

SUPREME COURT OF ALABAMA

Bowater Inc. v. Zager

901 So. 2d 658 (Ala. 2004) · No. 1030202 · Decided September 24, 2004

SUMMARY

The Alabama Supreme Court considered an appeal from an order compelling arbitration under a long-term timber lease. The court held that the appeal was timely because a Rule 59(e) motion suspended the appeal period, and that the trial court improperly required the arbitrators to be licensed attorneys instead of following the arbitrator-selection method specified in the arbitration agreement. The court reversed and remanded.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Harwood, Justice; Nabers, C.J.; See, J.; Brown, J.; Stuart, J.; Harwood, J.
JURISDICTION	Alabama
DECIDED	September 24, 2004
DOCKET	1030202
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Bowater appealed as of right from an order granting motions to compel arbitration but requiring the parties to appoint licensed attorneys as arbitrators rather than following the arbitrator-selection qualifications and procedure in the lease. The appellees moved to dismiss the appeal as untimely and as an appeal from a favorable ruling.
STANDARD OF REVIEW	The Supreme Court reviewed the timeliness and appealability of the arbitration order as matters of appellate jurisdiction and reviewed the trial court's arbitration order for consistency with the parties' arbitration agreement and the Federal Arbitration Act.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Alabama
PARTIES	Bowater Incorporated v. Lisa Zager, Page Hart, Joyce Marie Eidson, HDJ Land Company

TOPICS

arbitration

appellate procedure

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PRACTICE AREAS

Arbitration

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QUESTIONS PRESENTED

1. Whether Bowater's appeal from the order compelling arbitration was timely when Bowater filed a Rule 59(e) motion that was denied before the notice of appeal was filed.
2. Whether the trial court could require the arbitrators to be licensed attorneys instead of enforcing the arbitrator qualifications and selection method specified in the lease.
3. Whether the nonsignatory defendants could collectively exercise a selection right under the lease's provision giving the lessee and lessors the right to select arbitrators.
4. Whether Alabama law generally requires arbitrators to be licensed attorneys.

HOLDINGS

1. A timely Rule 59(e) motion to alter, amend, or vacate an order granting arbitration suspends the running of the 42-day period for appealing that order. Because an order granting or denying arbitration is appealable as of right under Rule 4(d), it qualifies as a judgment under Rule 54(a) for purposes of Rule 59(e).
2. When a trial court compels arbitration, it must enforce the arbitration agreement according to its terms, including the parties' agreed qualifications and method for selecting arbitrators. The trial court therefore erred by requiring the arbitrators to be duly licensed attorneys and by omitting the requirement that they have at least 20 years' membership in the Society of American Foresters.
3. Under the lease, Bowater as successor lessee had the sole selection right on the lessee's side, and the lessors had the corresponding selection right. The nonsignatory defendants did not obtain a collective or separate vote in the arbitrator-selection process merely because they sought to participate in arbitration.
4. Alabama law does not generally require arbitrators to be licensed attorneys. The trial court therefore erred in imposing a licensed-attorney requirement on the arbitrators.

KEY QUOTATIONS

"Section 5 provides that "[i]f in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed...." (667)

"Arbitration under the Act is a matter of consent, not coercion, and parties are generally free to structure their arbitration agreements as they see fit." (667)

"When a trial court compels arbitration, it must do so in a manner consistent with the terms of the arbitration provision." (669)

"The lease does not envision the participation of any parties in the selection process other than the 'Lessee' and the 'Lessors.'" (670)

FACTUAL BACKGROUND

The plaintiffs and Bowater were, respectively, lessors and lessee under a 66-year timber lease executed in 1965. The plaintiffs alleged that Bowater and other defendants conducted timber harvesting and related forestry activities negligently or wantonly, committed waste, trespassed, and removed timber from property not covered by the lease. The lease required disputes over issues of fact arising under the lease to be arbitrated by a three-member panel selected by the lessee and lessors, with the arbitrators having at least 20 years of membership in the Society of American Foresters. The trial court compelled arbitration but required the arbitrators to be licensed attorneys.

PROCEDURAL HISTORY

The plaintiffs filed an action in Walker Circuit Court alleging negligent and wanton timber harvesting, waste, trespass, and illegal timber removal. Bowater moved to compel arbitration under a 1965 timber lease, whose arbitration clause required each side to select an arbitrator who had been a member of the Society of American Foresters for at least 20 years. The trial court compelled arbitration but changed the contractual qualifications by requiring licensed attorneys. Bowater filed a Rule 59(e) motion, which was denied, and then appealed 48 days after the original arbitration order. The Supreme Court of Alabama held the appeal timely, denied the motion to dismiss, reversed the arbitration order in part, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must enter a revised order compelling arbitration consistent with the lease, including the requirement that the arbitrators selected by the parties be members of at least 20 years' standing in the Society of American Foresters and the contractual selection procedure. The trial court may not require the arbitrators to be licensed attorneys.

CASES CITED

- Mathias v. WorldCom Technologies, Inc., 535 U.S. 682 (2002)
- Davis v. Hartford Accident & Indemnity Co., 335 So. 2d 688 (Ala. Civ. App. 1976)
- Gold Kist, Inc. v. Tedder, 580 So. 2d 1321 (Ala. 1991)
- Ex parte Troutman Sanders, LLP, 866 So. 2d 547 (Ala. 2003)
- Jack Ingram Motors, Inc. v. Ward, 768 So. 2d 362 (Ala. 1999)
- Ex parte Roberson, 749 So. 2d 441 (Ala. 1999)
- A.G. Edwards & Sons, Inc. v. Clark, 558 So. 2d 358 (Ala. 1990)
- Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Cobb, 717 So. 2d 355 (Ala. 1998)
- Alabama Farm Bureau Mutual Casualty Insurance Co. v. Boswell, 430 So. 2d 426 (Ala. 1983)
- Ex parte Mutual Savings Life Insurance Co., 765 So. 2d 649 (Ala. 1998)
- Ex parte Alfa Mutual General Insurance Co., 684 So. 2d 1281 (Ala. 1996)

- Trammell v. Vane Calvert & Co., 62 Ala. 301 (1878)
- Johnson v. State, 87 Ala. 39, 6 So. 400 (1889)
- Walker v. State, 91 Ala. 76, 9 So. 87 (1891)
- Cobb v. Malone, 92 Ala. 630, 9 So. 738 (1891)
- Drennen Motor Co. v. Patrick, 225 Ala. 36, 141 So. 681 (1932)
- Stewart v. Younger, 375 So. 2d 428 (Ala. 1979)
- Bagley v. Mazda Motor Corp., 864 So. 2d 301 (Ala. 2003)
- Alabama Public Service Commission v. Redwing Carriers, Inc., 281 Ala. 111, 199 So. 2d 653 (1967)
- Southeastern Meats of Pelham, Inc. v. City of Birmingham, 895 So. 2d 909 (Ala. 2004)
- McDonald v. H & S Homes, LLC, 853 So. 2d 920 (Ala. 2003)
- BankAmerica Housing Services v. Lee, 833 So. 2d 609 (Ala. 2002)
- Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University, 489 U.S. 468 (1989)
- Shearson/American Express, Inc. v. McMahon, 482 U.S. 220 (1987)
- AT&T Technologies, Inc. v. Communications Workers of America, 475 U.S. 643 (1986)
- Universal Reinsurance Corp. v. Allstate Insurance Co., 16 F.3d 125 (7th Cir. 1993)
- Szuts v. Dean Witter Reynolds, Inc., 931 F.2d 830 (11th Cir. 1991)
- Avis Rent A Car System, Inc. v. Garage Employees Union, 791 F.2d 22 (2d Cir. 1986)
- ATSA of California, Inc. v. Continental Insurance Co., 754 F.2d 1394 (9th Cir. 1985)
- Cargill Rice, Inc. v. Empresa Nicaraguense Dealimentos Basicos, 25 F.3d 223 (4th Cir. 1994)
- R.J. O'Brien & Associates, Inc. v. Pipkin, 64 F.3d 257 (7th Cir. 1995)
- Brook v. Peak International, Ltd., 294 F.3d 668 (5th Cir. 2002)
- Southern United Fire Insurance Co. v. Howard, 775 So. 2d 156 (Ala. 2000)
- Burchell v. Marsh, 58 U.S. (17 How.) 344 (1854)
- Prima Paint Corp. v. Flood & Conklin Manufacturing Co., 388 U.S. 395 (1967)