

SUPREME COURT OF MISSISSIPPI

Loggers, L.L.C. v. 1 Up Technologies, L.L.C.

No. 2009-CA-01471-SCT · No. No. 2009-CA-01471-SCT · Decided July 31, 2009

SUMMARY

The Mississippi Supreme Court affirmed a judgment for 1 Up Technologies in a contract dispute involving computer-gaming equipment and services. The court held that Loggers waived its affirmative defense under Mississippi Code section 79-29-1007(1) by failing to specifically assert it in its answer and raising it for the first time at trial.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Graves, Presiding Justice; Graves, P.J.; Dickinson, J.; Chandler, J.
JURISDICTION	Mississippi
DECIDED	July 31, 2009
DOCKET	No. 2009-CA-01471-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a Pearl River County Circuit Court judgment entered after the court adopted a special master's report and awarded 1 Up Technologies, L.L.C. \$10,979.19 plus court costs.
STANDARD OF REVIEW	De novo review applies to issues of law, including issues involving a motion to dismiss or a motion for directed verdict.
PRECEDENTIAL VALUE	Published Mississippi Supreme Court opinion; precedential.
PARTIES	Loggers, L.L.C., Gary Troescher, individually v. 1 Up Technologies, L.L.C.

TOPICS

[affirmative defenses](#) [waiver](#) [civil procedure](#) [motions to dismiss](#) [appellate procedure](#)

PRACTICE AREAS

[civil procedure](#) [contracts](#) [commercial litigation](#) [appellate procedure](#)

QUESTIONS PRESENTED

1. Whether Loggers preserved the affirmative defense under Mississippi Code Section 79-29-1007(1) by including general failure-to-state-a-claim language in its answer.
2. Whether Loggers waived the defense by failing to timely and specifically assert it before trial while actively participating in the litigation.

HOLDINGS

1. A general assertion that a complaint fails to state a claim does not specifically preserve the affirmative defense that an unregistered foreign limited liability company may not maintain an action under Mississippi Code Section 79-29-1007(1).
2. Loggers waived the affirmative defense by failing to raise it in its answer or otherwise timely before trial and by actively participating in the litigation before asserting it for the first time at trial.

KEY QUOTATIONS

“Because the appellants are barred from raising the affirmative defense for the first time at trial, we affirm the judgment of the trial court.” (¶ 1)

“Loggers cannot merely assert a general defense in its initial response to preserve any other defenses that might be asserted months or years later.” (¶ 11)

FACTUAL BACKGROUND

In April 2007, Loggers and Gary Troescher entered into an oral contract with 1 Up Technologies concerning equipment and services for Loggers' computer gaming business in Pearl River County. After a dispute, 1 Up sued for \$8,783.33 allegedly owed under the contract and \$2,195.83 in attorney's fees. Loggers participated actively in the litigation but did not specifically assert before trial that Section 79-29-1007(1) barred 1 Up, raising that defense for the first time at trial after 1 Up rested.

PROCEDURAL HISTORY

1 Up sued Loggers for amounts allegedly owed under an oral contract. A default judgment was initially entered and later set aside. Loggers filed an amended answer asserting various affirmative defenses, but at trial first asserted that Section 79-29-1007(1) barred 1 Up from maintaining the action because it was an unregistered foreign limited liability company. The special master found the defense waived, the circuit court adopted the report and entered judgment for 1 Up, and Loggers appealed.

DISPOSITION

affirmed

CASES CITED

- Howard v. Estate of Harper ex rel. Harper, 947 So. 2d 854, 856 (Miss. 2006)
- Forbes v. General Motors Corp., 935 So. 2d 869, 873 (Miss. 2006)
- East Mississippi State Hospital v. Adams, 947 So. 2d 887, 890-91 (Miss. 2007)

- MS Credit Center, Inc. v. Horton, 926 So. 2d 167, 181 (Miss. 2006)
- Burleson v. Lathem, 968 So. 2d 930, 934-37 (Miss. 2007)
- Transocean Enterprise, Inc. v. Ingalls Shipbuilding, Inc., 33 So. 3d 459, 463 (Miss. 2010)

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