

SUPREME COURT OF OKLAHOMA

Binder v. Shepard's Inc.

2006 OK 17 (Okla. 2006) · No. No. 97822 · Decided March 21, 2006

SUMMARY

The Supreme Court of Oklahoma held that the existence of a viable alternative forum is a prerequisite to dismissal under the doctrine of forum non conveniens. The court further held that the defendant bears the burden of establishing an available alternative forum and may be required to accept service, submit to jurisdiction, and waive statute-of-limitations defenses in that forum.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Watt, C.J.; Lavender, J.; Hargrave, J.; Kauger, J.; Edmondson, J.; Colbert, J.; Winchester, V.C.J.; Opala, J.; Taylor, J.
JURISDICTION	Oklahoma
DECIDED	March 21, 2006
DOCKET	No. 97822
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs appealed from the district court's dismissal of their contract claims against McGraw-Hill on forum non conveniens grounds. The Court of Civil Appeals reversed and remanded with conditions, and the Oklahoma Supreme Court granted certiorari.
STANDARD OF REVIEW	Abuse of discretion review applies to a district court's decision on a motion to dismiss based on forum non conveniens.
PRECEDENTIAL VALUE	binding
PARTIES	David F. Binder, Edward A. Dauer, Roger W. Haines Jr., Ann M. Haralambie, Michael B. Mushlin, Sheldon H. Nahmod, James T. O'Reilly, Daniel W. Shuman, Frank F. Skillern, Harold Weinstock, Weinstock, Manion, Reisman, Shore & Neumann, Robert P. Wilkins v. The McGraw-Hill Companies, Inc.

TOPICS

- forum non conveniens
- commercial litigation
- appellate procedure
- standard of review
- civil procedure

PRACTICE AREAS

civil procedure

commercial litigation

appellate procedure

QUESTIONS PRESENTED

1. Whether a viable alternate forum is a prerequisite to dismissal under the doctrine of forum non conveniens.
2. Whether the defendant seeking forum non conveniens dismissal bears the burden of establishing that a viable alternate forum exists.
3. Whether a court may condition a forum non conveniens dismissal on the defendant's acceptance of service and personal jurisdiction and waiver of statute-of-limitations defenses in the alternate forum.
4. Whether the district court abused its discretion by dismissing the case without ensuring that an actually available alternate forum existed.

HOLDINGS

1. The existence of a viable alternate forum is a prerequisite to applying the doctrine of forum non conveniens.
2. The defendant seeking dismissal bears the burden of establishing the existence of a viable alternate forum.
3. A court may condition dismissal for forum non conveniens on the defendant's agreement to accept service, submit to personal jurisdiction, and waive statute-of-limitations defenses in the plaintiff's chosen alternate forum, provided that forum accepts the waiver.
4. The district court abused its discretion by dismissing McGraw-Hill without ensuring that a viable alternate forum was actually available.

KEY QUOTATIONS

"We hold, therefore, that the existence of a viable alternate forum is a prerequisite to the application of the doctrine of forum non conveniens." (at 279-280)

"Further, the defendant bears the burden of establishing the existence of a viable alternate forum." (at 280)

"If these conditions are not met, the district court should vacate the dismissal and proceed with the case." (at 280)

FACTUAL BACKGROUND

The plaintiffs were authors of law-related books and computer software who had publishing contracts with Shepard's Inc. Shepard's sold most of the assets of its topical publishing unit, including the plaintiffs' works and related contracts, to Thomson Legal Publishing, Inc. The plaintiffs alleged that Shepard's breached the contracts by failing to pay one-time royalties on the sale and that McGraw-Hill was liable as guarantor of Shepard's pre-sale liabilities. McGraw-Hill sought dismissal because the events, witnesses, evidence, and substantive

connections were outside Oklahoma, while the plaintiffs asserted that limitations periods had expired in the proposed alternate forums.

PROCEDURAL HISTORY

Plaintiffs sued Shepard's and McGraw-Hill for unpaid royalties allegedly owed after the sale of Shepard's topical publishing assets. The district court granted McGraw-Hill's motion to dismiss for forum non conveniens. The Court of Civil Appeals agreed Oklahoma was an inconvenient forum but required McGraw-Hill to accept service and waive statute-of-limitations defenses in the alternate forum. The Supreme Court vacated the Court of Civil Appeals' opinion, reversed the district court's order, and remanded for proceedings consistent with its opinion.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must either deny McGraw-Hill's motion to dismiss or condition any subsequent forum non conveniens dismissal on McGraw-Hill's stipulation that it will accept service of process, submit to personal jurisdiction, and waive any statute-of-limitations defense in the plaintiffs' chosen alternate forum, with that forum accepting the waiver. If the conditions are not met, the district court must vacate the dismissal and proceed with the case. The Court of Civil Appeals' opinion was vacated.

CASES CITED

- Conoco Inc. v. Agrico Chemical Co., 2004 OK 83, 115 P.3d 829
- American Dredging Co. v. Miller, 510 U.S. 443 (1994)
- Piper Aircraft Co. v. Reyno, 454 U.S. 235 (1981)
- Koster v. (American) Lumbermens Mutual Casualty Co., 330 U.S. 518 (1947)
- Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947)
- St. Louis-S.F. Ry. v. Superior Court, 1954 OK 223, 276 P.2d 773
- Pruitt Tool & Supply Co. v. Windham, 1963 OK 56, 379 P.2d 849
- Atchison, Topeka & Santa Fe Ry. v. District Court, 1956 OK 120, 298 P.2d 427
- Lovett v. Wal-Mart Stores, Inc., 2001 OK CIV APP 9, 18 P.3d 387
- Republic of Iran v. Pahlavi, 62 N.Y.2d 474, 478 N.Y.S.2d 597, 467 N.E.2d 245 (1984)
- Moezinia v. Moezinia, 124 A.D.2d 571, 507 N.Y.S.2d 716 (N.Y. App. Div. 1986)
- Shin-Etsu Chem. Co. v. 3033 ICICI Bank Ltd., 9 A.D.3d 171, 777 N.Y.S.2d 69 (N.Y. App. Div. 2004)
- Stamm v. Deloitte & Touche, 202 A.D.2d 413, 608 N.Y.S.2d 498 (N.Y. App. Div. 1994)
- McLeod v. Lovelace, 117 A.D.2d 989, 499 N.Y.S.2d 290 (N.Y. App. Div. 1986)
- Globalvest Mgmt. Co. v. Citibank, N.A., 801 N.Y.S.2d 234 (N.Y. Sup. Ct. 2005)
- Shewbrooks v. A.C. & S., Inc., 529 So. 2d 557 (Miss. 1988)
- S. Pac. Transp. Co. v. Fox, 609 So. 2d 357 (Miss. 1992)

- Mills v. Aetna Fire Underwriters Ins. Co., 511 A.2d 8 (D.C. 1986)
- Groendyke Transp., Inc. v. Cook, 1979 OK 59, 594 P.2d 369
- Besse v. Mo. Pac. R.R., 721 S.W.2d 740 (Mo. 1986)
- F.D.I.C. v. Jernigan, 1995 OK 54, 901 P.2d 793
- Cole v. Lee, 435 S.W.2d 283 (Tex. Civ. App. 1968)

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