

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

John Franks v. Associated Air Center, Inc.

663 F.2d 583 (5th Cir. 1981) · No. No. 81-1187 · Decided December 11, 1981

SUMMARY

The Fifth Circuit reviewed a diversity action arising from negligent damage to an aircraft during a landing-gear repair test and an alleged unconscionable service charge under the Texas Deceptive Trade Practices-Consumer Protection Act. The court affirmed the findings on borrowed-servant status, negligence, proximate cause, and the consumer-protection claim, but remanded for a new trial on damages because the record lacked evidence establishing the reasonableness of the repair labor costs.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Ainsworth, Circuit Judge; Reavley, Circuit Judge; Randall, Circuit Judge
JURISDICTION	Federal
DECIDED	December 11, 1981
DOCKET	No. 81-1187
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	In a diversity action, a jury found Associated liable for negligence in damaging Franks's airplane and for unconscionable charges under the Texas Deceptive Practices-Consumer Protection Act. The district court denied Associated's motions for judgment notwithstanding the verdict and for a new trial. Associated appealed.
STANDARD OF REVIEW	Judgment notwithstanding the verdict is reviewed under the Boeing standard: all evidence and reasonable inferences are viewed in the light most favorable to the nonmovant, and judgment is proper only when the facts and inferences point so strongly and overwhelmingly in favor of one party that reasonable jurors could not reach a contrary verdict. Denial of a new trial is reviewed for abuse of discretion; a new trial is warranted when the verdict is against the great weight of the evidence. Greater deference is given when the district court has denied a new trial and left the jury's verdict undisturbed.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES

Associated Air Center, Inc. v. John Franks

TOPICS

negligence

consumer protection

damages

standard of review

appellate procedure

PRACTICE AREAS

torts

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remedies

QUESTIONS PRESENTED

1. Whether the evidence supported the jury's finding that Associated's employees were not borrowed servants of Franks.
2. Whether the evidence was sufficient to support the jury's findings of negligence and proximate cause.
3. Whether the negligence-damages award was supported by evidence establishing the reasonable cost of the repairs.
4. Whether the jury could reasonably find Associated's charges unconscionable under the Texas Deceptive Practices-Consumer Protection Act.
5. Whether the district court abused its discretion by denying Associated's motion for a new trial.

HOLDINGS

1. The evidence supported the jury's finding that Associated's employees remained Associated's employees because Franks's personnel did not possess the right to control the manner in which Associated's employees performed the work.
2. The evidence was sufficient for a reasonable jury to find that Associated negligently allowed excessive hydraulic pressure to build and that the negligence proximately caused the aircraft damage.
3. The \$8,000 negligence-damages award could not be sustained because the evidence did not establish the reasonable cost of labor and the court could not determine how the jury allocated the award between parts and labor; however, judgment notwithstanding the verdict was inappropriate because the evidence supported some damages.
4. The evidence supported the jury's finding that Associated's charges were unconscionable because they created a gross disparity between the value of the services received and the consideration paid; proof of deception or wrongful intent was not required under the applicable statutory definition.

KEY QUOTATIONS

“Under these circumstances, right of control of the manner of operating the equipment is the decisive factor, not control of the result to be accomplished by the equipment.” (¶ 20)

“We think that when the plaintiff relies on the second definition of unconscionability expressed in § 17.45(5) (B), gross disparity and not deception is the gravamen of the action.” (¶ 43)

FACTUAL BACKGROUND

Franks brought his HFD 320 Hansa jet to Associated to diagnose a landing-gear-door malfunction. During a retraction test, Associated employees operated a hydraulic mule while Franks's pilot operated the landing-gear controls, and the aircraft's landing-gear systems were substantially damaged. Rockwell later repaired the aircraft, but the record did not establish the reasonableness of Rockwell's labor charges. Associated also charged Franks for labor, storage, freight, cleanup, and inspection-related services, and the jury found those charges unconscionable under Texas law.

PROCEDURAL HISTORY

Franks sued Associated in the United States District Court for the Northern District of Texas after Associated's employees damaged his aircraft during a landing-gear retraction test. The jury returned verdicts for Franks on negligence and the Texas consumer-protection claim and awarded damages on both claims. The district court denied Associated's post-trial motions. The Fifth Circuit affirmed most of the judgment but remanded for a new trial limited to damages resulting from negligence.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for a new trial limited to the amount of damages attributable to Associated's negligence. The judgment was affirmed in all other respects, including the negligence liability finding, the borrowed-servant determination, and the Texas consumer-protection judgment.

CASES CITED

- Boeing Co. v. Shipman, 411 F.2d 365 (5th Cir. 1969)
- Producers Chemical Co. v. McKay, 366 S.W.2d 220 (Tex. 1963)
- The Standard Oil Co. v. Anderson, 212 U.S. 215 (1909)
- J.A. Robinson Sons, Inc. v. Wigart, 431 S.W.2d 327 (Tex. 1968)
- Mobil Chemical Co. v. Bell, 517 S.W.2d 245 (Tex. 1974)
- Pasadena State Bank v. Isaac, 149 Tex. 47, 228 S.W.2d 127 (1950)
- Truck Farm, Inc. v. Allen, 608 S.W.2d 296 (Tex. Civ. App.—Dallas 1980, no writ)
- C.A. May Marine Supply Co. v. Brunswick Corp., 649 F.2d 1049 (5th Cir. 1981)
- Sam Kane Beef Processors, Inc. v. Manning, 601 S.W.2d 93 (Tex. Civ. App.—Corpus Christi 1980, no writ)
- Fenner v. General Motors Corp., 657 F.2d 647 (5th Cir. 1981)
- Darien Bank v. Travellers Indemnity Co., 654 F.2d 1015 (5th Cir. 1981)
- Ellis v. Chevron U.S.A., Inc., 650 F.2d 94 (5th Cir. 1981)

- *Gaspard v. Taylor Diving & Salvage Co.*, 649 F.2d 372 (5th Cir. 1981)
- *Conway v. Chemical Leaman Tanklines, Inc.*, 610 F.2d 360 (5th Cir. 1980)
- *Taylor v. Fletcher Properties, Inc.*, 592 F.2d 244 (5th Cir. 1979)
- *Spurlin v. General Motors Corp.*, 528 F.2d 612 (5th Cir. 1976)
- *Cities Service Oil Co. v. Launey*, 403 F.2d 537 (5th Cir. 1968)
- *Evers v. Equifax, Inc.*, 650 F.2d 793 (5th Cir. 1981)
- *Valley View Cattle Co. v. Iowa Beef Processors*, 548 F.2d 1219 (5th Cir. 1977), cert. denied, 434 U.S. 855 (1977)
- *Massey v. Gulf Oil Corp.*, 508 F.2d 92 (5th Cir. 1975), cert. denied, 423 U.S. 838 (1975)
- *Columbia Southern Chemical Corp. v. Johnson*, 297 S.W.2d 373 (Tex. Civ. App.—San Antonio 1956, no writ)
- *Brown v. American Transfer and Storage Co.*, 601 S.W.2d 931 (Tex. 1980), cert. denied, 449 U.S. 1015 (1980)
- *Davis v. Becker & Associates, Inc.*, 608 F.2d 621 (5th Cir. 1979)
- *Lucas v. American Manufacturing Co.*, 630 F.2d 291 (5th Cir. 1980)
- *McKinzie v. Fleming*, 588 F.2d 165 (5th Cir. 1979)
- *Moren v. Pruske*, 570 S.W.2d 442 (Tex. Civ. App.—San Antonio 1978, writ ref'd n.r.e.)
- *Hyatt v. Tate*, 505 S.W.2d 373 (Tex. Civ. App.—Houston 1974, no writ)