

SUPREME COURT OF ALABAMA

The McCutchen Company, Inc. v. Media General, Inc.

988 So. 2d 998 (Ala. 2008) · No. 1060211 · Decided January 25, 2008

SUMMARY

The Supreme Court of Alabama affirmed summary judgment for Media General, Inc., WKRG, and Sue Cosgrove on claims involving alleged fraudulent inducement and breach of an advertising contract. The court held that the alleged representation concerning obtaining at least 50 new customers per month was an opinion or prediction rather than a misrepresentation of material fact, and that the plaintiff lacked substantial evidence of an intent to deceive. The court also held that the contract's unambiguous noncancellation provision controlled over asserted industry standards and affirmed the damages award.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	See, Justice; Cobb, C.J.; Woodall, J.; Smith, J.; Parker, J.
JURISDICTION	Alabama
DECIDED	January 25, 2008
DOCKET	1060211
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiff appealed from a summary judgment entered for the defendants on the plaintiff's fraud claim and on the defendants' breach-of-contract counterclaim, including an award of \$48,300 in damages.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. Summary judgment is proper when no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law. The evidence is viewed in the light most favorable to the nonmovant, with reasonable doubts resolved in the nonmovant's favor. The trial court's legal conclusions are also reviewed de novo.
PRECEDENTIAL VALUE	Published Alabama Supreme Court opinion
PARTIES	The McCutchen Company, Inc. v. Media General, Inc., d/b/a WKRG TV-5, Media General Operations, Inc., d/b/a WKRG, Sue Cosgrove

TOPICS

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QUESTIONS PRESENTED

1. Whether the alleged statement that the advertising campaign would produce at least 50 new customers per month was a misrepresentation of material fact supporting a fraud claim.
2. Whether the plaintiff presented substantial evidence that Cosgrove had a present intent to deceive when she made the alleged statement.
3. Whether an advertising-industry standard permitting cancellation on two weeks' notice could alter the contract's express noncancellable annual terms.
4. Whether the plaintiff demonstrated error in the trial court's award of \$48,300 in damages based on WKRG's alleged duty to mitigate.

HOLDINGS

1. The alleged statement that the company could expect at least 50 new customers per month was an opinion or prediction of future events, not a misrepresentation of material fact upon which a fraud claim could ordinarily be based.
2. The plaintiff failed to present substantial evidence that Cosgrove had a present intent to deceive when she allegedly made the customer estimate; therefore, summary judgment on the fraud claim was proper.
3. The industry standard permitting cancellation on two weeks' notice did not alter the contract's express terms because the contract clearly specified that it was an annual, noncancellable contract.
4. The damages award was affirmed because the plaintiff cited no relevant legal authority supporting its contention that WKRG had a duty to mitigate damages in the circumstances presented.

KEY QUOTATIONS

"A mere statement of opinion or prediction as to events to occur in the future is not a statement of a 'material fact' upon which individuals have the right to rely and, therefore, it will not support a fraud claim." (1002)

"Speculation is insufficient to prove that a party had a present intent to deceive." (1003)

"evidence of custom is admissible only to explain an ambiguous contract or to add to it an element not in contravention of its terms; but such evidence is never admissible to contradict the plain unambiguous covenants and agreements expressed in the contract itself." (1004)

FACTUAL BACKGROUND

The McCutchen Company negotiated with WKRG for an advertising package and alleged that WKRG sales manager Sue Cosgrove represented that the campaign would produce at least 50 new customers per month. The

company entered a two-year noncancellable advertising contract requiring substantial advertising purchases, but obtained no new customers during the first four months. It then attempted to cancel the contract on two weeks' notice based on an asserted industry standard, while the contract expressly described itself as an annual, noncancellable contract. WKRG refused to accept the cancellation and counterclaimed for breach of contract.

PROCEDURAL HISTORY

The McCutchen Company sued WKRG alleging that a representation concerning the number of new customers expected from an advertising campaign fraudulently induced it to enter into a two-year noncancellable advertising contract. WKRG counterclaimed for breach of contract after The McCutchen Company attempted to cancel the contract on two weeks' notice. The trial court entered summary judgment for WKRG on both claims and awarded WKRG \$48,300 in damages. The Supreme Court of Alabama affirmed.

DISPOSITION

affirmed

CASES CITED

- Smith v. State Farm Mut. Auto. Ins. Co., 952 So. 2d 342, 346 (Ala. 2006)
- Bockman v. WCH, L.L.C., 943 So. 2d 789 (Ala. 2006)
- Ex parte Alfa Mut. Gen. Ins. Co., 742 So. 2d 182, 184 (Ala. 1999)
- West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989)
- Jones v. BP Oil Co., 632 So. 2d 435, 436 (Ala. 1993)
- Dunlap v. Regions Fin. Corp., 983 So. 2d 374, 377 (Ala. 2007)
- Ex parte Graham, 702 So. 2d 1215, 1221 (Ala. 1997)
- Allstate Ins. Co. v. Eskridge, 823 So. 2d 1254, 1258 (Ala. 2001)
- Brushwitz v. Ezell, 757 So. 2d 423, 429 (Ala. 2000)
- Crowne Invs., Inc. v. Bryant, 638 So. 2d 873, 877 (Ala. 1994)
- Reynolds v. Mitchell, 529 So. 2d 227, 231 (Ala. 1988)
- Lawson v. Cagle, 504 So. 2d 226, 227 (Ala. 1987)
- Fincher v. Robinson Bros. Lincoln-Mercury, Inc., 583 So. 2d 256, 259 (Ala. 1991)
- D.H. Holmes Dep't Store v. Feil, 472 So. 2d 1001, 1003 (Ala. 1985)
- Vance v. Huff, 568 So. 2d 745, 750 (Ala. 1990)
- Beaulieu v. Wynfrey Hotel, Ltd., 718 So. 2d 83, 85 (Ala. Civ. App. 1998)
- Goodyear Tire & Rubber Co. v. Washington, 719 So. 2d 774, 776 (Ala. 1998)
- Moncrief v. Donohoe, 892 So. 2d 379, 383 (Ala. Civ. App. 2003)
- Winkleblack v. Murphy, 811 So. 2d 521, 529 (Ala. 2001)
- State Farm Fire & Cas. Co. v. Slade, 747 So. 2d 293, 303 (Ala. 1999)
- Southern Med. Health Sys., Inc. v. Vaughn, 669 So. 2d 98, 99 (Ala. 1995)
- Henderson v. Alabama A & M Univ., 483 So. 2d 392, 392 (Ala. 1986)

- Gibson v. Nix, 460 So. 2d 1346, 1347 (Ala. Civ. App. 1984)
- Mall Gift Cards, Inc. v. Wood, 288 Ala. 355, 358, 261 So. 2d 31, 34 (1972)
- Miller v. Gray, 136 Tex. 196, 200, 149 S.W.2d 582, 583 (1941)

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