SUPREME COURT OF MISSISSIPPI

Fidelity & Guaranty Insurance Co. v. Blount

63 So. 3d 453 (Miss. 2011) · Decided March 24, 2011

SUMMARY

The Mississippi Supreme Court considered whether sureties on contractor tax bonds were entitled to notice of their principals' tax audits and assessments. The court held that the sureties were contractually liable for the taxes, damages, penalties, and interest covered by the bond riders, and that the Tax Commission's failure to notify the sureties of the audits did not violate due process. The court also concluded that the sureties were not taxpayers entitled to statutory notice of the underlying assessments.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Pierce, Justice; Waller, C.J.; Carlson, P.J.; Dickinson, P.J.; Randolph, J.; Kitchens, J.; Chandler, J.; Lamar, J.; King, J.
JURISDICTION	Mississippi
DECIDED	March 24, 2011
DISPOSITION	affirmed
PROCEDURAL POSTURE	Consolidated appeal from Hinds County Chancery Court summary-judgment rulings in actions brought by sureties challenging the Mississippi State Tax Commission's practices concerning contractor tax bonds, notice, and collection of taxes, penalties, damages, and interest.
STANDARD OF REVIEW	The Court applied the arbitrary-and-capricious standard to review the agency's order, considering whether it was supported by substantial evidence, arbitrary or capricious, beyond the agency's power, or violative of a statutory or constitutional right. The Court also accorded deference to the agency's construction of its own rules and governing statutes.
PRECEDENTIAL VALUE	published precedential opinion of the Supreme Court of Mississippi
PARTIES	Fidelity and Guaranty Insurance Company, St. Paul Fire and Marine Insurance Company, Travelers Casualty and Surety Company of

America, United States Fidelity and Guaranty Company v. Mississippi State Tax Commission

TOPICS

insurance | contracts | state and local tax | due process | construction law

PRACTICE AREAS

suretyship | insurance | tax litigation | administrative law | constitutional law

QUESTIONS PRESENTED

1. Whether Mississippi contract law permitted enforcement of the tax riders against the sureties for all taxes, damages, penalties, and interest assessed against the bonded principals.
2. Whether the Tax Commission violated the sureties' substantive or procedural due-process rights by failing to notify them of the principals' tax audits, assessments, and hearings before demanding payment.
3. Whether the sureties had standing as taxpayers or otherwise to challenge the lack of notice concerning the principals' tax assessments.

HOLDINGS

1. The sureties were contractually liable for all taxes, damages, interest, and penalties that accrued to Mississippi under the bonds and tax riders, because the riders' language was clear and unambiguous and expressly covered those amounts.
2. The Tax Commission did not violate the sureties' substantive or procedural due-process rights by failing to notify them of the principals' audits, assessments, or hearings before the principals' defaults.
3. The sureties lacked standing to contest the alleged denial of notice and due process relating to the principals' tax audits and assessments because they were not the taxpayers whose statutory rights were allegedly violated.

KEY QUOTATIONS

> *"The language "guaranteeing payment of all taxes, damages, interest and penalties which may accrue to the State of Mississippi" is clear and unambiguous and should be given its plain and ordinary meaning."* (461-462)

> *"Here, the sureties contracted through the tax riders to guarantee the "payment of all taxes, damages, interest and penalties which may accrue to the State of Mississippi." This plain language expressly includes all taxes, penalties, and interest which may accrue."* (463)

> *"Reading the confidentiality and assessment statutes together with this rule of law, it is evident that the Legislature intended that a surety's right to notice does not arise until after its principal's default."* (465)

> *"The sureties are not "taxpayers" as contemplated by the Legislature and in regard to the underlying tax liabilities at issue."* (467)

FACTUAL BACKGROUND

The appellants were surety companies that issued construction bonds accompanied by Mississippi State Tax Commission riders guaranteeing payment of all taxes, damages, interest, and penalties accruing to Mississippi from the bonded construction contracts. The Tax Commission audited the bonded principals, assessed unpaid contractor's taxes and related charges, and later demanded payment from the sureties, generally providing ten days to pay or face a tax lien and possible seizure of Mississippi assets. The sureties received no notice of the principals' audits or assessment hearings before the demands and argued that they were entitled to notice and could not be liable for penalties and interest caused by the principals' defaults.

PROCEDURAL HISTORY

Fidelity and Guaranty Insurance Company filed an action in the Hinds County Chancery Court challenging the Tax Commission's demand for payment of taxes assessed against its bonded principal and the threatened seizure of its Mississippi assets. The chancery court denied the surety's motion for summary judgment and granted the Tax Commission's motion. Other sureties later filed a similar action, which was decided in favor of the Tax Commission; the matters were consolidated on appeal.

DISPOSITION

affirmed

CASES CITED

- Miss. State Tax Comm'n v. Mask, 667 So. 2d 1313, 1314-1315 (Miss. 1995)
- Miss. State Tax Comm'n v. Dyer Inv. Co., Inc., 507 So. 2d 1287, 1289 (Miss. 1987)
- Bishop v. Currie-McGraw Co., 133 Miss. 517, 97 So. 886, 888 (1923)
- State for Use and Benefit of Brazeale v. Lewis, 498 So. 2d 321, 324 (Miss. 1986)
- Hartford Accident & Indem. Co. v. Hewes, 190 Miss. 225, 199 So. 93 (1940)
- Morgan v. U.S. Fid. & Guar. Co., 222 So. 2d 820, 830 (Miss. 1969)
- U.S. Fid. & Guar. Co. v. Parsons, 154 Miss. 587, 122 So. 544, 549 (1929)
- J.R. Watkins Co. v. Runnels, 252 Miss. 87, 172 So. 2d 567 (1965)
- American Olean Tile Co. v. Morton, 247 Miss. 886, 157 So. 2d 788 (1963)
- First Baptist Church of Oxford v. Hendricks, 107 Miss. 267, 65 So. 244, 245 (1914)
- Fid. & Deposit Co. of Maryland v. Deposit Guar. Bank & Trust, 164 Miss. 286, 144 So. 700, 702 (1932)
- Miss. Farm Bureau Ins. Co. v. Britt, 826 So. 2d 1261, 1266 (Miss. 2002)
- Stowell v. Clark, 152 Miss. 32, 118 So. 370, 372 (1928)
- State v. Moody, 198 So. 2d 586, 591-592 (Miss. 1967)
- Miss. Pub. Serv. Comm'n v. Mun. Energy Agency, 463 So. 2d 1056, 1058 (Miss. 1985)
- Atwood Chevrolet-Olds, Inc. v. Aberdeen Mun. Sch. Dist., 431 So. 2d 926, 928 (Miss. 1983)