

SUPREME COURT OF TEXAS

Forbes Inc. and William P. Barrett v. Granada Biosciences, Inc. and Granada Foods Corporation

124 S.W.3d 167 (Tex. 2003) · No. 01-0788 · Decided December 19, 2003

SUMMARY

The Supreme Court of Texas held that Granada Biosciences, Inc. and Granada Foods Corporation presented no evidence that Forbes Inc. and William P. Barrett published a disparaging article with actual malice. The Court concluded that post-publication events and imprecise use of the term “Granada” did not raise a fact issue concerning the defendants’ subjective awareness of falsity. It reversed the court of appeals and rendered judgment that the plaintiffs take nothing.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Harriet O'Neill; Chief Justice Phillips; Justice Hecht; Justice Owen; Justice Jefferson; Justice Smith; Justice Wainwright; Justice Brister; Justice O'Neill
JURISDICTION	Texas
DECIDED	December 19, 2003
DOCKET	01-0788
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from the court of appeals' reversal of a no-evidence summary judgment rendered for Forbes Inc. and William P. Barrett in a business-disparagement action.
STANDARD OF REVIEW	The court reviews a no-evidence summary judgment by examining the record in the light most favorable to the nonmovant. Summary judgment is improper only if the nonmovant presents more than a scintilla of probative evidence supporting the challenged element; evidence that creates only surmise or suspicion is insufficient.
PRECEDENTIAL VALUE	published opinion
PARTIES	Forbes Inc., William P. Barrett v. Granada Biosciences, Inc., Granada Foods Corporation

TOPICS

commercial litigation

first amendment

free speech

torts

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PRACTICE AREAS

business disparagement

constitutional torts

summary judgment

media law

QUESTIONS PRESENTED

1. Whether Granada Biosciences and Granada Foods produced more than a scintilla of evidence that Forbes or Barrett published the article with constitutional actual malice.
2. Whether statements or knowledge arising after the article was printed and placed in distribution could establish actual malice at the time of publication.
3. Whether Forbes's imprecise use of the generic term Granada, without more evidence of subjective awareness of falsity, constituted actual malice.

HOLDINGS

1. The court assumed, without deciding, that a public figure suing a media defendant for business disparagement must prove actual malice under the New York Times v. Sullivan standard.
2. The plaintiffs produced no evidence that Forbes or Barrett knew the challenged statements were false or acted with reckless disregard for their truth; therefore, summary judgment was proper.
3. Events occurring after the article was printed and placed in distribution, including Barrett's later conversation with Eller and subsequent awareness of the Bass misidentification, could not constitute evidence of actual malice at the time of publication.

KEY QUOTATIONS

“Actual malice, in this context, is a term of art. It is not ill will, spite, or evil motive.” (Section III)

“To establish reckless disregard, a public-figure plaintiff must prove that the defendant entertained serious doubts as to the truth of his publication.” (Section III)

“A no-evidence summary judgment is improper if the respondent brings forth more than a scintilla of probative evidence to raise a genuine issue of material fact.” (Section IV)

“The record before us presents no evidence that Forbes published defamatory statements about GBI and GFC with actual malice.” (Section V)

FACTUAL BACKGROUND

Forbes published an article about the financial condition of the Granada organization and its chairman, David Eller. The article referred to Granada Biosciences and Granada Foods as publicly traded Granada entities and included statements about Granada's declining revenues, lack of profits, shareholder litigation, and possible movement of assets. The article incorrectly associated a lawsuit with a Fort Worth billionaire named Edward Bass, and the companies' stock prices fell sharply after publication. Barrett later acknowledged that he used

Granada generically to refer to entities controlled by Eller, although the article did not always specifically identify the entities to which particular statements applied.

PROCEDURAL HISTORY

Granada Biosciences and Granada Foods sued Forbes and Barrett for business disparagement based on a Forbes article concerning the Granada organization. The trial court granted summary judgment for Forbes and Barrett. The court of appeals reversed, holding that fact issues existed regarding falsity, disparagement, and actual malice. The Supreme Court of Texas reversed the court of appeals and rendered judgment that the plaintiffs take nothing.

DISPOSITION

reversed

CASES CITED

- Hurlbut v. Gulf Atl. Life Ins. Co., 749 S.W.2d 762, 766 (Tex. 1987)
- New York Times v. Sullivan, 376 U.S. 254, 270-71, 279-80 (1964)
- WFAA-TV, Inc. v. McLemore, 978 S.W.2d 568, 571 (Tex. 1998)
- Huckabee v. Time Warner, 19 S.W.3d 413, 420-22, 426 (Tex. 2000)
- Casso v. Brand, 776 S.W.2d 551, 558 (Tex. 1989)
- St. Amant v. Thompson, 390 U.S. 727, 731 (1968)
- Bentley v. Bunton, 94 S.W.3d 561, 591, 603 (Tex. 2002)
- Harte-Hanks Comm., Inc. v. Connaughton, 491 U.S. 657, 688 (1989)
- Garrison v. Louisiana, 379 U.S. 64, 75 (1964)
- King Ranch v. Chapman, 118 S.W.3d 742, 750-51 (Tex. 2003)
- Wal-Mart Stores, Inc. v. Rodriguez, 92 S.W.3d 502, 506 (Tex. 2002)
- Kindred v. Con/Chem, Inc., 650 S.W.2d 61, 63 (Tex. 1983)
- Merrell Dow Pharms., Inc. v. Havner, 953 S.W.2d 706, 711 (Tex. 1997)
- Bose Corp. v. Consumers Union of United States, Inc., 466 U.S. 485, 488, 492, 511-14 (1984)
- N.A.A.C.P. v. Button, 371 U.S. 415, 433 (1963)
- Holloway v. Butler, 662 S.W.2d 688, 690-92 (Tex. App.—Houston [14th Dist.] 1983, writ ref'd n.r.e.)
- Philadelphia Newspapers, Inc. v. Hepps, 475 U.S. 767, 778 (1986)
- Herbert v. Lando, 441 U.S. 153 (1979)
- Turner v. KTRK Television, Inc., 38 S.W.3d 103, 119, 121-22 (Tex. 2000)
- Granada Biosciences, Inc. v. Barrett, 958 S.W.2d 215, 221-25 (Tex. App.—Amarillo 1997, pet. denied)
- Hustler Magazine v. Falwell, 485 U.S. 46, 56 (1988)

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