

SUPREME COURT OF TEXAS

In re Lumbermens Mutual Casualty Company

In re Lumbermens Mutual Casualty Co., 184 S.W.3d 718 (Tex. 2006) · No. No. 04-0245 · Decided February 3, 2006

SUMMARY

The Texas Supreme Court held that Lumbermens Mutual Casualty Company could invoke the virtual-representation doctrine and intervene in its insured’s pending appeal to raise a potentially dispositive choice-of-law issue that the insured had abandoned. The Court concluded that the insurer’s \$29 million appellate bond created a sufficient interest, that its intervention was timely under the unusual circumstances, and that the court of appeals abused its discretion by denying intervention. The Court conditionally granted mandamus relief and directed the court of appeals to permit Lumbermens to participate in the appeal.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Justice Harriet O'Neill
JURISDICTION	Texas
DECIDED	February 3, 2006
DOCKET	No. 04-0245
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Lumbermens petitioned for a writ of mandamus after the court of appeals denied its motion to intervene in Cudd's pending appeal. Lumbermens sought to participate in the appeal to assert a potentially dispositive choice-of-law issue that Cudd had abandoned after settling related claims.
STANDARD OF REVIEW	Abuse of discretion.
PRECEDENTIAL VALUE	Published Texas Supreme Court opinion; precedential, but expressly limited to the unusual circumstances presented.
PARTIES	Lumbermens Mutual Casualty Company v. Sonat Exploration Company

TOPICS

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appellate procedure

intervention

standard of review

insurance

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether an insurer that posted appellate security for a judgment against its insured may invoke the virtual-representation doctrine and intervene in the insured's appeal to assert a potentially dispositive issue the insured abandoned.
2. Whether Lumbermens' post-judgment intervention motion was timely under the equitable circumstances presented.
3. Whether the court of appeals abused its discretion by denying Lumbermens' motion to intervene.

HOLDINGS

1. An insurer that posted security for the judgment may satisfy the identity-of-interest requirement for virtual representation when its funds are placed at risk by the judgment, even though its legal theories and litigation position have diverged from those of its insured.
2. A virtually represented party may seek appellate participation after final judgment, and the mere fact that intervention was sought post-judgment is not dispositive. Timeliness is evaluated contextually under equitable factors, including knowledge of the interest, prejudice to existing parties, prejudice from denial, and unusual circumstances.
3. Under the unusual circumstances presented, the court of appeals abused its discretion by denying Lumbermens' intervention, and Lumbermens was entitled to participate in the appeal to contest the choice-of-law ruling.

KEY QUOTATIONS

“We hold that under the unusual circumstances this case presents, Lumbermens is entitled to invoke the virtual-representation doctrine to raise on appeal the choice-of-law issue its insured abandoned in order to settle uninsured claims in another suit, and the court of appeals abused its discretion in holding otherwise.”

“We reiterate that whether a would-be intervenor is entitled to appeal under the virtual-representation doctrine is an equitable determination that must be decided on a case-by-case basis.”

FACTUAL BACKGROUND

Cudd entered a service agreement with Sonat containing reciprocal defense and indemnity obligations, and an explosion during well-servicing operations led to personal-injury and wrongful-death claims. Sonat pursued indemnity from Cudd after Cudd refused to indemnify it, and the trial court held that Texas law governed the indemnity provision, which was valid under Texas law but void under Louisiana law. After Cudd abandoned the choice-of-law issue on appeal in connection with a settlement of related claims, Lumbermens sought to intervene because it had posted a \$29 million appellate bond and faced immediate exposure if the judgment were affirmed.

PROCEDURAL HISTORY

Sonat obtained partial summary judgment and a \$20.7 million judgment against Cudd in an indemnity action. Cudd appealed but later agreed not to challenge the trial court's Texas choice-of-law ruling, while Lumbermens, Cudd's excess insurer that had posted a \$29 million appellate bond, sought to intervene in the appeal. The court of appeals denied intervention, and the Supreme Court of Texas conditionally granted mandamus, directing the court of appeals to permit Lumbermens to participate.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The court of appeals was directed to permit Lumbermens to participate in the appeal to contest the trial court's choice-of-law ruling. The writ would issue only if the court failed to do so.

CASES CITED

- Motor Vehicle Bd. of Tex. v. El Paso Indep. Auto. Dealers Ass'n, 1 S.W.3d 108 (Tex. 1999)
- City of San Benito v. Rio Grande Valley Gas Co., 109 S.W.3d 750 (Tex. 2003)
- Cont'l Cas. Co. v. Huizar, 740 S.W.2d 429 (Tex. 1987)
- Guar. Fed. Sav. Bank v. Horseshoe Operating Co., 793 S.W.2d 652 (Tex. 1990)
- Rios v. Calhoon, 889 S.W.2d 257 (Tex. 1994)
- Nat'l Union Fire Ins. Co. v. Ninth Court of Appeals, 864 S.W.2d 58 (Tex. 1993)
- Comal County Rural High Sch. Dist. No. 705 v. Nelson, 314 S.W.2d 956 (Tex. 1958)
- Devlin v. Scardelletti, 536 U.S. 1 (2002)
- United Airlines, Inc. v. McDonald, 432 U.S. 385 (1977)
- Ross v. Marshall, 426 F.3d 745 (5th Cir. 2005)
- Gonzalez v. Banco Cent. Corp., 27 F.3d 751 (1st Cir. 1994)
- Tyus v. Schoemehl, 93 F.3d 449 (8th Cir. 1996)
- Hone v. Hanafin, 104 S.W.3d 884 (Tex. 2003)
- Sierra Club v. Espy, 18 F.3d 1202 (5th Cir. 1994)
- Edwards v. City of Houston, 78 F.3d 983 (5th Cir. 1996)
- Verburgt v. Dorner, 959 S.W.2d 615 (Tex. 1997)
- Am. Brake Shoe & Foundry Co. v. Interborough Rapid Transit Co., 3 F.R.D. 162 (S.D.N.Y. 1942)
- State Farm Fire & Cas. Co. v. Gandy, 925 S.W.2d 696 (Tex. 1996)
- N. County Mut. Ins. Co. v. Davalos, 140 S.W.3d 685 (Tex. 2004)