

SUPREME COURT OF ALABAMA

Jim Walter Homes, Inc. v. Kendrick

810 So. 2d 645 (Ala. 2001) · No. 1981938 · Decided July 13, 2001

SUMMARY

The Supreme Court of Alabama considered an appeal from a jury verdict against Jim Walter Homes, Inc. arising from alleged defects and representations concerning a home constructed for Arthur Kendrick. The court held that Kendrick, a Chapter 13 debtor, had standing and was not judicially estopped from asserting claims omitted from his bankruptcy schedules. It nevertheless held that his fraud claim was barred by Alabama's statute of limitations, reversed the judgment based on the general verdict, and remanded because the breach-of-contract and breach-of-warranty claims were not specifically challenged.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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| COURT                 | Supreme Court of Alabama                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| WRITING FOR THE COURT | Per Curiam; Moore, C.J.; Houston, J.; See, J.; Lyons, J.; Brown, J.; Woodall, J.; Stuart, J.; Harwood, J.; Johnstone, J.                                                                                                                                                                                                                                                                                                                                                                                                      |
| JURISDICTION          | Alabama                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| DECIDED               | July 13, 2001                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| DOCKET                | 1981938                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | Jim Walter Homes, Inc. appealed from a judgment entered on a jury's general verdict awarding Arthur Kendrick compensatory and punitive damages on claims for breach of contract, breach of warranty, and fraud. The appeal followed the trial court's denial of Jim Walter Homes's renewed motion for judgment as a matter of law.                                                                                                                                                                                            |
| STANDARD OF REVIEW    | The court reviewed the denial of judgment as a matter of law under the same standard applied by the trial court, viewing the evidence in the light most favorable to the nonmovant and asking whether substantial evidence supported submission of each claim to the jury. Questions of law were reviewed without a presumption of correctness. Accrual of a limitations defense is a question of law when facts are undisputed and warrant only one conclusion, but is a jury question when a disputed issue of fact exists. |
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|---------------------------|-------------------------------------------------------|
| <b>PRECEDENTIAL VALUE</b> | Published Alabama Supreme Court opinion; precedential |
| <b>PARTIES</b>            | Jim Walter Homes, Inc. v. Arthur Kendrick             |

## TOPICS

fraud consumer protection construction law chapter 13 appellate procedure

## PRACTICE AREAS

consumer protection construction law contracts bankruptcy fraud appellate procedure

## QUESTIONS PRESENTED

1. Whether Kendrick had standing under Chapter 13 to pursue claims against Jim Walter Homes that were part of the bankruptcy estate.
2. Whether Kendrick was judicially estopped from asserting claims that he failed to list as assets in his bankruptcy schedules.
3. Whether Kendrick's fraud claim was barred by Alabama's two-year statute of limitations.
4. Whether equitable estoppel prevented Jim Walter Homes from asserting the statute-of-limitations defense.
5. Whether the general verdict could stand when the fraud claim was legally barred but the breach-of-contract and breach-of-warranty claims were not specifically challenged.

## HOLDINGS

1. A Chapter 13 debtor does not lose standing to pursue a cause of action belonging to the bankruptcy estate merely because the bankruptcy proceeding has been instituted.
2. Kendrick was not judicially estopped from asserting his claims because his mere knowledge or awareness of a potential claim and failure to list it as a bankruptcy asset, without more, did not establish the deliberate manipulation necessary to invoke judicial estoppel.
3. Kendrick's fraud claim was barred as a matter of law by Alabama's two-year statute of limitations because his testimony established that, by March 1995 at the latest, he actually knew facts that would have put a reasonable person on notice of the alleged fraud, yet he did not sue until December 1997.
4. Equitable estoppel did not prevent Jim Walter Homes from asserting the statute-of-limitations defense, and its repair efforts did not toll the limitations period.
5. When a jury returns a general verdict on multiple claims and one claim should have been removed from the jury because it lacked legal support, the judgment must be reversed if the defendant specifically challenged the deficient claim in its motions for judgment as a matter of law.

## KEY QUOTATIONS

*“A Chapter 13 debtor does not lose standing to proceed on a cause of action after a proceeding in bankruptcy*

*is instituted, as does a debtor under Chapter 7.” (at 649)*

*“a debtor's mere knowledge or awareness of a potential claim and the debtor's failure to include the claim as an asset on the bankruptcy schedules ..., without more, are not sufficient to invoke the application of the doctrine of judicial estoppel.” (at 649)*

*“A fraud action is subject to a two-year statute of limitations. Ala.Code 1975, § 6-2-38. However, the fraud claim accrues only when the plaintiff discovers the fraud or when the plaintiff, acting as a reasonable person, should have discovered the fraud.” (at 650)*

## FACTUAL BACKGROUND

Kendrick purchased a Jim Walter Homes house in 1992 after visiting model homes and hearing assurances that the company built good-quality homes with good-quality materials. After moving into the house, he observed defects and Jim Walter Homes sent workers to make repairs. Kendrick testified that he knew by 1992 that the house was not of good quality and that he knew of most of the problems by the end of 1993; he stopped making mortgage payments in March 1995. He filed Chapter 13 bankruptcy in 1995 but did not list his potential claims against Jim Walter Homes as assets, then sued in December 1997.

## PROCEDURAL HISTORY

Kendrick sued Jim Walter Homes in December 1997 after purchasing a partially completed home in 1992 and alleging breach of contract, fraud, fraudulent suppression, and breach of warranty. At trial, the court directed a judgment as a matter of law on the fraudulent-suppression claim but submitted the remaining claims to the jury. The jury returned a general verdict for Kendrick, awarding \$40,000 in compensatory damages and \$50,000 in punitive damages. The Supreme Court of Alabama withdrew its May 11, 2001, opinion, substituted this opinion on rehearing, reversed the judgment, and remanded because the fraud claim was barred by the statute of limitations, while the general verdict also encompassed contract and warranty claims that Jim Walter Homes had not challenged with specificity.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The cause was remanded for proceedings consistent with the opinion. The court did not direct entry of judgment for Jim Walter Homes because the general verdict also encompassed breach-of-contract and breach-of-warranty claims that Jim Walter Homes had not challenged.

## CASES CITED

- *Cooks v. Jim Walter Homes, Inc.*, 695 So. 2d 19 (Ala. Civ. App. 1997)
- *Ex parte Moore*, 793 So. 2d 762, 764 (Ala. 2000)
- *Olick v. Parker & Parsley Petroleum Co.*, 145 F.3d 513, 515-16 (2d Cir. 1998)
- *Bauer v. Commerce Union Bank*, 859 F.2d 438, 441 (6th Cir. 1988)

- In re Tippins, 221 B.R. 11, 26 (Bankr. N.D. Ala. 1998)
- Jinright v. Paulk, 758 So. 2d 553, 559 (Ala. 2000)
- In re Griner, 240 B.R. 432 (Bankr. S.D. Ala. 1999)
- Bell v. T.R. Miller Mill Co., 768 So. 2d 953, 956 (Ala. 2000)
- Ex parte Grand Manor, Inc., 778 So. 2d 173, 177 (Ala. 2000)
- Glenlakes Realty Co. v. Norwood, 721 So. 2d 174, 177 (Ala. 1998)
- Cloverleaf Plaza, Inc. v. Cooper & Co., 565 So. 2d 1147, 1149 (Ala. 1990)
- Hutchins v. DCH Reg'l Med. Ctr., 770 So. 2d 49, 52 (Ala. 2000)
- Kindred v. Burlington Northern R.R., 742 So. 2d 155, 157 (Ala. 1999)
- Hicks v. Globe Life & Accident Insurance Co., 584 So. 2d 458, 463 (Ala. 1991)
- Liberty Nat'l Life Ins. Co. v. McAllister, 675 So. 2d 1292, 1297 (Ala. 1995)
- McCormack v. AmSouth Bank, N.A., 759 So. 2d 538, 543 (Ala. 2000)
- City of Birmingham v. Cochrane Roofing & Metal Co., 547 So. 2d 1159, 1167-68 (Ala. 1989)
- Clark v. Jim Walter Homes, Inc., 719 F. Supp. 1037 (M.D. Ala. 1989)