

SUPREME COURT OF ALABAMA

Rampey v. Novartis Consumer Health, Inc.

867 So. 2d 1079 (Ala. 2003) · No. 1011684 · Decided May 30, 2003

SUMMARY

The Alabama Supreme Court reviewed a summary judgment entered for Novartis in a putative class action concerning Ex-Lax containing phenolphthalein. The court held that, because Rampey purchased the product from a retailer and sought only economic damages, he lacked the contractual privity required to pursue implied-warranty claims against the manufacturer. The court also addressed the alleged sufficiency of notice under Alabama's Uniform Commercial Code and the denial of leave to amend the complaint.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Harwood, Justice; Moore, Chief Justice; See, Justice; Brown, Justice; Stuart, Justice
JURISDICTION	Alabama
DECIDED	May 30, 2003
DOCKET	1011684
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a summary judgment for the manufacturer in a putative class action asserting breach of implied warranties and seeking economic damages, followed by denial of a postjudgment motion to vacate and amend the complaint to add unjust enrichment.
STANDARD OF REVIEW	Summary judgment is reviewed de novo, using the same standard as the trial court; the record is viewed in the light most favorable to the nonmovant and reasonable doubts are resolved against the movant. The denial of leave to amend a pleading is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Alabama Supreme Court opinion; precedential.
PARTIES	Tom Rampey et al. v. Novartis Consumer Health, Inc.

TOPICS

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uniform commercial code

summary judgment

motion to amend

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether a consumer who purchased an over-the-counter drug from a retailer may sue the drug's manufacturer for breach of implied warranties when the consumer seeks only economic damages and lacks contractual privity with the manufacturer.
2. Whether the trial court abused its discretion by denying a motion filed after summary judgment to vacate the judgment and amend the complaint to add an unjust-enrichment claim.
3. Whether the filing of the lawsuit constituted sufficient notice of breach under Ala. Code 1975, § 7-2-607.

HOLDINGS

1. Under Alabama's Uniform Commercial Code, a consumer cannot maintain an action against a manufacturer for breach of the implied warranties of merchantability or fitness for a particular purpose when the manufacturer was not the seller in the transaction and the claimed injury is purely economic.
2. The trial court did not abuse its discretion by denying leave to amend a complaint after summary judgment had been entered in favor of the defendant to add a new unjust-enrichment claim.

KEY QUOTATIONS

"Similarly, we conclude that, without privity of contract, there is no right of action against a manufacturer for direct economic loss." (1089)

"There simply was no privity of contract between Rampey and Novartis in the transaction whereby the Ex-Lax produced by Novartis ultimately made its way to Rampey." (1091)

"For the foregoing reasons, the judgment of the trial court is affirmed." (1093)

FACTUAL BACKGROUND

Novartis manufactured an older formulation of Ex-Lax containing phenolphthalein, while Rampey purchased three packages from a retail store rather than directly from Novartis. Rampey alleged that phenolphthalein was unsuitable because studies indicated that it could cause cancerous or precancerous conditions, but he sought only economic damages and did not allege personal injury. He never requested a refund or replacement, although the product packaging contained a money-back guarantee and Novartis offered a refund program. Novartis supported its summary-judgment motion with evidence that it sold Ex-Lax to distributors and wholesalers, not directly to consumers, and Rampey offered no contrary evidence.

PROCEDURAL HISTORY

Rampey filed a putative class action against Novartis alleging breach of the implied warranties of merchantability and fitness for a particular purpose based on the PPH formulation of Ex-Lax. The trial court entered summary judgment for Novartis on March 22, 2002, based on lack of UCC notice and lack of privity. Rampey then moved to vacate the judgment and sought leave to file a second amended complaint adding unjust enrichment; the trial court denied the motion, and Rampey appealed. The Supreme Court of Alabama affirmed.

DISPOSITION

affirmed

CASES CITED

- Bussey v. John Deere Co., 531 So. 2d 860, 862 (Ala. 1988)
- Wright v. Wright, 654 So. 2d 542 (Ala. 1995)
- Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989)
- West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989)
- Hanners v. Balfour Guthrie, Inc., 564 So. 2d 412, 413 (Ala. 1990)
- Hobson v. American Cast Iron Pipe Co., 690 So. 2d 341, 344 (Ala. 1997)
- Wellcraft Marine v. Zarzour, 577 So. 2d 414, 419 (Ala. 1990)
- State Farm Fire & Cas. Co. v. J.B. Plastics, Inc., 505 So. 2d 1223, 1227 (Ala. 1987)
- Ex parte General Motors Corp., 769 So. 2d 903, 910 (Ala. 1999)
- Rhodes v. General Motors Corp., 621 So. 2d 945, 947 (Ala. 1993)
- Bryant v. Southern Energy Homes, Inc., 682 So. 2d 3, 5 (Ala. 1996)
- Johnson v. Anderson Ford, Inc., 686 So. 2d 224, 227-28 (Ala. 1996)
- Kidd v. Kilpatrick Chevrolet, Inc., 613 So. 2d 336, 338 (Ala. 1993)
- Chandler v. Hunter, 340 So. 2d 818, 822 (Ala. Civ. App. 1976)
- Cheminova America Corp. v. Corker, 779 So. 2d 1175, 1180 (Ala. 2000)
- Dennis Joslin Co., L.L.C. v. Tate, 779 So. 2d 217 (Ala. 2000)
- Butler v. Michigan Mutual Ins. Co., 402 So. 2d 949, 953 (Ala. 1981)
- Brannan & Guy, P.C. v. City of Montgomery, 828 So. 2d 914 (Ala. 2002)
- Andrews v. Merritt Oil Co., Inc., 612 So. 2d 409 (Ala. 1993)
- Deputy Sheriffs Law Enforcement Association of Mobile County v. Mobile County, 590 So. 2d 239, 243 (Ala. 1991)
- Government Street Lumber Co. v. AmSouth Bank, N.A., 553 So. 2d 68 (Ala. 1989)
- Kilgore v. Alabama By-Products Corp., 581 So. 2d 872, 874 (Ala. Civ. App. 1991)
- McElrath v. Consolidated Pipe & Supply Co., 351 So. 2d 560 (Ala. 1977)