

SUPREME COURT OF TEXAS

Katy Venture, Ltd. and Katy Management, L.L.C. v. Cremona Bistro Corp.

469 S.W.3d 160 (Tex. 2015) · No. 14-0629 · Decided July 27, 2015

SUMMARY

The Supreme Court of Texas held that the petitioners raised a genuine issue of material fact in their equitable bill-of-review action challenging a no-answer default judgment. Although the petitioners failed to update their registered address, evidence indicated that the respondent knew their current address but certified an outdated address as their last known mailing address under Texas Rule of Civil Procedure 239a. The court reversed the court of appeals' judgment and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Texas
DECIDED	July 27, 2015
DOCKET	14-0629
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petition for review of the court of appeals' affirmance of a trial court's traditional summary judgment denying the petitioners' equitable bill of review seeking to set aside a no-answer default judgment.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The record is examined in the light most favorable to the nonmovant, with every reasonable inference indulged against the motion and doubts resolved against it.
PRECEDENTIAL VALUE	published opinion
PARTIES	Katy Venture, Ltd., Katy Management, L.L.C. v. Cremona Bistro Corp.

TOPICS

[summary judgment](#)[default judgment](#)[service of process](#)[appellate procedure](#)[civil procedure](#)

PRACTICE AREAS

civil procedure

appellate procedure

commercial litigation

remedies

QUESTIONS PRESENTED

1. Whether the Katy entities raised a genuine issue of material fact regarding whether Cremona failed to provide their actual last known mailing address under Texas Rule of Civil Procedure 239a.
2. Whether the Katy entities' failure to update their registered address necessarily established that their own negligence contributed to their failure to receive notice of the default judgment.
3. Whether the trial court properly granted traditional summary judgment against the Katy entities' equitable bill of review.

HOLDINGS

1. The Katy entities raised a genuine issue of material fact as to whether Cremona gave the trial-court clerk their last known mailing address as required by Rule 239a.
2. The Katy entities' negligent failure to update their registered address did not necessarily contribute to their failure to receive notice of the default judgment because evidence showed Cremona may already have known their correct current address.
3. The trial court should not have granted summary judgment, and the court of appeals erred by affirming that judgment.

KEY QUOTATIONS

“Because the petitioners presented some evidence that their failure to receive notice of the default judgment resulted solely from the respondent’s failure to properly certify the petitioners’ “last known mailing address,” and not from any negligence or fault on the petitioners’ part, we conclude that they raised a genuine issue of material fact in their bill-of-review claim.” (at 160)

“But “when a bill-of-review plaintiff claims a due process violation for no service [of process] or notice [of a default judgment], it is relieved of proving the first two elements” and must only prove that its own fault or negligence did not contribute to cause the lack of service or notice.” (at 164)

FACTUAL BACKGROUND

Cremona Bistro leased space in a commercial building owned by Katy Venture, whose general partner was Katy Management. After a fire destroyed the building and an insurer denied Cremona's claim, Cremona sued the Katy entities and attempted service through their registered agent and the Secretary of State using an outdated registered address that the entities had failed to update. Cremona obtained a no-answer default judgment exceeding \$820,000 and certified that outdated address as the entities' last known mailing address, even though evidence indicated Cremona knew the entities' current address. The Katy entities did not receive notice of the default judgment and later filed an equitable bill of review.

PROCEDURAL HISTORY

Cremona obtained an \$820,000-plus no-answer default judgment against the Katy entities. The trial court granted Cremona's traditional motion for summary judgment on the Katy entities' equitable bill of review and entered a take-nothing judgment, and the court of appeals affirmed. The Supreme Court of Texas reversed and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded to the trial court for further proceedings consistent with the opinion.

CASES CITED

- Henkel v. Norman, 441 S.W.3d 249, 250 (Tex. 2014) (per curiam)
- W. Invs., Inc. v. Urena, 162 S.W.3d 547, 550 (Tex. 2005)
- Lear Siegler, Inc. v. Perez, 819 S.W.2d 470, 471 (Tex. 1991)
- Amedisys, Inc. v. Kingwood Home Health Care, LLC, 437 S.W.3d 507, 511 (Tex. 2014)
- Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding, 289 S.W.3d 844, 848 (Tex. 2009)
- Smith v. O'Donnell, 288 S.W.3d 417, 424 (Tex. 2009)
- PNS Stores, Inc. v. Rivera, 379 S.W.3d 267, 275-77 (Tex. 2012)
- Mabon Ltd. v. Afri-Carib Enters., 369 S.W.3d 809, 812-13 (Tex. 2012) (per curiam)
- Petro-Chem. Trans., Inc. v. Carroll, 514 S.W.2d 240, 245 (Tex. 1974)
- Caldwell v. Barnes, 154 S.W.3d 93, 96 (Tex. 2004) (per curiam)
- Campus Invs. v. Cullever, 144 S.W.3d 464, 466 (Tex. 2004) (per curiam)