

SUPREME COURT OF MISSISSIPPI

Rebecca Keyes v. Dollar General Corp.

240 So. 3d 373 (Miss. 2018) · No. 2017-IA-00010-SCT · Decided April 12, 2018

SUMMARY

The Supreme Court of Mississippi held that Rebecca Keyes's defamation claim fell within the scope of her employment arbitration agreement, but her claims for malicious prosecution, infliction of emotional distress, false imprisonment, fraud, deceit, and misrepresentation did not. The court also held that Dollar General did not waive its right to arbitrate by filing a criminal affidavit. The defamation claim was stayed pending arbitration, while the remaining claims were remanded to the circuit court.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Randolph, Presiding Justice; Waller, Chief Justice; Maxwell, Justice; Beam, Justice; Chamberlin, Justice; Ishee, Justice; Kitchens, Presiding Justice; King, Justice; Coleman, Justice
JURISDICTION	Mississippi
DECIDED	April 12, 2018
DOCKET	2017-IA-00010-SCT
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Keyes appealed the Smith County Circuit Court's order granting Dollar General's motion to dismiss and compel arbitration.
STANDARD OF REVIEW	De novo review applies to a trial court's grant or denial of a motion to compel arbitration because the issue is a question of law.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Mississippi; decided en banc.
PARTIES	Rebecca Keyes v. Dollar General Corporation, DG Mize, LLC, Dolgencorp, LLC d/b/a Dollar General Store #11775

TOPICS

- employment arbitration
- arbitration
- contracts
- appellate procedure
- torts

PRACTICE AREAS

Arbitration

Employment law

Torts

Civil procedure

Appellate procedure

QUESTIONS PRESENTED

1. Whether Keyes's claims were covered claims within the scope of the employee arbitration agreement.
2. Whether Dollar General waived its right to arbitrate by filing criminal charges against Keyes in municipal court.

HOLDINGS

1. The defamation claim fell within the scope of the arbitration agreement because the agreement expressly identified defamation as a covered claim.
2. Those claims were outside the scope of the arbitration agreement and could not be compelled to arbitration.
3. Swearing out a criminal affidavit, standing alone, did not waive Dollar General's right to arbitrate.
4. The court applied the customary two-pronged inquiry: whether a valid arbitration agreement exists and covers the dispute, and whether external legal constraints foreclose arbitration.

KEY QUOTATIONS

“Arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.” (§ 10)

“Swearing out a criminal affidavit does not constitute waiver of the right to arbitrate.” (§ 23)

“Only Keyes’s claim for defamation falls within the scope of the Arbitration Agreement.” (§ 26)

FACTUAL BACKGROUND

Keyes, a Dollar General employee, alleged that a \$500 cash reload transaction failed because of a register problem and that she reported the problem to her manager. Dollar General thereafter filed a criminal affidavit, and Keyes was arrested for embezzlement; the charges were later resolved in her favor and dismissed when a Dollar General representative failed to appear and prosecute. Keyes then filed civil claims including malicious prosecution, emotional distress, defamation, false imprisonment, fraud, deceit, and misrepresentation. She had agreed to Dollar General's employee arbitration agreement when hired, but disputed that the claims arising from the criminal complaint were within its scope.

PROCEDURAL HISTORY

Keyes sued after Dollar General filed a criminal affidavit that led to her arrest for embezzlement. The circuit court granted Dollar General's motion to dismiss and compel arbitration. The Mississippi Supreme Court affirmed arbitration of the defamation claim, reversed the order compelling arbitration of the remaining claims, and remanded those claims to the circuit court.

DISPOSITION

REMAND INSTRUCTIONS

The defamation claim is to be stayed pending arbitration. The remaining claims—malicious prosecution, infliction of emotional distress, false imprisonment, fraud, deceit, and misrepresentation—are remanded to the Smith County Circuit Court for proceedings consistent with the opinion, where Keyes may pursue them in litigation.

CASES CITED

- Russell v. Performance Toyota, Inc., 826 So. 2d 719, 724 (Miss. 2002)
- Smith ex rel. Smith v. Captain D's, LLC, 963 So. 2d 1116, 1119-21 (Miss. 2007)
- Howard v. Estate of Harper, 947 So. 2d 854, 856 (Miss. 2006)
- IP Timberlands Operating Co., Ltd. v. Denmiss Corp., 726 So. 2d 96, 104 (Miss. 1998)
- Hutto v. Jordan, 204 Miss. 30, 36 So. 2d 809, 812 (1948)
- East Ford, Inc. v. Taylor, 826 So. 2d 709, 713 (Miss. 2002)
- Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 626 (1985)
- Rogers-Dabbs Chevrolet-Hummer, Inc. v. Blakeney, 950 So. 2d 170, 176 (Miss. 2007)
- EquiFirst Corp. v. Jackson, 920 So. 2d 458, 461 (Miss. 2006)
- MS Credit Ctr., Inc. v. Horton, 926 So. 2d 167, 175-76 (Miss. 2006)
- Smith Barney, Inc. v. Henry, 775 So. 2d 722, 726 (Miss. 2001)
- Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 406 (1967)
- Wolgin v. Experian Info. Sols., Inc., 101 So. 3d 1160, 1166 (Miss. 2012)
- Scruggs v. Wyatt, 60 So. 3d 758, 766 (Miss. 2011)
- Pedigo v. Robertson, 2017 WL 4838243, at *1, *4 (Miss. Oct. 26, 2017)
- Doe v. Hallmark Partners, LP, 227 So. 3d 1052, 1056, 1059-60 (Miss. 2017)
- University Nursing Assocs., PLLC v. Phillips, 842 So. 2d 1270, 1278 (Miss. 2003)
- Consorcio Rive, S.A. de C.V. v. Briggs of Cancun, Inc., 134 F. Supp. 2d 789, 795-96 (E.D. La. 2001)
- Griffin v. Burlington Volkswagen, Inc., 411 N.J. Super. 515, 521 (N.J. Super. Ct. App. Div. 2010)
- Cash Biz, LP v. Hiawatha Henry, 539 S.W.3d 342, 353 (Tex. Ct. App. 2016)
- InfoSpan, Inc. v. Emirates NBD Bank PJSC, 2012 WL 12960766, at *4 (C.D. Cal. Dec. 7, 2012)
- Gatlin v. Criscione, 2008 WL 2745956, at *3 (N.D. Ill. July 11, 2008)
- Prescott-Follett & Assocs., Inc. v. Delasa/Prescott Follett & Assocs., No. Civ. A. 01-3178, 2002 WL 31528463, at *5 (E.D. La. Nov. 8, 2002)
- Myers v. Rosenberg, No. 83 C 1342 (N.D. Ill. Mar. 7, 1986)