

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Alan Enterprizes LLC v. Mac's Convenience Stores LLC

810 S.E.2d 61 (W. Va. 2018) · No. 17-0087 · Decided February 7, 2018

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed summary judgment for Mac's Convenience Stores LLC and the other respondents in an action under the West Virginia Unfair Practices Act. The court held that the pre-2016 version of West Virginia Code § 47-11A-6(a) did not include taxes in calculating a retailer's cost for purposes of determining whether gasoline was sold below cost. The court concluded that any policy change was for the Legislature to address.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Davis
JURISDICTION	West Virginia
DECIDED	February 7, 2018
DOCKET	17-0087
DISPOSITION	affirmed
PROCEDURAL POSTURE	Alan Enterprizes appealed the Harrison County Circuit Court's order granting summary judgment to Mac's Convenience Stores LLC, Joyce Sammon, and Louis Diab in an action alleging that Mac's violated the West Virginia Unfair Practices Act by selling gasoline below cost.
STANDARD OF REVIEW	Statutory interpretation and summary judgment are reviewed de novo.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Alan Enterprizes LLC v. Mac's Convenience Stores LLC, d/b/a Circle K, Joyce Sammon, Louis Diab

TOPICS

[statutory interpretation](#)[plain meaning rule](#)[legislative intent](#)[standard of review](#)[commercial litigation](#)

PRACTICE AREAS

statutory interpretation

commercial litigation

consumer protection

appellate procedure

summary judgment

QUESTIONS PRESENTED

1. Whether West Virginia Code § 47-11A-6(a), as applicable to the events preceding the 2016 amendment, includes taxes in the calculation of a retailer's cost under the West Virginia Unfair Practices Act.
2. Whether the circuit court properly granted summary judgment to the respondents.

HOLDINGS

1. West Virginia Code § 47-11A-6(a) does not include taxes in the calculation of a retailer's cost under the West Virginia Unfair Practices Act.
2. Summary judgment for the respondents was proper because the statutory interpretation issue presented a question of law and the circuit court correctly determined that taxes were not included in the retailer-cost calculation.

KEY QUOTATIONS

“Accordingly, we conclude that W. Va. Code § 47-11A-6(a) (1983) (Repl. Vol. 2015) does not include taxes in the calculation of a retailer’s cost, and we affirm the circuit court’s ruling in this regard.” (at 10)

“Where the language of a statute is plain and unambiguous, there is no basis for application of rules of statutory construction; but courts must apply the statute according to the legislative intent plainly expressed therein.” (at 7)

“There is simply no indication that the Legislature intended to include taxes within the calculation of a retailer’s cost pursuant to W. Va. Code § 47-11A-6(a).” (at 9)

FACTUAL BACKGROUND

Alan operates three gas stations and convenience stores in Bridgeport, West Virginia, while Mac's operates a competing gas station and convenience store there. Alan alleged that Mac's sold gasoline below cost in violation of the West Virginia Unfair Practices Act. The dispute centered on whether motor fuel taxes paid upon acquisition of gasoline must be included in calculating a retailer's cost under the pre-2016 version of West Virginia Code § 47-11A-6(a).

PROCEDURAL HISTORY

Alan filed suit in November 2014 alleging violations of the West Virginia Unfair Practices Act. The parties jointly moved to refer the action to the Business Court Division, and both sides later moved for summary judgment on whether taxes were included in calculating a retailer's cost under West Virginia Code § 47-11A-6(a). The circuit court granted summary judgment to the respondents on January 3, 2017, and the Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Appalachian Power Co. v. State Tax Department of West Virginia, 195 W. Va. 573, 466 S.E.2d 424 (1995)
- Painter v. Peavy, 192 W. Va. 189, 451 S.E.2d 755 (1994)
- Smith v. State Workmen's Compensation Commissioner, 159 W. Va. 108, 219 S.E.2d 361 (1975)
- Dunlap v. State Compensation Director, 149 W. Va. 266, 140 S.E.2d 448 (1965)
- Brooke B. v. Ray, 230 W. Va. 355, 738 S.E.2d 21 (2013)
- Chrystal R.M. v. Charlie A.L., 194 W. Va. 138, 459 S.E.2d 415 (1995)
- Wilkinson v. Searls, 155 W. Va. 475, 184 S.E.2d 735 (1971)
- Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York, 148 W. Va. 160, 133 S.E.2d 770 (1963)
- Lowe v. Richards, 234 W. Va. 48, 763 S.E.2d 64 (2014)
- Dan's Carworld, LLC v. Serian, 223 W. Va. 478, 677 S.E.2d 914 (2009)
- State ex rel. Frazier v. Meadows, 193 W. Va. 20, 454 S.E.2d 65 (1994)
- Huffman v. Goals Coal Co., 223 W. Va. 724, 679 S.E.2d 323 (2009)

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