SUPREME COURT OF ALABAMA

Defleron v. Gulf Agency, Inc.

815 So. 2d 558 (Ala. 2001) · Decided March 23, 2001

SUMMARY

The Alabama Supreme Court reviewed a summary judgment in favor of Gulf Agency and certain Lloyd’s underwriters in claims arising from the attempted procurement and cancellation of homeowners insurance. The court held that the underwriters could not be liable for fraudulent suppression because they had no relationship or direct contact with the plaintiffs, and that Gulf’s alleged failure to provide cancellation notice supported, at most, a contract claim rather than a tort claim. The court reversed the Court of Civil Appeals insofar as it had reversed the summary judgment and remanded the case.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Lyons, Justice; Moore, C.J.; Houston, Justice; See, Justice; Brown, Justice; Harwood, Justice; Woodall, Justice; Stuart, Justice
JURISDICTION	Alabama
DECIDED	March 23, 2001
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Deflerons appealed from a summary judgment entered for Gulf Agency and certain Lloyd's underwriters. The Alabama Supreme Court transferred the appeal to the Court of Civil Appeals, which affirmed in part and reversed in part as to the fraudulent-suppression claim. The Supreme Court of Alabama granted certiorari review and reversed the Court of Civil Appeals insofar as it had reversed the summary judgment on that claim.
STANDARD OF REVIEW	Summary judgment is reviewed under the same standard applied by the trial court. The evidence must show no genuine issue of material fact and entitlement to judgment as a matter of law; the record is viewed in the light most favorable to the nonmovant, with reasonable doubts resolved against the movant.
PRECEDENTIAL VALUE	Published Alabama Supreme Court opinion; precedential.

PARTIES	Gregory Defleron, Leslie Defleron v. Gulf Agency, Inc., Certain Underwriters at Lloyd's of London

TOPICS

insurance coverage · fraud · summary judgment · civil procedure · appellate procedure

PRACTICE AREAS

Insurance law · Tort law · Civil procedure · Appellate procedure

QUESTIONS PRESENTED

1. Whether Lloyd's could be liable for fraudulent suppression when the Deflerons had no direct relationship or communication with Lloyd's and presented no substantial evidence that Lloyd's suppressed a material fact.
2. Whether the alleged failure to provide notice of cancellation supported a tort claim for fraudulent suppression against Gulf Agency or instead constituted nonfeasance sounding only in contract.
3. Whether summary judgment was proper on the fraudulent-suppression claims against Gulf and Lloyd's.

HOLDINGS

1. Lloyd's was entitled to summary judgment because the Deflerons had no relationship or direct contact with Lloyd's and presented no substantial evidence that Lloyd's suppressed any material fact.
2. The alleged failure to give notice of cancellation constituted, at most, nonfeasance and supported an action in contract rather than a tort action for fraudulent suppression.
3. Summary judgment was properly entered for Gulf and Lloyd's on the fraudulent-suppression claim.

KEY QUOTATIONS

> *"The Deflerons presented no evidence — and certainly not the requisite substantial evidence — indicating that Lloyd's suppressed any material fact."* (562)

> *"This failure would leave the Defler-ons with an action in contract, not tort."* (564)

> *"The summary judgment was properly entered for Gulf on the fraudulent-suppression claim."* (564)

FACTUAL BACKGROUND

The Deflerons sought homeowners insurance through an insurance agency, and the application identified their home as having been constructed in 1906 and 1929. Gulf initially issued a certificate for Lloyd's H08 coverage but later determined that the home did not meet the underwriting guidelines and prepared a cancellation notice. The Deflerons disputed receiving the notice, and after a burglary they learned that no insurance would cover the loss. They sued the agency and the Lloyd's underwriters, alleging misrepresentation, negligent or wanton sale or administration of the policy, and suppression of the fact that they lacked coverage.

PROCEDURAL HISTORY

The Mobile County Circuit Court entered partial summary judgments for Gulf and Lloyd's and certified them as final under Rule 54(b), Ala. R. Civ. P. The Court of Civil Appeals affirmed summary judgment on the misrepresentation and negligent or wanton sale, procurement, or administration claims but reversed as to fraudulent suppression. The Supreme Court of Alabama reversed that portion of the intermediate appellate judgment and remanded.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

The case was remanded for an order or proceedings consistent with the opinion.

CASES CITED

- Defleron v. Gulf Agency, Inc., 815 So. 2d 548 (Ala. Civ. App. 1999)
- Ballard v. Lee, 671 So. 2d 1368 (Ala. 1995)
- Montz v. Mead & Charles, Inc., 557 So. 2d 1 (Ala. 1987)
- Currie v. Great Central Insurance Co., 374 So. 2d 1330 (Ala. 1979)
- 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)
- Ex parte Lumpkin, 702 So. 2d 462, 465 (Ala. 1997)
- Fanners v. Balfour Guthrie, Inc., 564 So. 2d 412, 413 (Ala. 1990)
- Ex parte Alfa Mutual General Insurance Co., 742 So. 2d 182, 184 (Ala. 1999)
- Baker v. State Farm General Insurance Co., 585 So. 2d 804, 808 (Ala. 1991)
- Ex parte Ryals, 773 So. 2d 1011, 1013 (Ala. 2000)
- Smith v. Equifax Services, Inc., 537 So. 2d 463, 465 (Ala. 1988)
- Hamner v. Mutual of Omaha Insurance Co., 49 Ala. App. 214, 270 So. 2d 87 (Civ. 1972)
- Blackburn v. Fidelity & Deposit Co. of Maryland, 667 So. 2d 661, 667-68 (Ala. 1995)
- National Security Fire & Casualty Co. v. Bowen, 417 So. 2d 179, 183 (Ala. 1982)
- Alfa Mutual Insurance Co. v. Northington, 604 So. 2d 758, 759-60 (Ala. 1992)
- Watkins v. Life Insurance Co. of Georgia, 456 So. 2d 259 (Ala. 1984)
- Raybon v. Allstate Insurance Co., 589 So. 2d 710 (Ala. 1991)
- Wilkinson v. Moseley, 18 Ala. 288 (1850)
- Mobile Life Insurance Co. v. Randall, 74 Ala. 170 (1888)
- Vines v. Crescent Transit Co., 264 Ala. 114, 85 So. 2d 436 (1955)
- Garig v. East End Memorial Hospital, 279 Ala. 118, 182 So. 2d 852 (1966)
- National Casualty Co. v. Thompson, 38 Ala. App. 338, 84 So. 2d 363 (1955)

- Western Union Telegraph Co. v. Rowell, 153 Ala. 295, 45 So. 73 (1907)
- Deavors v. Southern Express Co., 200 Ala. 372, 76 So. 288 (1917)
- Sloss-Sheffield Steel & Iron Co. v. Greek, 211 Ala. 95, 99 So. 791 (1924)

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