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CASE SUMMARIES

SUPREME COURT OF ALABAMA

Ex Parte City Boy's Tire and Brake, Inc., No. 1100205. Plaintiff filed a complaint against defendants Donald Wease, Alabama Cable Fiber Repair, and City Boy's Tire and Brake, Inc., a Florida corporation located in Florida ("City Boy"), among others, alleging claims arising out of an automobile accident that occurred in Alabama when one of the tires on her vehicle failed. Though City Boy did not install the faulty tire, Plaintiff claimed that, as part of City Boy's inspection process when it replaced another one of her tires at its Florida office, it breached a duty to inspect the vehicle and warn her of any dangers, including the dangers posed by the other tires. City Boy filed a motion to dismiss Plaintiff's claims for lack of personal jurisdiction. The trial court denied the motion, and City Boy petitioned the Supreme Court for a writ of mandamus, directing the lower court to grant its motion to dismiss. In determining whether to issue the writ, the Court considered whether the trial court had personal jurisdiction over City Boy under a specific-contacts analysis (e.g., whether City Boy, a Florida corporation, purposefully availed itself to Alabama, the forum state). The Court rejected Plaintiff's argument that the accompanying promises City Boy made to rotate, balance or replace the tire it sold Plaintiff in Florida constituted a continuing obligation, making it foreseeable that City Boy could be sued in Alabama. Alternatively, the Court held that City Boy's warranties involved no obligation in Alabama and instead only limited obligations to City Boy's place of business in Florida. Furthermore, the Court noted that City Boy was not a "large volume" tire store and did not advertise in Alabama. Finally, the Court refused to apply the "stream-of-commerce" analysis utilized in product-related litigation to a claim relating to a service provided, as opposed to the purchase of a product. Specifically, the Court held that the transaction between Plaintiff and City Boy was merely an "isolated occurrence," insufficient for City Boy to "reasonably anticipate being haled into court" in Alabama. Accordingly, the Supreme Court granted City Boy's petition and issued a writ directing the lower court to dismiss the claim against City Boy.

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ALABAMA COURT OF CIVIL APPEALS

James M. Perry v. Federal National Mortgage Association, No. 2100235. James Perry took out a home loan from RBMG, Inc., in return executing a note to RBMG in the full amount of the loan. Perry also executed a mortgage in favor of Mortgage Electronic Registrations Systems, Inc. as RBMG's nominee. The note and mortgage were both eventually assigned to EverHome Mortgage Company. After Perry fell behind on his mortgage payments, EverHome notified Perry that it was accelerating his loan and initiating foreclosure proceedings. Prior to publishing notice of the foreclosure, EverHome conveyed its interest in the property to Fannie Mae. In the second week of publication of the foreclosure notice, MERS assigned the mortgage to EverHome. After EverHome purchased the property at the foreclosure sale, Fannie Mae recorded its mortgage and deed from EverHome. Fannie Mae then filed an ejectment action against Perry, claiming that it was the owner of the property. Fannie Mae then moved for summary judgment, attaching the affidavit of Nik Fox, custodian of EverHome's books and records relating to Perry's loan. Fox stated that he had reviewed EverHome's records and that EverHome had acquired its interest in the note on July 2, 2007. Fox did not, however, attach these records to his affidavit. The trial court entered summary judgment for Fannie Mae, and Perry appealed. The Court of Civil Appeals reversed, noting that although EverHome had not been assigned the mortgage securing Perry's note until after the foreclosure proceedings had been initiated, according to Ala. Code 35-10-12 a holder of the underlying indebtedness is nevertheless entitled to exercise the power of sale. The Court held, however, that the portion of Fox's affidavit stating that EverHome had been assigned the note in July 2007 was inadmissible because it failed to attach the business records that Fox relied upon for such information. Because Fox's affidavit establishing that EverHome held the note prior to initiating foreclosure proceedings was inadmissible, Fannie Mae could not demonstrate that it had standing to prosecute the ejectment action.

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Tanner v. Ebbole, No. 2091121. LA Body Art, a tattoo parlor, alleged a claim of defamation against a competing tattoo parlor and its owner and employee. A jury awarded LA Body Art nominal damages of \$1 and assessed punitive damages of \$200,000 against the defendant tattoo parlor, \$100,000 against the owner, and \$10,000 against the employee. The trial court denied the defendants' motions for a remittitur of the punitive damages, and the defendants appealed. Applying the factors outlined in Green Oil Co. v. Hornsby and Hammond v. City of Gadsden, within the constitutional guideposts set out in BMW of North America, Inc. v. Gore, the Court of Civil Appeals determined that the punitive damages awards assessed against the individual defendants were not excessive. While the individual defendants submitted affidavits suggesting that the awards would have a devastating effect on their financial positions, the trial court was entitled to disregard these affidavits where they were not supported with credible documentation, such as tax returns or audited financial statements, and to conclude that the defendants' financial position did not warrant reduction of the punitive damages. With respect to the corporate defendant tattoo parlor, however, the trial court erred in disregarding evidence and testimony indicating that the tattoo parlor had a net worth of less than \$2 million and was therefore a "small business" under Ala. Code § 6-11-21, against which punitive damages are capped at \$50,000 or ten percent of the business's net worth, whichever is greater. The Court affirmed the trial court's judgment as to the individual defendants and affirmed the judgment as to the corporate defendant conditioned on the plaintiff's acceptance of a remittitur from \$200,000 to the statutory cap of \$50,000. In dissent, Judge Moore stated that the awards far exceeded the actual damage caused and would financially devastate the defendants.

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