

SUPREME COURT OF WASHINGTON

Sales v. Weyerhaeuser Company

177 P.3d 1122 (Wash. 2008) · No. No. 80472-9 · Decided February 7, 2008

SUMMARY

The Washington Supreme Court held that a trial court applying forum non conveniens may consider the effect of removal to federal court and transfer to multidistrict litigation on the convenience of the alternative forum. It concluded that the trial court abused its discretion by failing to consider those effects when dismissing the asbestos personal injury action in favor of Arkansas. The court remanded for application of the forum non conveniens factors with proper consideration of removal and MDL transfer.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Owens, J.; Gerry L. Alexander, C.J.; Charles W. Johnson, J.; Mary E. Fairhurst, J.; Barbara A. Madsen, J.; James M. Johnson, J.; Richard B. Sanders, J.; Tom Chambers, J.; Bobbe J. Bridge, Justice Pro Tem
JURISDICTION	Washington
DECIDED	February 7, 2008
DOCKET	No. 80472-9
DISPOSITION	remanded
PROCEDURAL POSTURE	Weyerhaeuser sought review of the Washington Court of Appeals' reversal of a trial court's forum non conveniens dismissal. The Supreme Court affirmed the Court of Appeals and remanded to the trial court for reconsideration under the proper legal standard.
STANDARD OF REVIEW	A trial court's forum non conveniens decision is reviewed for abuse of discretion. A decision based on an erroneous view of the law constitutes an abuse of discretion.
PRECEDENTIAL VALUE	Published Washington Supreme Court en banc opinion; precedential.
PARTIES	Weyerhaeuser Company v. Charles Sales, Patricia Sales

TOPICS

- forum non conveniens
- civil procedure
- appellate procedure
- standard of review
- personal injury

PRACTICE AREAS

Civil procedure

Appellate procedure

Torts

QUESTIONS PRESENTED

1. Whether the doctrine of forum non conveniens permits a Washington court to consider the possibility that an action filed in the proposed alternative forum will be removed to federal court and transferred to multidistrict litigation.
2. Whether the trial court abused its discretion by dismissing on forum non conveniens grounds without fully considering the effect of potential removal and multidistrict proceedings on the convenience of litigating in Arkansas.
3. Whether a forum non conveniens dismissal may be conditioned on the defendant's stipulation to litigate in the alternative forum's state courts.

HOLDINGS

1. The doctrine of forum non conveniens permits a court to consider the effect of removal to another jurisdiction and subsequent multidistrict transfer on the convenience of litigating in the proposed alternative forum.
2. The trial court abused its discretion by applying an erroneous view of the law that prevented it from considering the effect of potential removal and transfer to multidistrict litigation when determining whether Arkansas was a more convenient forum.
3. A trial court may condition a forum non conveniens dismissal on the defendant's stipulation to submit to jurisdiction and litigate in the alternative forum, including by refusing to dismiss if the defendant will not agree to proceed in that forum.

KEY QUOTATIONS

“The efficacy of forum non conveniens depends on the court's power to subject dismissal on the fact that the parties will litigate in the alternative forum.” (177 P.3d at 1125)

“We hold that the doctrine of forum non conveniens permits a court to consider the effect of removal to another jurisdiction on the convenience of the litigation in the alternative forum.” (177 P.3d at 1127)

FACTUAL BACKGROUND

Charles Sales grew up in Arkansas, where his father worked for Weyerhaeuser at a lumber mill. Sales alleged that asbestos carried home on his father's clothing exposed him to asbestos and caused mesothelioma. He filed suit in Washington, where Weyerhaeuser was incorporated and where many former corporate employees who might be witnesses resided; Weyerhaeuser argued Arkansas was more convenient because the exposure, residence, and medical treatment were there. Sales also asserted that refiling in Arkansas state court could lead to removal to federal court and transfer to an asbestos multidistrict litigation proceeding in Pennsylvania, causing delay and expense given his terminal illness.

PROCEDURAL HISTORY

Sales filed a personal injury action against Weyerhaeuser in Pierce County Superior Court. The trial court dismissed without prejudice on forum non conveniens grounds, finding Arkansas more convenient, and denied reconsideration. The Court of Appeals reversed and directed the trial court to condition dismissal on Weyerhaeuser's stipulation to proceed in Arkansas state court. The Washington Supreme Court granted review, affirmed the Court of Appeals, and remanded for proper consideration of removal and multidistrict litigation consequences.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The trial court must reapply the Myers private and public interest factors and fully consider the effect of potential removal to federal court and transfer to multidistrict litigation on the convenience of litigating in Arkansas. If the MDL would make Arkansas less convenient, the court may deny dismissal or condition dismissal on Weyerhaeuser's stipulation not to remove. If Arkansas remains more convenient, the court may dismiss without that stipulation.

CASES CITED

- Myers v. Boeing Co., 115 Wash. 2d 123, 794 P.2d 1272 (1990)
- Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wash. 2d 299, 858 P.2d 1054 (1993)
- Baker v. Hilton, 64 Wash. 2d 964, 395 P.2d 486 (1964)
- Johnson v. Spider Staging Corp., 87 Wash. 2d 577, 555 P.2d 997 (1976)
- Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 67 S. Ct. 839, 91 L. Ed. 1055 (1947)
- Werner v. Werner, 84 Wash. 2d 360, 526 P.2d 370 (1974)
- Ina Sales & Lease, Inc. v. Seven Bar Flying Serv., Inc., 12 Wash. App. 894, 533 P.2d 445 (1975)
- Resolution Trust Corp. v. Bayside Developers, 43 F.3d 1230, 1238 (9th Cir. 1994)
- In re Asbestos Products Liability Litigation (No. VI), 771 F. Supp. 415 (J.P.M.L. 1991)
- American National Bank & Trust Co. of Sapulpa v. Bic Corp., 931 F.2d 1411, 1412-13 (10th Cir. 1991)
- Wilson v. City of San Jose, 111 F.3d 688, 694 (9th Cir. 1997)
- Harvey Specialty & Supply, Inc. v. Anson Flowline Equipment Inc., 434 F.3d 320, 324 n.15 (5th Cir. 2005)
- Sales v. Weyerhaeuser Co., 138 Wash. App. 222, 156 P.3d 303 (2007)
- Sales v. Weyerhaeuser Co., 161 Wash. 2d 1014, 171 P.3d 1057 (2007)