

SUPREME COURT OF GEORGIA

Metro Atlanta Task Force for the Homeless, Inc. v. Ichthus
Community Trust

298 Ga. 221 (2015) · No. S15A1021; S15X1022; S15X1023; S15X1024; S15A1027; S15A1028; S15A1029;
S15X1030/S15X1031 · Decided November 23, 2015

SUMMARY

The Supreme Court of Georgia reviewed interlocutory appeals concerning a stay of dispossessory proceedings and summary judgment rulings arising from the foreclosure and transfer of a homeless shelter property. The court dismissed the appeal concerning the dispossessory action as moot and affirmed in part and reversed in part the summary judgment order. It held, among other things, that factual disputes supported civil conspiracy and tortious-interference claims, but that the claim involving charitable donations could not proceed because the evidence did not show diversion of the donation to the defendants.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Benham, Justice; All Justices
JURISDICTION	Georgia
DECIDED	November 23, 2015
DOCKET	S15A1021; S15X1022; S15X1023; S15X1024; S15A1027; S15A1028; S15A1029; S15X1030/S15X1031
DISPOSITION	other
PROCEDURAL POSTURE	The Georgia Supreme Court granted interlocutory applications concerning a trial-court order lifting a stay and allowing Premium Funding Solutions to file a dispossessory action, and a summary-judgment order adopted from a special master's ruling. The court dismissed the appeal concerning the dispossessory action as moot and affirmed in part and reversed in part the summary-judgment rulings.
STANDARD OF REVIEW	Summary judgment is reviewed de novo to determine whether a genuine issue of material fact exists and whether the undisputed facts, viewed in the light most favorable to the nonmoving party, warrant judgment as a matter of law. Subject-matter jurisdiction is reviewed independently by the court.

PRECEDENTIAL VALUE	Published Georgia Supreme Court opinion; binding precedent in Georgia.
PARTIES	Metro Atlanta Task Force for the Homeless, Inc., Central Atlanta Progress, Premium Funding Solutions, LLC, Emanuel Fialkow v. Ichthus Community Trust, Metro Atlanta Task Force for the Homeless, Inc., Central Atlanta Progress, Premium Funding Solutions, LLC, Emanuel Fialkow

TOPICS

interlocutory appeal mootness summary judgment wrongful foreclosure
intentional interference with contract

PRACTICE AREAS

Appellate procedure Civil procedure Real estate litigation Torts Commercial litigation

QUESTIONS PRESENTED

1. Whether the appeal from the order permitting PFS to file a dispossessory action was moot.
2. Whether the Task Force could maintain a tortious-interference claim based on the loss of a charitable donation.
3. Whether genuine issues of material fact precluded summary judgment on the civil-conspiracy claim.
4. Whether genuine issues of material fact precluded summary judgment on the Task Force's tortious-interference claims involving its lenders and public funding.
5. Whether the Task Force had standing to maintain its quiet-title claim after foreclosure.
6. Whether the alleged tortious interference created an exception to the usual tender requirement for a wrongful-foreclosure action.
7. Whether genuine issues of material fact precluded summary judgment on the wrongful-foreclosure claim.
8. Whether summary judgment was proper on the claim for attorney fees and litigation expenses based on bad faith.
9. Whether the Task Force could pursue Georgia RICO predicate acts that were not pleaded or could not be supported by the evidence.

HOLDINGS

1. The appeal concerning the order allowing PFS to file a dispossessory action was moot because the Task Force had obtained a remedy at law through the trial court's plea in abatement, which was upheld by the Court of Appeals.

2. Summary judgment was properly denied on the civil-conspiracy claim because evidence permitted a jury to find that defendants acted pursuant to a common design to commit tortious acts against the Task Force.
3. The Task Force's claim concerning discontinued charitable donations could not survive summary judgment because it produced no evidence that defendants diverted a donation intended for the Task Force to themselves.
4. Summary judgment was properly denied on the claims that defendants tortiously interfered with the Task Force's relationships with ICE and Mercy.
5. Summary judgment was properly denied on the Task Force's claim that defendants interfered with its ability to obtain public grant funding because factual disputes existed concerning whether defendants improperly influenced city officials and acted with private malice.
6. The Task Force could not maintain its quiet-title claim because foreclosure had divested it of all title, leaving only an expectancy that it might regain title if it prevailed on its wrongful-foreclosure claim.
7. The Task Force was not required to tender the amount owed before pursuing its wrongful-foreclosure claim because the alleged tortious interference could have prevented it from obtaining the funds necessary to tender.
8. Summary judgment was properly denied on the wrongful-foreclosure claim because material factual disputes existed concerning the property's value, the adequacy of the foreclosure price, alleged tortious conduct, breach of duty, causation, and damages.
9. Summary judgment for defendants on the Georgia RICO claim was proper because the Task Force failed to establish the pleaded predicate acts and could not raise an unpleaded wire-fraud theory for the first time in opposition to summary judgment.

KEY QUOTATIONS

“A prior action may bar a subsequent action under the doctrine of res judicata if the prior action resulted in an adjudication by a court of competent jurisdiction and the two actions have an identity of parties and subject matter.” (at 225)

“A conspiracy upon which a civil action for damages may be founded is a combination between two or more persons either to do some act which is a tort, or else to do some lawful act by methods which constitute a tort.” (at 226)

“To state a claim for quiet title relief, a plaintiff must allege more than a right to acquire title; it must allege that it presently holds current title or current prescriptive title.” (at 238)

“Equity believes in good conscience, honesty, and morality. It will not sanction oppression or extortion demanded by a party because of his own illegal act.” (at 239)

FACTUAL BACKGROUND

The Task Force operated a homeless shelter on Atlanta property that secured loans from ICE and Mercy. After the Task Force defaulted and a forbearance period expired, Ichthus purchased the notes, foreclosed, and bought

the property at the foreclosure sale; Ichthus later transferred the property interest to PFS. The Task Force alleged that defendants conspired to deprive it of the property by interfering with its lender relationships, charitable donations, public funding, and foreclosure-related rights. Evidence showed communications portraying the Task Force negatively, efforts to influence lenders and public officials, and a substantial disparity between the foreclosure price and alleged property value.

PROCEDURAL HISTORY

The Task Force operated a homeless shelter on property securing loans originally held by ICE and Mercy. After the Task Force defaulted, Ichthus purchased the notes, foreclosed, and acquired the property; Ichthus later transferred its interest to PFS. The Task Force asserted wrongful foreclosure, quiet title, civil conspiracy, tortious interference, defamation-related claims, bad faith, punitive damages, and Georgia RICO claims. A special master found jury issues on several claims, and the superior court adopted that ruling while also allowing PFS to pursue a dispossessory action. The Supreme Court granted interlocutory review.

DISPOSITION

other

REMAND INSTRUCTIONS

The court dismissed appeal S15A1021 as moot. In the consolidated summary-judgment appeals, it affirmed in part and reversed in part; the opinion does not state additional remand instructions.

CASES CITED

- Advanced Disposal Services Middle Georgia LLC v. Deep South Sanitation, LLC, 296 Ga. 103, 765 S.E.2d 364 (2014)
- Premium Funding Solutions, LLC v. Metro Atlanta Task Force for the Homeless, 333 Ga. App. 718, 776 S.E.2d 504 (2015)
- Waggaman v. Franklin Life Insurance Co., 265 Ga. 565, 458 S.E.2d 826 (1995)
- Wetzel v. State, 2015 WL 6630379 (Ga. Nov. 2, 2015)
- Giles v. Swimmer, 290 Ga. 650, 725 S.E.2d 220 (2012)
- Cook v. Robinson, 216 Ga. 328, 116 S.E.2d 742 (1960)
- Alta Anesthesia Associates of Georgia, P.C. v. Gibbons, 245 Ga. App. 79, 537 S.E.2d 388 (2000)
- Outside Carpets, Inc. v. Industrial Rug Co., 228 Ga. 263, 185 S.E.2d 65 (1971)
- Nottingham v. Wrigley, 221 Ga. 386, 144 S.E.2d 749 (1965)
- Tyler v. Thompson, 308 Ga. App. 221, 707 S.E.2d 137 (2011)
- Dee v. Sweet, 218 Ga. App. 18, 460 S.E.2d 110 (1995)
- Wilson v. Mountain Valley Community Bank, 328 Ga. App. 650, 759 S.E.2d 921 (2014)
- Witty v. McNeal Agency, Inc., 239 Ga. App. 554, 521 S.E.2d 619 (1999)
- Morrison v. Morrison, 284 Ga. 112, 663 S.E.2d 714 (2008)

- Morgan v. Morgan, 256 Ga. 250, 347 S.E.2d 595 (1986)
- Mitchell v. Langley, 143 Ga. 827, 85 S.E. 1050 (1915)
- Ford v. Reynolds, 315 Ga. App. 200, 726 S.E.2d 687 (2012)
- Tribeca Homes, LLC v. Marathon Investment Corp., 322 Ga. App. 596, 745 S.E.2d 806 (2013)
- Gordon Document Products, Inc. v. Service Technologies, Inc., 308 Ga. App. 445, 708 S.E.2d 48 (2011)
- Renden, Inc. v. Liberty Real Estate Ltd. Partnership III, 213 Ga. App. 333, 444 S.E.2d 814 (1994)
- Cox v. City of Atlanta, 266 Ga. App. 329, 596 S.E.2d 785 (2004)
- Disaster Services, Inc. v. ERC Partnership, 228 Ga. App. 739, 492 S.E.2d 526 (1997)
- Georgia Canoeing Association v. Henry, 263 Ga. 77, 428 S.E.2d 336 (1993)
- Atlanta Humane Society v. Harkins, 278 Ga. 451, 603 S.E.2d 289 (2004)
- West Lumber Co. v. Schnuck, 204 Ga. 827, 51 S.E.2d 644 (1949)
- Chase Manhattan Mortgage Corp. v. Shelton, 290 Ga. 544, 722 S.E.2d 743 (2012)
- Tomkus v. Parker, 236 Ga. 478, 224 S.E.2d 353 (1976)
- Vereen v. Deutsche Bank National Trust Co., 282 Ga. 284, 646 S.E.2d 667 (2007)
- McCarter v. Bankers Trust Co., 247 Ga. App. 129, 543 S.E.2d 755 (2000)
- Dykes Paving & Construction Co. v. Hawk's Landing Homeowners Assn., 282 Ga. 305, 647 S.E.2d 579 (2007)
- In re Rivermist Homeowners Assn., 244 Ga. 515, 260 S.E.2d 897 (1979)
- Benedict v. Gammon Theological Seminary, 122 Ga. 412, 50 S.E. 162 (1905)
- Coates v. Jones, 142 Ga. 237, 82 S.E. 649 (1914)
- Smith v. Citizens & Southern Financial Corp., 245 Ga. 850, 268 S.E.2d 157 (1980)
- Stewart v. SunTrust Mortgage, Inc., 331 Ga. App. 635, 770 S.E.2d 892 (2015)
- Wells Fargo Bank, N.A. v. Molina-Salas, 332 Ga. App. 641, 774 S.E.2d 712 (2015)
- Giordano v. Stubbs, 228 Ga. 75, 184 S.E.2d 165 (1971)
- Kennedy v. Gwinnett Commercial Bank, 155 Ga. App. 327, 270 S.E.2d 867 (1980)
- Covington Square Associates, LLC v. Ingles Markets, Inc., 287 Ga. 445, 696 S.E.2d 649 (2010)
- Pfeiffer v. Georgia Department of Transportation, 275 Ga. 827, 573 S.E.2d 389 (2002)