

SUPREME COURT OF KENTUCKY

Wilder v. Absorption Corp.

107 S.W.3d 181 (Ky. 2003) · No. 2002-SC-0338-MR · Decided June 12, 2003

SUMMARY

The Supreme Court of Kentucky reversed a Court of Appeals decision granting a writ of mandamus concerning enforcement of an arbitration and forum-selection clause requiring proceedings in Washington. The court held that enforcement would cause manifest injustice and sufficiently deprive the Kentucky plaintiffs of their opportunity to litigate, reinstating the trial court's order requiring binding arbitration in Kentucky. The dissent maintained that the clause was freely negotiated and that mandamus was the appropriate remedy.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Wintersheimer, Justice; Wintersheimer; Graves; Johnstone; Stumbo; Lambert; Cooper; Keller
JURISDICTION	Kentucky
DECIDED	June 12, 2003
DOCKET	2002-SC-0338-MR
DISPOSITION	reversed
PROCEDURAL POSTURE	Absorption Corporation sought a writ of mandamus or prohibition from the Kentucky Court of Appeals to require the Boone Circuit Court to vacate its order directing arbitration in Kentucky rather than Washington. The Court of Appeals granted the writ, and Wilder and Kelley appealed to the Supreme Court of Kentucky.
STANDARD OF REVIEW	A writ of mandamus or prohibition is an extraordinary remedy granted only when the lower court is proceeding outside its jurisdiction without an adequate remedy by appeal, or when it is proceeding incorrectly within its jurisdiction, no adequate remedy exists by appeal or otherwise, and great injustice and irreparable injury would result. The decision to grant or deny the writ is committed to the court's sound discretion.
PRECEDENTIAL VALUE	Published Kentucky Supreme Court opinion; binding precedent in Kentucky, subject to later treatment not provided in the source.

PARTIES

Roger Wilder, individually and d/b/a R. Wilder Sales, Roger Wilder and Dennis Kelley, individually and d/b/a R & D Midwest Pet Supply v. Absorption Corporation, Hon. Joseph Bamberger, Judge, Boone Circuit Court

TOPICS

arbitration

forum non conveniens

writ of certiorari

appellate procedure

contracts

PRACTICE AREAS

contracts

commercial litigation

civil procedure

appellate procedure

arbitration

remedies

QUESTIONS PRESENTED

1. Whether the Court of Appeals properly issued a writ of mandamus to review the circuit court's order concerning the arbitration and forum-selection clauses.
2. Whether Absorption Corporation had an adequate remedy by appeal from the circuit court's order.
3. Whether enforcement of the contractual arbitration and forum-selection provisions would cause manifest injustice by imposing an unreasonable and seriously inconvenient forum on Wilder and Kelley.
4. Whether the circuit court's order requiring arbitration within Kentucky should be reinstated.

HOLDINGS

1. The Court of Appeals erred in granting mandamus because Absorption Corporation failed to show that it lacked an adequate remedy by appeal.
2. The circuit court correctly found that enforcing the Washington arbitration and forum-selection provisions would produce manifest injustice and inconvenience so serious as to deprive Wilder and Kelley of their day in court.
3. The Court of Appeals' decision was reversed and the circuit court's May 29, 2001 order was reinstated, requiring the litigation to be submitted to binding arbitration within Kentucky.

KEY QUOTATIONS

“A writ of mandamus is an extraordinary remedy, one which should not be issued lightly.” (185)

“The inconvenience and unreasonableness of the choice of forum clause results in a manifest injustice, and this consideration is greater than the contractual agreement to accept arbitration in the state of Washington.” (185)

FACTUAL BACKGROUND

Absorption Corporation, a Nevada corporation headquartered in Washington, entered into a sales representative agreement with Roger Wilder covering sales in Kentucky, Indiana, Ohio, and Michigan. The agreement contained arbitration and forum-selection provisions requiring arbitration in Bellingham, Washington, and

litigation in Whatcom County, Washington, under Washington law. After Absorption terminated the relationship and began selling directly into the territory, Wilder and Kelley sued in Kentucky. A master commissioner found that the clause was freely negotiated and did not violate Kentucky public policy, but concluded that proceeding in Washington would effectively end the plaintiffs' case; the circuit court adopted that finding and ordered arbitration in Kentucky.

PROCEDURAL HISTORY

Wilder and Kelley sued Absorption Corporation in Boone Circuit Court for breach of contract, fraud, misrepresentation, and unfair trade practices. The circuit court initially denied enforcement of the arbitration and forum-selection provisions, but the Court of Appeals remanded for application of the Plunkett factors. After an evidentiary hearing, the circuit court found that enforcement in Washington would cause manifest injustice and ordered binding arbitration in Kentucky. The Court of Appeals then granted mandamus directing the circuit judge to vacate that order. The Supreme Court reversed and reinstated the circuit court's order.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The circuit court's May 29, 2001 order is reinstated, and the litigation shall be submitted to binding arbitration within the Commonwealth of Kentucky.

CASES CITED

- Prudential Resources Corp. v. Plunkett, 583 S.W.2d 97 (Ky. App. 1979)
- University of Louisville v. Shake, 5 S.W.3d 107 (Ky. 1999)
- Kentucky Labor Cabinet v. Graham, 43 S.W.3d 247 (Ky. 2001)
- Ohio River Contract Co. v. Gordon, 170 Ky. 412, 186 S.W. 178 (1916), *aff'd*, 244 U.S. 68 (1917)
- Absorption Corp. v. Wilder, 1998-CA-1358-MR
- Prezocki v. Bullock Garages, Inc., 938 S.W.2d 888 (Ky. 1997)
- Medical Legal Consulting Services, Inc. v. Covarrubias, 648 F. Supp. 153 (D. Md. 1986)
- Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972)
- Panavision International, L.P. v. Toeppen, 141 F.3d 1316 (9th Cir. 1998)
- Effron v. Sun Line Cruises, Inc., 67 F.3d 7 (2d Cir. 1995)
- Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer, 515 U.S. 528 (1995)
- Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585 (1991)
- Kentucky Farm Bureau Mutual Insurance Co. v. Henshaw, 95 S.W.3d 866 (Ky. 2003)
- Gevedon v. Grigsby, 303 S.W.2d 282 (Ky. 1957)
- Bridgestone/Firestone v. McQueen, 3 S.W.3d 366 (Ky. App. 1999)
- Tru Green Corp. v. Sampson, 802 S.W.2d 951 (Ky. App. 1991)

- *Artrip v. Samons Construction, Inc.*, 54 S.W.3d 169 (Ky. App. 2001)
- *Southeastern United Medigroup, Inc. v. Hughes*, 952 S.W.2d 195 (Ky. 1997)

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