve an aiding-and-abetting claim because its pleadings and summary-judgment response did not give Parker fair notice that it asserted that distinct claim. In any event, the evidence did not show that Parker knowingly and wrongfully assisted or encouraged Lamb's theft before the theft was completed.
5. The evidence did not raise a genuine issue of material fact that Parker and Lamb formed a joint venture to steal or conceal the church's money.

KEY QUOTATIONS

> *"It is the agent's disloyalty, not any resulting harm, that violates the fiduciary relationship and thus impairs the basis for compensation."* (221)

> *"Rather, the central purpose of the equitable remedy of forfeiture is to protect relationships of trust by discouraging agents' disloyalty."* (221)

> *"Plainly put, for the church to have defeated a no-evidence motion for summary judgment as to a claim for actual damages, the church must have provided evidence that Parker's actions were causally related to the*

> *loss of its money.”* (222)

FACTUAL BACKGROUND

The church entrusted approximately $1,094,611.02 in settlement funds to The Lamb Law Firm for safekeeping. Firm owner Kip Lamb transferred most of the money to accounts he controlled and spent it on personal and firm expenses. Parker maintained that he did not learn the funds were gone until the summer of 2010, but he did not disclose the loss immediately and instead agreed with Lamb to try to replace the money through a proposed Ghana transaction. The church sued Parker and others, alleging, among other claims, breach of fiduciary duty, conspiracy, aiding and abetting, and joint venture.

PROCEDURAL HISTORY

The church sued Parker, The Lamb Law Firm, and Kip Lamb after funds entrusted to the firm were misappropriated. Parker moved for no-evidence and traditional summary judgment. After the trial court granted both motions, the court of appeals affirmed. The Supreme Court affirmed as to civil conspiracy, aiding and abetting, and joint venture, but reversed and remanded the church's claim for equitable remedies based on breach of fiduciary duty.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

The case was remanded to the trial court for further proceedings on the church's claim that it was entitled to equitable remedies against Parker for breach of fiduciary duties. The judgments regarding civil conspiracy, aiding and abetting, and joint venture were affirmed.

CASES CITED

- Cantey Hanger, LLP v. Byrd, 467 S.W.3d 477, 481 (Tex. 2015)
- Valence Operating Co. v. Dorsett, 164 S.W.3d 656, 661 (Tex. 2005)
- Ford Motor Co. v. Ridgway, 135 S.W.3d 598, 600-01 (Tex. 2004)
- Merriman v. XTO Energy, Inc., 407 S.W.3d 244, 248 (Tex. 2013)
- Merrell Dow Pharm., Inc. v. Havner, 953 S.W.2d 706, 711 (Tex. 1997)
- Kia Motors Corp. v. Ruiz, 432 S.W.3d 865, 875 (Tex. 2014)
- ERI Consulting Eng'rs, Inc. v. Swinnea, 318 S.W.3d 867, 873 (Tex. 2010)
- Kinzbach Tool Co. v. Corbett-Wallace Corp., 160 S.W.2d 509, 510, 514 (Tex. 1942)
- Burrow v. Arce, 997 S.W.2d 229, 232, 237-40 (Tex. 1999)
- Nath v. Tex. Children's Hosp., 446 S.W.3d 355, 365 (Tex. 2014)
- Perry v. Cohen, 272 S.W.3d 585, 587 (Tex. 2008)
- Tri v. J.T.T., 162 S.W.3d 552, 556 (Tex. 2005)

- Swinnea v. ERI Consulting Eng'rs, Inc., 318 S.W.3d 867, 881 (Tex. 2010)
- Massey v. Armco Steel Co., 652 S.W.2d 932, 934 (Tex. 1983)
- Firestone Steel Prods. Co. v. Barajas, 927 S.W.2d 608, 614 (Tex. 1996)
- Schlumberger Well Surveying Corp. v. Nortex Oil & Gas Corp., 435 S.W.2d 854, 857 (Tex. 1968)
- Triplex Communications, Inc. v. Riley, 900 S.W.2d 716, 719 (Tex. 1995)
- Randall v. Dallas Power & Light Co., 752 S.W.2d 4, 5 (Tex. 1988)
- Gaines v. Hamman, 358 S.W.2d 557, 562 (Tex. 1962)
- Insurance Co. of North America v. Morris, 981 S.W.2d 667, 675 (Tex. 1998)
- Juhl v. Airington, 936 S.W.2d 640, 643-45 (Tex. 1996)
- Stafford v. Stafford, 726 S.W.2d 14, 15 (Tex. 1987)
- Horizon/CMS Healthcare Corp. v. Auld, 34 S.W.3d 887, 896 (Tex. 2000)
- Kopplow Dev., Inc. v. City of San Antonio, 399 S.W.3d 532, 536 (Tex. 2013)
- Roark v. Allen, 633 S.W.2d 804, 810 (Tex. 1982)
- St. Joseph Hosp. v. Wolff, 94 S.W.3d 513, 534-35 (Tex. 2002)
- Coastal Plains Dev. Corp. v. Micrea, Inc., 572 S.W.2d 285, 287 (Tex. 1978)
- City of Keller v. Wilson, 168 S.W.3d 802, 813 (Tex. 2005)
