SUPREME COURT OF ALABAMA

Armstrong Business Services, Inc. v. AmSouth Bank and Leonard "Bo" Marks

817 So. 2d 665 (Ala. 2001) · No. 1992302 · Decided August 31, 2001

SUMMARY

The Alabama Supreme Court reviewed a summary judgment entered for AmSouth Bank and its employee in claims arising from failed negotiations for a $5.2 million loan. The court concluded that the alleged loan commitment was unenforceable under Alabama's Statute of Frauds because the writings did not express consideration for the commitment. The opinion also addresses claims for fraudulent nondisclosure, negligent or wanton refusal to lend, and negligent or wanton supervision.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Harwood, Justice; Moore, C.J.; Houston, J.; Brown, J.; Stuart, J.; Harwood, J.; See, J. (recused)
JURISDICTION	Alabama
DECIDED	August 31, 2001
DOCKET	1992302
DISPOSITION	affirmed
PROCEDURAL POSTURE	Armstrong Business Services, Inc. appealed from a summary judgment entered for AmSouth Bank and Leonard "Bo" Marks on its remaining breach-of-contract, fraudulent-suppression, negligence, wantonness, and negligent-or-wanton-supervision claims.
STANDARD OF REVIEW	The Supreme Court reviews summary judgment under the same standard as the trial court, viewing the evidence in the light most favorable to the nonmovant and resolving reasonable doubts against the movant. Summary judgment is proper when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law; after a prima facie showing, the nonmovant must present substantial evidence creating a genuine issue of material fact.
PRECEDENTIAL VALUE	Published Alabama Supreme Court opinion; precedential

PARTIES	Armstrong Business Services, Inc. v. AmSouth Bank, Leonard "Bo" Marks

TOPICS

statute of frauds · breach of contract · fraud · negligence · summary judgment

PRACTICE AREAS

contract law · banking law · fraud and misrepresentation · negligence · civil procedure

QUESTIONS PRESENTED

1. Whether the evidence created a genuine issue of material fact concerning a binding loan agreement and breach of contract.
2. Whether the alleged loan commitment was unenforceable under Alabama's Statute of Frauds because no writing expressed consideration for the commitment.
3. Whether AmSouth owed ABS a duty to disclose that no binding loan agreement existed, that ABS had not finally qualified for the loan, or that Marks lacked authority to commit AmSouth.
4. Whether AmSouth or Marks owed ABS a duty of care to process the loan request, supporting negligence or wantonness claims.
5. Whether ABS presented substantial evidence that AmSouth negligently or wantonly supervised Marks.

HOLDINGS

1. The alleged agreement by AmSouth to lend ABS $5.2 million was void under Ala. Code 1975, § 8-9-2(7), because none of the writings in the record expressed consideration given or bargained for in exchange for AmSouth's commitment to lend.
2. AmSouth owed ABS no duty to disclose that the bank had not made a binding loan commitment, that ABS had not finally qualified for the loan, or that Marks lacked authority to approve it.
3. AmSouth and Marks owed ABS no contractual or common-law duty to lend money or to process the loan request in the manner ABS demanded; therefore, ABS's negligence and wantonness claims failed as a matter of law.
4. ABS failed to present substantial evidence that AmSouth knew or should have known of Marks's incompetence and negligently or wantonly disregarded it; summary judgment on the supervision claim was proper.

KEY QUOTATIONS

> *"None of the three writings ABS relies on shows consideration for a loan commitment, and our careful examination of the record has located no other writing showing consideration for a contract by Am-South to lend money to ABS."* (676)

> *"Courts have traditionally viewed the relationship between a bank and its customer as a creditor-debtor relationship which does not impose a fiduciary duty of disclosure on the bank."* (679)

> *"Alabama law is long settled that a breach of a promise, outside a contract or a duty imposed by the common law, does not support a tort cause of action."* (681)

> *"It is not sufficient merely to allege, or to show, that the employee acted incompetently."* (683)

FACTUAL BACKGROUND

ABS sought financing from AmSouth to purchase the Thriftax H & R Block franchises. AmSouth loan officer Leonard Marks sent ABS a November 14, 1997, letter stating that ABS had qualified for financing of up to $5.2 million, but making funding contingent on acceptable, perfected assignment of franchise rights and formal credit approval. ABS did not obtain evidence that the franchise rights were assignable, and AmSouth ultimately declined to fund the loan. ABS then sued, claiming that the letter and related negotiations created a binding loan commitment and that AmSouth and Marks were liable for suppression, negligence, wantonness, and negligent or wanton supervision.

PROCEDURAL HISTORY

ABS and Norris Armstrong sued AmSouth and Marks in March 1999, asserting contract and tort claims arising from failed negotiations for a $5.2 million loan. After discovery, defendants moved for summary judgment. ABS conceded several claims, and both plaintiffs conceded that Armstrong lacked standing to assert ABS's claims. The trial court granted summary judgment for defendants on August 8, 2000, later amending the order to clarify the grounds and record considered. ABS appealed; Armstrong did not.

DISPOSITION

affirmed

CASES CITED

- Rains v. Patton, 191 Ala. 349, 67 So. 600 (1914)
- Cahaba Seafood, Inc. v. Central Bank of the South, 567 So. 2d 1304 (Ala. 1990)
- Employees' Benefit Ass'n v. Grissett, 732 So. 2d 968, 975 (Ala. 1998)
- Hargrove v. Tree of Life Christian Day Care Center, 699 So. 2d 1242, 1247 (Ala. 1997)
- Pinyan v. Community Bank, 644 So. 2d 919 (Ala. 1994)
- Peterson Development Co. v. Torrey Pines Bank, 233 Cal. App. 3d 103, 284 Cal. Rptr. 367 (Cal. Ct. App. 1991)
- Capital Holding Corp. v. Octagon Development Co., 757 S.W.2d 202 (Ky. Ct. App. 1988)
- Analytical Design & Construction Group, Inc. v. Murray, 690 P.2d 269 (Colo. Ct. App. 1984)
- Jenkins v. Thrift, 469 So. 2d 1278 (Ala. 1985)
- Kennedy v. Herring, 270 Ala. 73, 116 So. 2d 596 (1959)
- Foy v. Foy, 484 So. 2d 439 (Ala. 1986)

- Griese-Traylor Corp. v. First National Bank of Birmingham, 572 F.2d 1039 (5th Cir. 1978)
- McGuire v. Andre, 259 Ala. 109, 65 So. 2d 185 (1953)
- Ex parte Grant, 711 So. 2d 464, 465 (Ala. 1997)
- Roberts v. Lindsey, 242 Ala. 522, 7 So. 2d 82 (1942)
- Russell v. Russell, 270 Ala. 662, 120 So. 2d 733 (1960)
- Smoyer v. Birmingham Area Chamber of Commerce, 517 So. 2d 585, 587 (Ala. 1987)
- Kelsoe v. International Wood Products, Inc., 588 So. 2d 877 (Ala. 1991)
- Barnett v. Funding Plus of America, Inc., 740 So. 2d 1069, 1074 (Ala. 1999)
- State Farm Fire & Casualty Co. v. Owen, 729 So. 2d 834 (Ala. 1998)
- Richard Brown Auction & Real Estate, Inc. v. Brown, 583 So. 2d 1313 (Ala. 1991)
- Hines v. Riverside Chevrolet-Olds, Inc., 655 So. 2d 909, 919-20 (Ala. 1995)
- Colonial Bank v. Ridley & Schweigert, 551 So. 2d 390 (Ala. 1989)
- Baylor v. Jordan, 445 So. 2d 254, 256 (Ala. 1984)
- K & C Development Corp. v. AmSouth Bank, N.A., 597 So. 2d 671 (Ala. 1992)
- McIntyre Electric Service, Inc. v. SouthTrust Bank, 495 So. 2d 1043 (Ala. 1986)
- Duckworth v. National Bank of Commerce, 656 So. 2d 340 (Ala. 1994)
- Ryan v. First Alabama Bank, 620 So. 2d 568 (Ala. 1993)
- AALAR, Ltd., Inc. v. Francis, 716 So. 2d 1141, 1144 (Ala. 1998)
- Pugh v. Butler Telephone Co., 512 So. 2d 1317, 1319-20 (Ala. 1987)
- Smitherman v. McCafferty, 622 So. 2d 322, 324 (Ala. 1993)
- Buchanan v. Merger Enterprises, Inc., 463 So. 2d 121, 126 (Ala. 1984)
- Cox v. Miller, 361 So. 2d 1044, 1048 (Ala. 1978)
- Lance, Inc. v. Ramanauskas, 731 So. 2d 1204 (Ala. 1999)
- Collins v. Wilkerson, 679 So. 2d 1100 (Ala. Civ. App. 1996)
- Wal-Mart Stores, Inc. v. Tuck, 671 So. 2d 101 (Ala. Civ. App. 1995)
- Tharp v. Union Bank, 364 So. 2d 335 (Ala. Civ. App. 1978)
- General Motors Corp. v. Bell, 714 So. 2d 268 (Ala. 1996)
- Morgan v. South Central Bell Telephone Co., 466 So. 2d 107 (Ala. 1985)
- C & C Products, Inc. v. Premier Industrial Corp., 290 Ala. 179, 275 So. 2d 124 (1972)
- Vincent v. Blue Cross-Blue Shield of Alabama, Inc., 373 So. 2d 1054 (Ala. 1979)
- Big B, Inc. v. Cottingham, 634 So. 2d 999, 1003 (Ala. 1993)
- Lane v. Central Bank of Alabama, N.A., 425 So. 2d 1098, 1100 (Ala. 1983)
- Anselmo Meat Co. v. Riley, 533 So. 2d 552 (Ala. 1988)
- Bunch v. Garner, 208 Ala. 271, 94 So. 114 (1922)