

SUPREME COURT OF ARKANSAS

Marcum v. Wengert, 344 Ark. 153

40 S.W.3d 230 (2001) · No. No. 00-828 · Decided March 8, 2001

SUMMARY

The Supreme Court of Arkansas reviewed a landlord-tenant dispute involving conversion of furniture, breach of lease, security deposits, corporate authority, and attorney's fees. The court held that the housing corporation, Marcum, and Capo were prevailing parties on their respective claims or defenses, reversed and remanded for consideration or award of attorney's fees and costs, and affirmed the ruling that Marcum had authority to pursue the corporation's claim.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Jim Hannah
JURISDICTION	Arkansas
DECIDED	March 8, 2001
DOCKET	No. 00-828
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The appellants petitioned for review of the trial court's denial of attorney's fees and costs after a jury verdict on landlord-tenant, conversion, and breach-of-contract claims. The Wengerts cross-appealed the denial of judgment as a matter of law on their contention that Marcum lacked authority to prosecute the corporation's original claim.
STANDARD OF REVIEW	Attorney's-fee awards and their amounts are reviewed for abuse of discretion. On review of a court of appeals decision, the Arkansas Supreme Court reviews the issues as if they had originally been filed in that court.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Arkansas
PARTIES	Rick Marcum, Anthony Capo, Phi Kappa Tau Housing Corporation v. Matt Wengert, Paul Wengert, Angie Wengert

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QUESTIONS PRESENTED

1. Whether the trial court erred by finding that no party was a prevailing party because neither side recovered the full amount sought.
2. Whether attorney's fees and costs could be awarded under Arkansas Code Annotated section 16-22-308 and the lease's attorney-fee provision.
3. Whether Marcum had authority to prosecute PKT Housing Corporation's claim after he ceased serving on its board and disassociated from the fraternity.
4. Whether the Wengerts could challenge Marcum's authority to represent PKT Housing Corporation under Arkansas law.

HOLDINGS

1. The trial court erred by determining that no party prevailed based on the disparity between the damages sought and the damages recovered. The prevailing party is determined by who comes out on top on the claims and obtains the judgment in its favor; PKT Housing Corporation prevailed on its conversion and breach-of-lease claims, and Marcum and Capo prevailed on the claims asserted against them individually.
2. Because PKT Housing Corporation, Marcum, and Capo were prevailing parties on contract-related claims, the trial court was required on remand to exercise its discretion whether to award reasonable attorney's fees under section 16-22-308 and costs under Arkansas Rule of Civil Procedure 54(d).
3. The lease provision required the trial court to award PKT Housing Corporation reasonable attorney's fees and costs as the prevailing party in an action arising from enforcement of the lease or possession of the premises. Marcum and Capo were not parties to the lease and were not entitled to fees under that contractual provision.
4. The trial court properly denied the Wengerts' motion for judgment as a matter of law because the evidence supported the conclusion that Marcum was authorized by PKT Housing Corporation to initiate and continue the lawsuit.

KEY QUOTATIONS

"Instead, under Arkansas law, the prevailing party is determined by who comes out "on top" at the end of the case." (236)

"As such, according to our case law, PKT Housing Corporation, Marcum, and Capo, were the prevailing parties in their respective lawsuits with the Wengerts." (237)

“It appears here that the word "shall" in the attorney's fee section of the lease agreement required a finding by the trial court of the prevailing party in the action and then required a mandatory award of reasonable attorney's fees and costs to that party.” (238)

FACTUAL BACKGROUND

PKT Housing Corporation leased a fraternity house from the Wengerts and paid a security deposit and approximately \$10,500 for furniture placed in the house. After the lease relationship ended and the Wengerts declined to renew it, the Wengerts retained the furniture and deposits, asserting that the furniture had been abandoned under the lease. PKT Housing Corporation sued, and the jury found for PKT Housing Corporation on conversion and breach of lease while also awarding the Wengerts a smaller counterclaim recovery; it found for Marcum and Capo individually on the third-party claims.

PROCEDURAL HISTORY

PKT Housing Corporation sued the Wengerts for conversion of furniture and return of a security deposit, later seeking damages, punitive damages, attorney's fees, and costs. The Wengerts counterclaimed against PKT Housing Corporation and filed third-party claims against Marcum and Capo. The jury awarded PKT Housing Corporation \$8,500 for conversion and \$4,000 for breach of lease, awarded the Wengerts \$2,000 on their counterclaim, and found for Marcum and Capo on the individual third-party claims. The trial court concluded that no party was a prevailing party and denied fees and costs. The court of appeals affirmed, and the Arkansas Supreme Court granted review, reversed and remanded on the fee issue, and affirmed on the cross-appeal concerning Marcum's authority.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must determine the prevailing parties under the proper standard, consider whether to award reasonable attorney's fees to Marcum, Capo, and PKT Housing Corporation under Ark. Code Ann. § 16-22-308, award costs as authorized by Ark. R. Civ. P. 54(d), and award reasonable attorney's fees and costs to PKT Housing Corporation under paragraph sixteen of the lease agreement. The cross-appeal concerning Marcum's authority to prosecute the corporate claim is affirmed.

CASES CITED

- Youngman v. State Farm Mutual Automobile Insurance Co., 334 Ark. 73, 971 S.W.2d 248 (1998)
- Williams v. State, 328 Ark. 487, 944 S.W.2d 822 (1997)
- Jones v. Abraham, 341 Ark. 66, 15 S.W.3d 310 (2000)
- Chrisco v. Sun Industries, Inc., 304 Ark. 227, 800 S.W.2d 717 (1990)
- Nelson v. River Valley Bank & Trust, 334 Ark. 172, 971 S.W.2d 777 (1998)
- Burnette v. Perkins & Associates, 343 Ark. 237, 33 S.W.3d 145 (2000)

- Gill v. Transcriptions, Inc., 319 Ark. 485, 892 S.W.2d 258 (1995)
- ERC Mortgage Group, Inc. v. Luper, 32 Ark. App. 19, 795 S.W.2d 362 (1990)
- Ozias v. Haley, 141 Mo. App. 637, 125 S.W. 556 (Mo. App. 1910)
- Griffin v. First National Bank, 318 Ark. 848, 888 S.W.2d 306 (1994)
- Ramirez v. White County Circuit Court, 343 Ark. 372, 38 S.W.3d 298 (2001)
- First National Bank of Crossett v. Griffin, 310 Ark. 164, 832 S.W.2d 816 (1992)
- Farm Bureau Mutual Insurance Co. of Arkansas, Inc. v. Milburn, 269 Ark. 384, 601 S.W.2d 841 (1980)
- Calandro v. Parkerson, 327 Ark. 131, 936 S.W.2d 755 (1996)
- Arkansas Iron & Metal Co. v. First National Bank of Rogers, 16 Ark. App. 245, 701 S.W.2d 380 (1985)
- Marcum v. Wengert, 70 Ark. App. 477, 20 S.W.3d 430 (2000)

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