

SUPREME COURT OF ALABAMA

Pelt v. BankCard USA Merchant Services, Inc.

898 So. 2d 701 (Ala. 2004) · Decided October 1, 2004

SUMMARY

The Alabama Supreme Court granted First Western Bank's petition for a writ of mandamus challenging the denial of its motion to dismiss for lack of personal jurisdiction. The court held that Pelt's complaints did not expressly allege that BankCard acted as First Western's agent, and therefore the alleged conduct could not be imputed to First Western to establish specific jurisdiction. The court directed the trial court to dismiss First Western from the action.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Woodall, Justice; Nabers, C.J.; Houston, J.; See, J.; Lyons, J.; Brown, J.; Johnstone, J.; Harwood, J.; Stuart, J.
JURISDICTION	Alabama
DECIDED	October 1, 2004
DISPOSITION	writ_granted
PROCEDURAL POSTURE	First Western Bank petitioned for a writ of mandamus directing the Greene Circuit Court to vacate its order denying First Western's motions to dismiss for lack of personal jurisdiction and to dismiss First Western from the action.
STANDARD OF REVIEW	Mandamus is available to review the denial of a motion to dismiss for lack of personal jurisdiction when the petitioner demonstrates a clear legal right to the requested dismissal.
PRECEDENTIAL VALUE	Published Alabama Supreme Court opinion; precedential.
PARTIES	First Western Bank v. Mary Louise Pelt

TOPICS

- personal jurisdiction
- pleadings
- appellate procedure
- civil procedure
- consumer protection

PRACTICE AREAS

- civil procedure
- personal jurisdiction
- appellate procedure
- consumer protection

QUESTIONS PRESENTED

1. Whether mandamus was the proper method to challenge the denial of First Western's motions to dismiss for lack of personal jurisdiction.
2. Whether Pelt's complaint expressly alleged an agency relationship sufficient to permit Alabama courts to exercise specific personal jurisdiction over First Western for BankCard's conduct.
3. Whether the trial court could exercise personal jurisdiction over First Western based on BankCard's alleged agency without an express agency allegation in the complaint.

HOLDINGS

1. A petition for a writ of mandamus is the proper device to challenge the denial of a motion to dismiss for lack of in personam jurisdiction, and relief is available upon a showing of a clear legal right to dismissal.
2. Absent waiver of personal-jurisdiction objections, a complaint that does not expressly allege an agency relationship as the basis for jurisdiction cannot support the exercise of personal jurisdiction over an out-of-state defendant for the acts of a purported agent.
3. The trial court lacked a sufficient pleading basis to exercise specific personal jurisdiction over First Western because Pelt's complaint did not expressly allege that BankCard acted as First Western's agent in sending the facsimile.

KEY QUOTATIONS

“a petition for a writ of mandamus is the proper device by which to challenge the denial of a motion to dismiss for lack of in person-am jurisdiction.” (at 704)

“Thus, absent a waiver of any objections to in personam jurisdiction, a complaint lacking express averments of agency will not support the exercise of jurisdiction over an out-of-state defendant for the acts of a purported agent.” (at 705)

“In short, the absence of express aver-ments of agency in Pelt’s complaint precludes the exercise of personal jurisdiction over First Western.” (at 705)

FACTUAL BACKGROUND

Pelt received an unsolicited facsimile advertising credit-card processing services offered by BankCard and First Western and filed a class-action complaint under the Telephone Consumer Protection Act. First Western was BankCard's sponsoring financial institution under a processing agreement, but submitted affidavits stating that it did not supervise or control BankCard's day-to-day operations. Pelt argued for personal jurisdiction over First Western based on respondeat superior, contending that BankCard acted as First Western's agent.

PROCEDURAL HISTORY

Pelt filed a class-action complaint alleging that First Western, BankCard, and others violated the Telephone Consumer Protection Act by sending her an unsolicited facsimile advertisement. First Western moved to dismiss for lack of personal jurisdiction, and the trial court denied the motions after considering affidavits addressing the

relationship between First Western and BankCard. First Western then sought mandamus relief in the Alabama Supreme Court.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The Greene Circuit Court was directed to vacate its order denying First Western's motions to dismiss and to enter an order dismissing First Western from the action for lack of personal jurisdiction.

CASES CITED

- Hannah v. Gregg, Bland & Berry, Inc., 840 So. 2d 839, 850 (Ala. 2002)
- Travis v. Ziter, 681 So. 2d 1348, 1351 (Ala. 1996)
- Ex parte Dill, Dill, Carr, Stonbraker & Hutchings, P.C., 866 So. 2d 519, 525 (Ala. 2003)
- Ex parte Fontaine Trailer Co., 854 So. 2d 71, 76 (Ala. 2003)
- Ex parte State ex rel. C.M., 828 So. 2d 291, 293 (Ala. 2002)
- Leventhal v. Harrelson, 723 So. 2d 566, 569 (Ala. 1998)
- Ex parte McInnis, 820 So. 2d 795, 807 (Ala. 2001)
- Ex parte Troncalli Chrysler Plymouth Dodge, Inc., 876 So. 2d 459, 468 (Ala. 2003)