

SUPREME COURT OF UTAH

America West Bank Members, L.C. v. State of Utah

America West Bank Members L.C. v. State, 2014 UT 49 (2014) · No. No. 20120456 · Decided October 24, 2014

SUMMARY

The Utah Supreme Court affirmed dismissal of America West Bank Members, L.C.'s claims against the State of Utah, the Utah Department of Financial Institutions, and a department director arising from the seizure and receivership of America West Bank. The court held that the dismissal was a final, appealable order and that the complaint inadequately pleaded breach-of-contract and related good-faith claims. The opinion also addresses procedural and substantive due process claims concerning the absence of a pre-seizure hearing, with separate opinions regarding whether those claims should have been dismissed with or without prejudice.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                     |
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| COURT                 | Supreme Court of Utah                                                                                                                                                                                                                                                                                                                               |
| WRITING FOR THE COURT | Associate Chief Justice Nehring; Justice Lee authored the opinion addressing Part II.B; Chief Justice Durrant; Justice Durham; Justice Lee; Justice Parrish; Associate Chief Justice Nehring                                                                                                                                                        |
| JURISDICTION          | Utah                                                                                                                                                                                                                                                                                                                                                |
| DECIDED               | October 24, 2014                                                                                                                                                                                                                                                                                                                                    |
| DOCKET                | No. 20120456                                                                                                                                                                                                                                                                                                                                        |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                            |
| PROCEDURAL POSTURE    | Appeal from the Third District Court's dismissal under Utah Rules of Civil Procedure 12(b)(6) of claims for breach of contract, breach of the covenant of good faith and fair dealing, procedural and substantive due process violations, and an unconstitutional taking.                                                                           |
| STANDARD OF REVIEW    | A Rule 12(b)(6) dismissal presents a question of law reviewed for correctness. The court accepts the complaint's factual allegations as true, but does not accept extrinsic facts or legal conclusions contrary to pleaded facts. Dismissal is proper only if it clearly appears that the plaintiff can prove no set of facts supporting the claim. |
| PRECEDENTIAL VALUE    | Published Utah Supreme Court opinion; precedential.                                                                                                                                                                                                                                                                                                 |
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## PARTIES

America West Bank Members, L.C. v. State of Utah, Utah Department of Financial Institutions, G. Edward Leary

## TOPICS

motions to dismiss

pleadings

final judgment rule

breach of contract

due process

## PRACTICE AREAS

Utah civil procedure

appellate procedure

contracts

constitutional law

administrative law

## QUESTIONS PRESENTED

1. Whether the district court's dismissal order was final and appealable despite dismissals without prejudice.
2. What allegations are required under Utah's short-and-plain pleading standard to state a breach of contract claim.
3. Whether failure to plead a breach of contract claim also defeats a derivative claim for breach of the covenant of good faith and fair dealing.
4. Whether the procedural due process claim was properly dismissed, and whether dismissal should be with or without prejudice.
5. Whether the complaint adequately pleaded a compensable taking under Article I, section 22 of the Utah Constitution.
6. Whether the district court applied a heightened pleading standard.

## HOLDINGS

1. An order dismissing the action is a final, appealable order even when some claims are dismissed without prejudice, because the pragmatic effect of the order is to terminate the case in the district court.
2. A breach of contract complaint must allege, at minimum, when the contract was entered, the essential terms of the contract at issue, and the nature of the defendant's breach.
3. A claim for breach of the covenant of good faith and fair dealing is derivative of a breach of contract claim and fails when the complaint does not adequately plead the underlying contract claim.
4. The procedural due process claim was properly dismissed under Rule 12(b)(6) for failure to plead the elements required for constitutional damages, but the dismissal had to be without prejudice because the complaint's pleading defect did not establish to a certainty that the plaintiff could never state a claim.
5. A complaint alleging a compensable taking under Article I, section 22 of the Utah Constitution must allege whether the asserted taking is physical or regulatory, in addition to alleging a protectable property interest and government action affecting that interest.
6. The district court did not apply a heightened pleading standard when it relied on authorities requiring the complaint to identify the essential facts supporting the requested relief.

## KEY QUOTATIONS

*“At a minimum, a breach of contract claim must include allegations of when the contract was entered into by the parties, the essential terms of the contract at issue, and the nature of the defendant’s breach.” (¶ 17)*

*“In order to state a claim for monetary damages for an alleged violation of the constitution, a plaintiff must allege three elements: (1) the plaintiff “suffered a flagrant violation of his or her constitutional rights,” (2) “existing remedies do not redress [the plaintiff’s] injuries,” and (3) “equitable relief, such as an injunction, was and is wholly inadequate to protect the plaintiff’s rights or redress his or her injuries.”” (¶ 38)*

*“We affirm the dismissal of the plaintiff’s procedural due process claim, but find error in the dismissal of the claim with prejudice and accordingly direct the district court to enter a judgment of dismissal without prejudice.” (¶ 44)*

## FACTUAL BACKGROUND

The Utah Department of Financial Institutions petitioned to seize America West Bank, and the district court approved the seizure without America West Bank Members' participation. The Department appointed the FDIC as receiver, which began winding down the bank and liquidating its assets. America West Bank Members later sued the State and related defendants, alleging contract, covenant, takings, and due process claims, but its complaint did not identify the contract's date or essential terms, describe the alleged breach, specify the type of taking, or plead the elements required for a constitutional damages claim.

## PROCEDURAL HISTORY

The Utah Department of Financial Institutions obtained an order approving seizure of America West Bank and appointed the FDIC as receiver. America West Bank Members filed suit against the State, the Department, and the Department's director. The district court dismissed the remaining claims under Rule 12(b)(6), and the plaintiff timely appealed. The Utah Supreme Court held that the dismissal was a final, appealable order and affirmed, directing that the procedural due process dismissal be without prejudice.

## DISPOSITION

affirmed

## REMAND INSTRUCTIONS

The district court must enter a judgment dismissing the procedural due process claim without prejudice. The other dismissals were affirmed, including dismissal without prejudice of the contract, covenant, and takings claims.

## CASES CITED

- Osguthorpe v. Wolf Mountain Resorts, L.C., 2010 UT 29, 232 P.3d 999
- Colman v. Utah State Land Board, 795 P.2d 622 (Utah 1990)
- Bradbury v. Valencia, 2000 UT 50, 5 P.3d 649
- Nichols v. State, 554 P.2d 231 (Utah 1976)

- Steiner v. State, 495 P.2d 809 (Utah 1972)
- United States v. Wallace & Tiernan Co., 336 U.S. 793 (1949)
- Bair v. Axiom Design, L.L.C., 2001 UT 20, 20 P.3d 388
- Canfield v. Layton City, 2005 UT 60, 122 P.3d 622
- Shah v. Intermountain Healthcare, Inc., 2013 UT App 261, 314 P.3d 1079
- Spackman ex rel. Spackman v. Board of Education of Box Elder County School District, 2000 UT 87, 16 P.3d 533
- Fuentes v. Shevin, 407 U.S. 67 (1972)
- Fahey v. Mallonee, 332 U.S. 245 (1947)
- Utah Department of Transportation v. Admiral Beverage Corp., 2011 UT 62, 275 P.3d 208
- B.A.M. Development, L.L.C. v. Salt Lake County, 2006 UT 2, 128 P.3d 1161
- Harold Selman, Inc. v. Box Elder County, 2011 UT 18, 251 P.3d 804
- Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982)
- Bonneville Tower Condominium Management Committee v. Thompson Michie Associates, 728 P.2d 1017 (Utah 1986)
- Alvarez v. Galetka, 933 P.2d 987 (Utah 1997)
- Foman v. Davis, 371 U.S. 178 (1962)