

SUPREME COURT OF MISSISSIPPI

Hutzel v. City of Jackson

33 So. 3d 1116 (Miss. 2010) · No. 2008-CA-02134-SCT · Decided May 6, 2010

SUMMARY

The Supreme Court of Mississippi held that the City of Jackson waived the affirmative defenses of release and accord and satisfaction by failing to plead them in its initial answer, actively participating in the litigation, and offering no reasonable explanation for a twenty-six-month delay. The court reversed the trial court's order allowing amendment of the answer and remanded the case for trial on the merits.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Kitchens, Justice; Waller, Chief Justice; Carlson, Presiding Justice; Graves, Presiding Justice; Dickinson, Justice; Randolph, Justice; Lamar, Justice; Chandler, Justice; Pierce, Justice
JURISDICTION	Mississippi
DECIDED	May 6, 2010
DOCKET	2008-CA-02134-SCT
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Hutzel appealed from a summary judgment and final judgment in favor of the City of Jackson. The Supreme Court considered whether the trial court abused its discretion by allowing the City to amend its answer to assert release and accord-and-satisfaction defenses more than two years after filing its original answer.
STANDARD OF REVIEW	Abuse of discretion for a trial court's decision to grant or deny leave to amend a pleading.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Homer Hutzel v. City of Jackson, Mississippi

TOPICS

- affirmative defenses
- motion to amend
- civil procedure
- appellate procedure
- standard of review

PRACTICE AREAS

civil procedure

appellate procedure

municipal law

real estate

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by allowing the City of Jackson to amend its answer to assert release and accord-and-satisfaction defenses after a twenty-six-month delay and active participation in the litigation.
2. Whether summary judgment in favor of the City was proper.

HOLDINGS

1. Under Mississippi Rule of Civil Procedure 8(c), a party generally waives an affirmative defense when it fails to plead the defense in its original answer and, absent extreme or unusual circumstances or another reasonable explanation, delays asserting it while actively participating in the litigation. The City waived its release and accord-and-satisfaction defenses because it waited twenty-six months, participated in discovery, and offered no reasonable explanation for the delay.

KEY QUOTATIONS

“A defendant’s failure to timely and reasonably raise and pursue the enforcement of any affirmative defense or other affirmative matter or right which would serve to terminate or stay the litigation, coupled with active participation in the litigation process, will ordinarily serve as a waiver.” (33 So. 3d at 1119-20)

“Therefore, pursuant to Horton and Rule 8(c), because the City actively participated in the litigation and has no reasonable explanation for its twenty-six month delay in raising the affirmative defenses, the City has waived its right to assert release and accord and satisfaction.” (33 So. 3d at 1122)

FACTUAL BACKGROUND

The City of Jackson undertook the High Street Improvement Project and acquired a ten-foot strip of land subject to Hutzel's leasehold interest through a quitclaim deed. Hutzel received \$2,500, and the deed included a release of claims for damages arising from the project. Hutzel later alleged that construction activity obstructed access to his restaurant on adjacent property, causing financial losses and forcing the restaurant to close. The City waited approximately twenty-six months after filing its original answer, and after participating in discovery, to assert release and accord-and-satisfaction defenses.

PROCEDURAL HISTORY

Hutzel sued the City of Jackson and Hemphill Construction Company for inverse condemnation, negligence, trespass, and nuisance arising from the High Street Improvement Project. Hemphill was dismissed after settling with Hutzel. After discovery, the City sought leave to amend its answer to add release and accord-and-satisfaction defenses; the trial court granted leave and later entered summary judgment for the City based on those defenses. Hutzel appealed, and the Supreme Court reversed and remanded for trial on the merits.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded for a trial on the merits.

CASES CITED

- Pratt v. City of Greenville, 804 So. 2d 972, 978 (Miss. 2001)
- Pass Termite and Pest Control, Inc. v. Walker, 904 So. 2d 1030, 1033-35 (Miss. 2004)
- Price v. Clark, 21 So. 3d 509, 524 (Miss. 2009)
- MS Credit Center, Inc. v. Horton, 926 So. 2d 167, 179-81 (Miss. 2006)
- Estate of Grimes v. Warrington, 982 So. 2d 365, 370 (Miss. 2008)
- East Mississippi State Hospital v. Adams, 947 So. 2d 887, 889, 891 (Miss. 2007)
- Red Enterprises, Inc. v. Peashooter, Inc., 455 So. 2d 793, 794, 796 (Miss. 1984)
- Bennett v. Madakasira, 821 So. 2d 794, 802 (Miss. 2002)
- Foman v. Davis, 371 U.S. 178, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962)