

SUPREME COURT OF ARKANSAS

Vibo Corp. v. State ex rel. McDaniel, 2011 Ark. 124

380 S.W.3d 411 (2011) · Decided March 31, 2011

SUMMARY

The Arkansas Supreme Court reviews a circuit court judgment enforcing Vibo Corporation’s tobacco Master Settlement Agreement and Adherence Agreement backpayment obligations. The court affirms summary judgment for the State, concludes that the circuit court had subject-matter jurisdiction to enter judgment for the total amount owed to all settling states, finds that the indispensable-party issue was not preserved, and holds that a prior arbitration stay did not encompass the later enforcement action. The court also holds that a contingent and unliquidated Non-Participating Manufacturer Adjustment could not be set off against the fixed backpayment obligation.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Arkansas                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| WRITING FOR THE COURT | Robert L. Brown, Justice                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| JURISDICTION          | Arkansas                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| DECIDED               | March 31, 2011                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| PROCEDURAL POSTURE    | General Tobacco appealed the circuit court's summary judgment for the State, order directing payment of the full backpayment obligation into the Master Settlement Agreement escrow account, order delisting its brand families, and denial of its motion to enforce a prior stay pending arbitration.                                                                                                                                                                           |
| STANDARD OF REVIEW    | Summary judgment is reviewed de novo. The appellate court determines whether the evidentiary items presented leave a material question of fact unanswered, viewing the evidence and all reasonable inferences in the light most favorable to the party opposing summary judgment. Denial of a Rule 56(f) continuance for additional discovery is reviewed for abuse of discretion, and reversal requires a showing that the additional discovery would have changed the outcome. |
| PRECEDENTIAL VALUE    | Published Arkansas Supreme Court opinion                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| PARTIES               | Vibo Corporation, Inc. d/b/a General Tobacco v. State of Arkansas ex rel. Dustin McDaniel                                                                                                                                                                                                                                                                                                                                                                                        |

## TOPICS

breach of contract

summary judgment

arbitration

joinder

personal jurisdiction

## PRACTICE AREAS

Contract law

Civil procedure

Appellate procedure

Arbitration

Commercial litigation

## QUESTIONS PRESENTED

1. Whether the circuit court had subject-matter jurisdiction to adjudicate General Tobacco's breach of the Master Settlement Agreement and order payment of the total backpayment amount into the MSA escrow account.
2. Whether General Tobacco preserved and established that the other Settling States were indispensable parties.
3. Whether the 2006 order staying proceedings pending arbitration applied to the State's later enforcement action.
4. Whether General Tobacco could set off its contingent and unliquidated Non-Participating Manufacturer Adjustment against its fixed backpayment obligation.
5. Whether the circuit court abused its discretion by granting summary judgment without allowing additional discovery.
6. Whether genuine issues of material fact precluded summary judgment on General Tobacco's defenses, including mistake, fraudulent inducement, economic duress, impracticability, frustration of purpose, laches, estoppel, waiver, unjust enrichment, antitrust, and constitutional claims.
7. Whether the circuit court could order payment for the benefit of Settling States that were not parties without first considering their joinder under Rule 19.

## HOLDINGS

1. The circuit court had subject-matter jurisdiction over the breach-of-contract dispute and could determine the total damages necessary to ensure Arkansas received its allocable share under the MSA's unitary payment structure.
2. The 2006 stay pending arbitration applied only to the declaratory proceeding concerning Arkansas's diligent enforcement of its qualifying statute and the 2003 Non-Participating Manufacturer Adjustment; it did not stay the later enforcement action for General Tobacco's unpaid backpayment obligation.
3. General Tobacco could not set off the Non-Participating Manufacturer Adjustment against its backpayment obligation because the adjustment was contingent and unliquidated, whereas the backpayment obligation was fixed, liquidated, and uncontingent.
4. The circuit court did not abuse its discretion by denying General Tobacco additional discovery before ruling on summary judgment.
5. Summary judgment was proper because General Tobacco ratified the MSA and Adherence Agreement after learning of the alleged mistake or misrepresentations, failed to establish its other asserted defenses,

and was collaterally estopped from relitigating federal antitrust and constitutional claims previously decided against it.

6. The circuit court correctly determined Arkansas's entitlement to its allocable share but erred in ordering payment for the benefit of the other Settling States without considering their joinder; the matter was reversed and remanded for the circuit court to consider joining those States as indispensable parties under Rule 19.

#### KEY QUOTATIONS

*“subject-matter jurisdiction cannot be conferred on a court by a contract or agreement like the MSA or Adherence Agreement.”* (at 415)

*“A contingent liability cannot be set off against an un-contingent liability.”* (at 422)

*“Affirmed in part; reversed and remanded in part.”* (at 428)

#### FACTUAL BACKGROUND

General Tobacco operated as a nonparticipating tobacco manufacturer beginning in 2000 and signed an Adherence Agreement to the Master Settlement Agreement in 2004, thereby becoming a Subsequent Participating Manufacturer. It acknowledged a substantial backpayment obligation and agreed to pay that obligation in installments, but failed to make its full installments for 2006 through 2008. The State sought enforcement of the backpayment obligation, while General Tobacco asserted that a prior arbitration-related stay applied to the entire litigation and that it was entitled to offsets and various contractual and statutory defenses.

#### PROCEDURAL HISTORY

The circuit court ordered arbitration in 2006 concerning whether Arkansas had diligently enforced its qualifying tobacco statute for purposes of the Non-Participating Manufacturer Adjustment. In 2009, the State filed a separate enforcement proceeding alleging that General Tobacco had breached its backpayment obligations under the Master Settlement Agreement and Adherence Agreement. The circuit court granted summary judgment for the State, denied General Tobacco's motion to enforce the 2006 stay, ordered payment of \$296,846,112.93 into the MSA escrow account, and delisted General Tobacco's brand families. The Supreme Court of Arkansas affirmed in part, reversed in part, and remanded for consideration of joining the other Settling States as indispensable parties.

#### DISPOSITION

reversed\_and\_remanded

#### REMAND INSTRUCTIONS

The circuit court must consider whether to join the other Settling States as indispensable parties under Arkansas Rule of Civil Procedure 19 so that complete relief concerning allocation of the escrowed funds can be afforded. The judgment was otherwise affirmed, including the determination that General Tobacco breached its obligations and that Arkansas was entitled to its allocable share.

## CASES CITED

- *Servewell Plumbing, LLC v. Summit Contractors, Inc.*, 362 Ark. 598, 210 S.W.3d 101 (2005)
- *Allen v. Circuit Court of Pulaski County*, 2009 Ark. 167, 303 S.W.3d 70, 76
- *Rowell v. White & Assocs., Inc.*, 302 Ark. 225, 788 S.W.2d 489 (1990)
- *Milberg, Weiss, Bershad, Hynes & Lerach, LLP v. State*, 342 Ark. 803, 310-11, 28 S.W.3d 842, 847 (2000)
- *Taylor v. Hamilton*, 90 Ark. App. 235, 241, 205 S.W.3d 149, 154 (2005)
- *Stokes v. Home Life Ins. Co.*, 187 Ark. 972, 68 S.W.2d 657, 658 (1933)
- *Alexander v. Flake*, 322 Ark. 239, 249, 910 S.W.2d 190, 195 (1995)
- *Jenkins v. Int'l Paper Co.*, 318 Ark. 663, 887 S.W.2d 300 (1994)
- *Kelly v. Golden*, 352 F.3d 344, 349 (8th Cir. 2003)
- *Custom Microsystems, Inc. v. Blake*, 344 Ark. 536, 42 S.W.3d 453 (2001)
- *Brock v. Townsell*, 2009 Ark. 224, 309 S.W.3d 179, 185
- *Repking v. Lokey*, 2010 Ark. 356, 377 S.W.3d 211, 215-16
- *Sims v. First Nat'l Bank, Harrison*, 267 Ark. 253, 590 S.W.2d 270 (1979)
- *State v. Grisby*, 370 Ark. 66, 69, 257 S.W.3d 104, 107 (2007)
- *Vibo Corp., Inc. v. Conway*, 594 F. Supp. 2d 758 (W.D. Ky. 2009)
- *Powell v. Lam*, 375 Ark. 178, 185, 289 S.W.3d 440, 444 (2008)
- *Oklahoma v. Tyson Foods, Inc.*, 258 F.R.D. 472 (N.D. Okla. 2009)
- *Symes v. Harris*, 472 F.3d 754 (10th Cir. 2006)
- *Diagnostic Unit Inmate Council v. Motion Picture Ass'n of Am.*, 953 F.2d 376 (8th Cir. 1992)
- *Freeman v. Nw. Acceptance Corp.*, 754 F.2d 553 (5th Cir. 1985)
- *Jeffries v. Georgia Residential Fin. Auth.*, 678 F.2d 919 (11th Cir. 1982)