

SUPREME COURT OF GEORGIA

Cox v. Garvin

278 Ga. 903 (Ga. 2005) · Decided January 10, 2005

SUMMARY

The Supreme Court of Georgia considered the meaning of “willfully” under OCGA § 10-5-13(a)(1)(A)(iv), which authorizes civil penalties for violations of the Georgia Securities Act. The court held that willfulness requires proof that the defendant intentionally committed the conduct violating the Act, not that the defendant knowingly intended to violate the law. The court reversed the Court of Appeals’ judgment applying a more demanding standard.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Hines, Justice; Carley, Justice; Other Justices of the Supreme Court of Georgia
JURISDICTION	Georgia
DECIDED	January 10, 2005
DISPOSITION	reversed
PROCEDURAL POSTURE	The Supreme Court of Georgia granted certiorari to review the Court of Appeals' interpretation of the term "willfully" in OCGA § 10-5-13(a)(1)(A)(iv), which authorizes civil penalties for willful violations of the Georgia Securities Act.
STANDARD OF REVIEW	De novo review of the Court of Appeals' interpretation of the Georgia Securities Act and the statutory meaning of "willfully."
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Georgia
PARTIES	Cox v. Garvin

TOPICS

- statutory interpretation
- administrative law
- judicial review of agency action
- remedies
- commercial litigation

PRACTICE AREAS

- securities regulation
- administrative law
- statutory interpretation
- civil penalties

QUESTIONS PRESENTED

1. Whether "willfully" in OCGA § 10-5-13(a)(1)(A)(iv) requires proof that the defendant knowingly and intentionally violated the Georgia Securities Act.
2. Whether an administrative civil penalty may be imposed upon proof only that the defendant intentionally committed the conduct that violated the Act.

HOLDINGS

1. A willful violation for purposes of imposing an administrative civil penalty requires proof that the defendant intended to commit the conduct that violated the Georgia Securities Act; it does not require proof that the defendant knew the conduct violated the Act or intended to violate the law.

KEY QUOTATIONS

"the term "willfully" requires proof only that the defendant intended to commit the conduct which is violative of the Act." (903)

"All that is required is proof that the person acted intentionally in the sense that the person was aware of what he or she was doing. Proof of evil motive or intent to violate the law or knowledge that the law was being violated is not required." (906)

"The Act is remedial in nature, intended for the protection of investors; therefore, it must be broadly and liberally construed to effectuate its aim." (906)

FACTUAL BACKGROUND

In 1999, Garvin, acting for Bee Communications, Inc., sold Kommor five payphones for \$35,000 as part of an investment venture. The arrangement allegedly promised that ETS Payphones, Inc. would operate and maintain the phones and pay Kommor \$75 per month for each phone, but ETS later declared bankruptcy and Kommor lost her investment. Garvin was not registered to sell securities in Georgia, and the contracts were not registered as securities under the Georgia Securities Act.

PROCEDURAL HISTORY

The Commissioner of Securities determined that Garvin had sold securities without the required registration and imposed an administrative civil penalty. The superior court affirmed the Commissioner's determination. The Court of Appeals affirmed the determination that the contracts were securities but reversed the finding of willfulness and the resulting penalty, remanding for reconsideration under a knowing-and-intentional-violation standard. The Supreme Court of Georgia reversed the Court of Appeals.

DISPOSITION

reversed

CASES CITED

- Garvin v. Secretary of State, 266 Ga. App. 66, 596 S.E.2d 166 (2004)

- Greenhill v. State, 199 Ga. App. 218, 404 S.E.2d 577 (1991)
- Dunwoody Country Club &c. v. Fortson, 243 Ga. 236, 253 S.E.2d 700 (1979)
- Wonsover v. SEC, 205 F.3d 408, 414 (2000)
- United States v. O'Hagan, 139 F.3d 641, 647 (1998)
- United States v. Brown, 578 F.2d 1280, 1284 (1978)
- State v. Andresen, 773 A.2d 328 (Conn. 2001)
- State v. Montgomery, 17 P.3d 292 (Idaho 2001)
- State v. Irons, 574 N.W.2d 144 (Neb. 1998)
- State v. Dumke, 901 S.W.2d 100 (Mo. App. 1995)
- State v. Ribadeneira, 817 P.2d 1105 (Kan. App. 1991)
- State v. Kershner, 801 P.2d 68 (Kan. App. 1990)
- Hayes v. State, 507 So. 2d 982 (Ala. Crim. App. 1986)
- People v. Feno, 154 Cal. App. 3d 719, 201 Cal. Rptr. 513 (1984)
- People v. Morrow, 682 P.2d 1201 (Colo. App. 1983)
- State v. Fries, 337 N.W.2d 398 (Neb. 1983)
- Buffo v. State, 415 So. 2d 1158 (Ala. 1982)
- State v. Hodge, 460 P.2d 596 (Kan. 1969)