SUPREME COURT OF TEXAS

Exxon Mobil Corp. v. Gill

299 S.W.3d 124 (Tex. 2009) · No. No. 07-0404 · Decided November 20, 2009

SUMMARY

The Supreme Court of Texas held that claims by Exxon service station dealers concerning rebates and open-price provisions constituted a single contract claim under Texas Uniform Commercial Code section 2.305. Applying the good-faith safe harbor discussed in Shell Oil Co. v. HRN, Inc., the court concluded that allegations that Exxon secretly recouped rebate costs did not distinguish the case from that precedent because the dealers did not allege commercially unreasonable or discriminatory pricing. The court vacated the class-certification order and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Texas
DECIDED	November 20, 2009
DOCKET	No. 07-0404
DISPOSITION	vacated
PROCEDURAL POSTURE	The Texas trial court certified a statewide class of Exxon service-station dealers. The court of appeals affirmed, and Exxon sought review in the Supreme Court of Texas.
STANDARD OF REVIEW	The court reviewed the class-certification ruling for whether the trial court correctly construed and applied the governing law and properly determined whether the certification prerequisites were met.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Exxon Mobil Corp. v. Dan Gill, Howard Granby, Patrick Morrow, the Dealers

TOPICS

class actions · civil procedure · breach of contract · implied covenant of good faith · uniform commercial code

PRACTICE AREAS

civil procedure · contracts · commercial litigation · uniform commercial code

QUESTIONS PRESENTED

1. Whether the dealers' allegations constituted a single breach-of-contract claim based on the open-price provisions rather than separate claims for breach of rebate promises or fraud.
2. Whether allegations that Exxon secretly recouped rebate costs through its prices could overcome the good-faith safe harbor for posted or price-in-effect provisions under Texas Business and Commerce Code section 2.305.
3. Whether the trial court properly certified a class when the certification order was based on a misunderstanding of the governing section 2.305 and class-certification law.

HOLDINGS

1. The dealers presented a single claim for breach of the open-price provisions based on an alleged failure to act in good faith; they did not assert an independent contract claim based on the rebate promises or a fraud claim.
2. When a seller charges a posted or price-in-effect price under an open-price contract, an allegation of undisclosed or subjective bad faith, without a claim that the price was commercially unreasonable or discriminatory, does not defeat the section 2.305 good-faith safe harbor.
3. The class-certification order could not stand because the trial court and court of appeals misconstrued and misapplied Shell Oil Co. v. HRN, Inc.; the order was vacated and the case remanded for further proceedings.

KEY QUOTATIONS

> *"Courts must perform a rigorous analysis before ruling on class certification to determine whether all prerequisites to certification have been met."* (125)

> *"To avoid having "a jury... determine in every section 2.305(b) case whether there was any improper motive animating the price-setter, even if the prices ultimately charged were undisputedly within the range of those charged throughout the industry," we concluded that the required good faith must be measured objectively, with reference to commercial realities, rather than subjectively, based on the person's motives or alleged dishonesty."* (128)

> *"The answer is no. Thus, it appears that the Dealers' claim lacks merit."* (129)

FACTUAL BACKGROUND

Exxon offered service-station dealers rebates based on sales volume and hours of operation. The dealers alleged that Exxon secretly recouped the rebate costs by factoring them into the wholesale prices charged under open-price provisions in the dealers' sales agreements. They did not allege that the prices were commercially unreasonable or discriminatory, nor that the rebate promises formed a separate contract or modified the sales agreements.

PROCEDURAL HISTORY

Three Texas Exxon dealers sued on behalf of Exxon dealers, initially seeking nationwide class certification and later limiting the proposed class to Texas after Compaq Computer Corp. v. Lapray. The Nueces County court at law certified a class asserting contract and good-faith claims concerning Exxon's open-price provisions, and the court of appeals affirmed. The Supreme Court of Texas held that the lower courts misconstrued Shell Oil Co. v. HRN, Inc., vacated the certification order, and remanded for further proceedings.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The class-certification order is vacated, and the case is remanded to the trial court for further proceedings and reconsideration of the effect of the governing law on the requirements for class certification.

CASES CITED

- Compaq Computer Corp. v. Lapray, 135 S.W.3d 657 (Tex. 2004)
- Flagler Auto., Inc. v. Exxon Mobil Corp., 582 F. Supp. 2d 367 (E.D.N.Y. 2008)
- Shell Oil Co. v. HRN, Inc., 144 S.W.3d 429, 434-438 (Tex. 2004)
- Sw. Ref. Co. v. Bernal, 22 S.W.3d 425, 435 (Tex. 2000)
- Intratex Gas Co. v. Beeson, 22 S.W.3d 398, 404 (Tex. 2000)
- Union Pac. Res. Group, Inc. v. Hankins, 111 S.W.3d 69, 72-73 (Tex. 2003)
- Romo v. Austin Nat'l Bank, 615 S.W.2d 168, 171 n. 2 (Tex. 1981)
- Henry Schein, Inc. v. Stromboe, 102 S.W.3d 675, 686, 693-694 (Tex. 2002)
- Autry Petroleum Co. v. BP Prods. N. Am., Inc., 334 F. App'x 982, 988 (11th Cir. 2009) (per curiam)
- Allapattah Services, Inc. v. Exxon Corp., 333 F.3d 1248 (11th Cir. 2003)
- BMG Direct Mktg., Inc. v. Peake, 178 S.W.3d 763, 778 (Tex. 2005)