

SUPREME COURT OF TEXAS

Sixth RMA Partners, L.P. v. Sibley

111 S.W.3d 46 (Tex. 2003) · No. No. 02-0179 · Decided May 22, 2003

SUMMARY

The Supreme Court of Texas held that a partnership's petition filed under an assumed name effectively commenced suit on behalf of the legal entity under Texas Rule of Civil Procedure 28. The Court further held that supplemental pleadings substituting the entity's correct legal name were effective because any pleading defect was waived, and that the challenge based on failure to file an assumed name certificate was waived because it was not properly raised in the trial court. The court reversed the court of appeals and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Justice Smith
JURISDICTION	Texas
DECIDED	May 22, 2003
DOCKET	No. 02-0179
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	After a bench trial, the trial court entered judgment for Sixth RMA Partners, L.P. The court of appeals reversed and rendered judgment that Sixth RMA take nothing, concluding that Sixth RMA had never properly become a plaintiff and that limitations barred its claims. The Supreme Court of Texas granted review.
STANDARD OF REVIEW	For the implied finding that Sixth RMA used RMA Partners, L.P. as an assumed name, the court applied legal-sufficiency review, viewing evidence in the light supporting the finding and disregarding contrary evidence. Implied findings were reviewed under the rule that, absent requested findings of fact and conclusions of law, all findings necessary to support the judgment are implied.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Texas.
PARTIES	Sixth RMA Partners, L.P. v. Thomas J. Sibley

TOPICS

civil procedure

pleadings

waiver

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether legally sufficient evidence supported the finding that Sixth RMA Partners, L.P. used RMA Partners, L.P. as an assumed name, making the original petition effective to commence suit on behalf of Sixth RMA.
2. Whether Sixth RMA's second supplemental pleadings effectively substituted its correct legal name for the assumed name under Texas Rule of Civil Procedure 28.
3. Whether Sixth RMA was barred from prosecuting its claims because it had not filed an assumed name certificate under the Assumed Business or Professional Name Act, and whether that objection was waived.

HOLDINGS

1. Some evidence supported the trial court's implied finding that Sixth RMA Partners, L.P. used RMA Partners, L.P. as an assumed name when collecting Sibley's notes. The original petition filed under RMA Partners, L.P. was therefore effective to commence suit on behalf of Sixth RMA.
2. Although the second supplemental pleadings were procedurally improper because they did not respond to the preceding pleadings as required for supplemental pleadings, they effectively substituted Sixth RMA's correct legal name because the defect was one of pleading form, was not specifically excepted to, and the pleadings remained in the case through judgment.
3. Failure to file an assumed name certificate does not render the plaintiff's claim void; it affects the plaintiff's capacity to maintain the action. Because Sibley did not properly raise the capacity objection in the trial court, he waived it.

KEY QUOTATIONS

"Accordingly, the original petition filed in July 1995 under the name RMA Partners, L.P. was effective to commence suit against Sibley on behalf of Sixth RMA." (53)

"The purpose of the second supplemental pleadings was to change the party name from 'RMA Partners, L.P.' to 'Sixth RMA Partners, L.P.'" (54)

"Although Sixth RMA filed the wrong pleadings to substitute its correct legal name, the second supplemental pleadings were not excepted to or struck by the trial court, and therefore they must be given effect" (55)

"Under the Act's plain language, failure to file an assumed name certificate does not render a plaintiff's claim void." (56)

FACTUAL BACKGROUND

Sixth RMA Partners, L.P. purchased a portfolio of notes that included two promissory notes executed by Thomas Sibley. Collection notices concerning the notes were sent on RMA Partners, L.P. letterhead, and payments on notes owned by Sixth RMA were made to RMA Partners, L.P. Sixth RMA and RMA Partners, L.P. were separate but related entities, and Sixth RMA initially sued under the RMA Partners, L.P. name before later pleadings identified Sixth RMA as the true legal party.

PROCEDURAL HISTORY

Sibley sued RMA Partners, L.P. for a declaration that he owed nothing, and RMA Partners sued Sibley on two promissory notes. The actions were later consolidated, with Sixth RMA's suit treated as a counterclaim. The trial court entered judgment for Sixth RMA, but the court of appeals reversed and rendered judgment for Sibley. The Supreme Court of Texas reversed the court of appeals and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the court of appeals for further proceedings consistent with the Supreme Court of Texas's opinion.

CASES CITED

- *Chilkewitz v. Hyson*, 22 S.W.3d 825, 828-29 (Tex. 1999)
- *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 795 (Tex. 2002)
- *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990)
- *Roberson v. Robinson*, 768 S.W.2d 280, 281 (Tex. 1989)
- *Bradford v. Vento*, 48 S.W.3d 749, 754 (Tex. 2001)
- *Glenn v. Dallas County Bois D'Arc Island Levee District*, 114 Tex. 325, 268 S.W. 452, 453 (1925)
- *Lemp v. Armengol*, 86 Tex. 690, 26 S.W. 941, 943 (1894)
- *Windom v. Howard*, 86 Tex. 560, 26 S.W. 483, 485 (1894)
- *Moody-Rambin Interests v. Moore*, 722 S.W.2d 790, 792 (Tex. App.—Houston [14th Dist.] 1987, no writ)
- *Intercity Invs. Co. v. Plowman*, 542 S.W.2d 260, 263 (Tex. Civ. App.—Fort Worth 1976, no writ)
- *Peek v. Equip. Serv. Co.*, 779 S.W.2d 802, 804 (Tex. 1989)
- *Continental Contractors, Inc. v. Thorup*, 578 S.W.2d 864, 866 (Tex. Civ. App.—Houston [1st Dist.] 1979, no writ)
- *Lighthouse Church of Cloverleaf v. Tex. Bank*, 889 S.W.2d 595, 600 (Tex. App.—Houston [14th Dist.] 1994, writ denied)
- *Luloc Oil Co. v. Caldwell County*, 601 S.W.2d 789, 794 (Tex. Civ. App.—Beaumont 1980, writ ref'd n.r.e.)
- *Paragon Oil Syndicate v. Rhoades Drilling Co.*, 115 Tex. 149, 277 S.W. 1036, 1037 (1925)

- Hotze v. Brown, 9 S.W.3d 404, 413 (Tex. App.—Houston [14th Dist.] 1999), rev'd in part on other grounds sub nom. Brown v. Todd, 53 S.W.3d 297 (Tex. 2001)
- Brown v. Todd, 53 S.W.3d 297 (Tex. 2001)
- Coastal Liquids Transp., L.P. v. Harris County Appraisal Dist., 46 S.W.3d 880, 884-85 (Tex. 2001)
- Nootsie, Ltd. v. Williamson County Appraisal Dist., 925 S.W.2d 659, 661-62 (Tex. 1996)
- Pledger v. Schoellkopf, 762 S.W.2d 145, 146 (Tex. 1988)
- Realtex Corp. v. Tyler, 627 S.W.2d 441, 442 (Tex. App.—Houston [1st Dist.] 1981, no writ)