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DECISIONS ISSUED AUGUST 5, 2011

SUPREME COURT REAFFIRMS THAT ABATEMENT STATUTE APPLIES TO STATE COURT ACTION WHILE PREVIOUSLY FILED FEDERAL LAWSUIT IS ON APPEAL

Ex parte Compass Bank, No. 1100870 [*Abatement: Trial court erred by refusing to dismiss second-filed state court action under Alabama's abatement statute where it arose from same facts as a previously filed federal lawsuit that was still pending on appeal.*] (Bolin, J., 5-0-0). Jerome Sirote sued Compass Bank in federal district court under the Truth In Lending Act and the Real Estate Settlement Procedures Act, alleging that Compass had forged his signature on two mortgages executed three years apart. Sirote also stated various common law claims, alleging that Compass had also converted millions of dollars in bonds that Sirote had under management at Compass. The district court dismissed Sirote's TILA and RESPA claims with prejudice and dismissed Sirote's common law claims without prejudice to his right to bring those claims in state court. Sirote appealed the district court's decision to the Eleventh Circuit. On the same day that Sirote filed his notice of appeal, Sirote also filed a second lawsuit in Alabama state court, alleging various theories of recovery arising from identical facts to those he had alleged in his first-filed federal suit. Compass moved to dismiss the second-filed state action under Alabama's abatement statute, which precludes a plaintiff from litigating two lawsuits in the courts of this state against the same defendant for the same cause of action at the same time. The trial court denied Compass's motion, and Compass petitioned the Alabama Supreme Court for a writ of mandamus. The Supreme Court granted the petition and issued the writ, holding that the abatement statute applies equally when the first action was filed in federal court and that the abatement statute continues to apply while the first-filed case is on appeal. The Court also held principles of res judicata guide the determination of whether the two suits are for the same cause of action. Simply because different theories of recovery are pleaded does not defeat application of the abatement statute. Instead, two lawsuits are for the same cause of action if a judgment in the first matter would be res judicata of the claims in the second matter. [This was a great victory for Kelly Brennan-Bolvig, Adam Israel, and Jason Tompkins of Balch & Bingham LLP.]

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SUPREME COURT OF ALABAMA

Black Warrior Minerals, Inc. v. Fay, No. 1100627 [*Contract Interpretation: Parties to a contract will not be imputed with using language that is meaningless or without effect.*] (Woodall, J., 5-0-0).

Matador Holdings, Inc. v. HoPo Realty Investments, LLC, Nos. 1091700 & 1091790 [*Materialman's Lien: Where lessee violates the terms of a lease in making improvements, a supplier may not enforce a materialman's lien against the owner of the property; Unjust Enrichment: Property owner was not unjustly enriched where there was conflicting evidence that it knowingly obtained a benefit.*] (Main, J., 5-0-0).

ALABAMA COURT OF CIVIL APPEALS

Cascaden v. Winn-Dixie Montgomery, LLC, No. 2100295 [*Workers' Compensation: An employer is not required to prove reliance on a misrepresentation made by an employee on his or her employment application in order to assert such misrepresentation as an affirmative defense to a claim by the employee for workers' compensation benefits.*] (Thompson, J., 5-0-0).

Joey Frazier v. Frank Gillis, M.D., No. 2100202 [*Medical Malpractice: Intervening negligent medical treatment by second physician does not break the causal chain and absolve original physician of liability for original negligent medical care.*] (Thompson, J., 5-0-0).

Waldrop, et al. v. Northwest-Shoals Community College, et al., No. 2100328 [*Sovereign Immunity: Sovereign immunity extends to a state's institutions of higher learning; Alabama Code Section 16-22-15 does not require that a vacant position be posted within a specific time frame.*] (Bryan, J., 5-0-0).

CASE SUMMARIES

SUPREME COURT OF ALABAMA

Black Warrior Minerals, Inc. v. Fay, No. 1100627. Black Warrior Minerals entered into a \$1.2 million coal-purchase agreement with Empire Coal Sales and John Fay. The agreement included a personal guarantee by Fay. Black Warrior sued Empire and Fay for the amount it claimed was owed under the agreement. The trial court entered summary judgment in favor of Black Warrior on its claims against Empire, but ruled in favor of Fay. Following a bench trial, it held that the guarantee language in the agreement was ambiguous and determined that the guarantee was only intended to apply to any sales in excess of the original \$1.2 million described in the agreement. On Black Warrior's appeal, the Alabama Supreme Court first noted that the question of whether a contract is ambiguous is an issue of law; that the non-technical terms of a contract should be interpreted using their ordinary, plain, and natural meanings; and that parties to a contract will not be imputed with using language that is meaningless or without effect. The Court then examined the guarantee language from the agreement, which stated that Fay guaranteed "full payment of all monetary obligations of Empire ... including all existing debt as of the date hereof and all future obligations under said agreement," and found that language was not ambiguous. The Court rejected Fay's argument that a later clause of the agreement modified the original clause such that Fay's guarantee only applied to obligations above and beyond the \$1.2 million specified in the agreement. Fay's argument, the Court explained, would render the original clause of the contract meaningless. Accordingly, the Court held that Fay had guaranteed all money due from Empire under the agreement, reversed the judgment of the trial court, and remanded the case for an entry of judgment in favor of Black Warrior.

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Matador Holdings, Inc. v. HoPo Realty Investments, LLC, Nos. 1091700 & 1091790. Matador Holdings, Inc. sold materials to Stratford Plastic Components of Alabama for the conversion of premises leased from HoPo Realty Investments, LLC. Matador did not inform HoPo that it would be supplying materials to Stratford for purposes of converting the leased property. Stratford converted the leased property to a manufacturing facility but failed to fulfill all relevant terms of the lease and vacated the property without paying Matador for the materials. Matador filed a materialman's lien against the leased property and sued Stratford and HoPo seeking payment for materials provided to Stratford. The trial court entered judgment against Stratford and, after a hearing, an order enforcing Matador's lien against HoPo's property but denying Matador's unjust enrichment claim against HoPo. Matador appealed the denial of its unjust enrichment claim, and HoPo appealed the grant of the materialman's lien. Addressing Matador's appeal of the denial of the unjust enrichment claim, the Alabama Supreme Court found that there was conflicting evidence as to whether HoPo knowingly obtained a benefit, but there was sufficient evidence to support the trial court's denial. It affirmed that judgment. Addressing HoPo's appeal of the materialman's lien, the Court noted that Alabama Code § 35-11-212 only provides for liens against leased lands where improvement to the lands was "not in violation of the terms" of the lease. Because Stratford violated the terms of its lease when it made additions to the premises, the lien against HoPo's property was not proper. The Court reversed the trial court's order insofar as it enforced any portion of Matador's lien and remanded the case for the trial court to enter an order declaring the lien void.

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ALABAMA COURT OF CIVIL APPEALS

Cascaden v. Winn-Dixie Montgomery, LLC, No. 2100295. While employed by Defendant, Plaintiff was involved in a non-work related accident which injured his back. Plaintiff left his employment shortly after the accident, but was rehired by Defendant a few years later. Before Plaintiff was rehired, he filled out a medical questionnaire and misrepresented that he had not had any prior back injuries. He later injured his back in the course of his employment with Defendant. Plaintiff subsequently filed an action against Defendant seeking workers' compensation benefits for this back injury. Defendant moved for summary judgment on the grounds that Plaintiff's claims were barred by Alabama Code § 25-5-51 because he had misrepresented his medical history in his employment application. The trial court granted summary judgment in Defendant's favor. Plaintiff appealed to the Alabama Court of Civil Appeals arguing that Defendant could not have relied on his misrepresentations because it already knew of his previous back injury. The Court found that § 25-5-51 does not require an employer to prove that it relied to its detriment on an employee's misrepresentations to assert the misrepresentation defense. Thus, the Court affirmed summary judgment in favor of Defendant.

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Joey Frazier v. Frank Gillis, M.D., No. 2100202. Dr. Frank Gillis prescribed Coumadin to Florine Bryant for treatment of a heart condition. A patient's INR and Coumadin dosage must be closely monitored to ensure that the patient remains in the therapeutic range. An INR between 2.0 and 3.0 is the therapeutic range for patients with Bryant's heart condition who are being treated with Coumadin. Bryant returned to Gillis's office for her first INR test one week after Gillis initially prescribed her Coumadin. At that time Bryant's INR was 1.9. Gillis's records indicate that Bryant's INR level was not tested again for over ten weeks. Only after Bryant called Gillis's office complaining of bruising and a lack of energy was she told to return to Gillis's office for further testing, but Gillis was out of town when Bryant came into the office. Carol Davis, a certified nurse practitioner under Gillis's supervision, tested Bryant's INR, which was then 34.2. Davis then told Bryant to stop using Coumadin and to have her INR rechecked four days later. Bryant returned to Gillis's office the next day, however, because she was still bleeding from the site where blood had been drawn the day before. Bryant's INR level that day was 44.77. Dr. George Evans, who was handling Gillis's patients while Gillis was out of town, instructed Davis to refer Bryant to a hematologist and to tell her that if she had any problems to go to the hospital. The next day Bryant became unresponsive and was taken to the hospital where she died from a brain hemorrhage. Bryant's estate presented expert testimony that Gillis had breached the standard of care by failing to adequately monitor Bryant's Coumadin dosage. The estate's expert also testified that despite her grave condition, Bryant's condition in the two days before her death was completely reversible. Gillis moved for judgment as a matter of law at the close of the estate's case and the trial court granted it, holding that Evan's and Davis's negligence was an intervening superseding cause and therefore Gillis's negligence did not proximately cause Bryant's death. The estate appealed. The Alabama Court of Civil Appeals reversed, holding that medical negligence is always foreseeable as a matter of law. Therefore, intervening medical negligence does not break the causal chain necessary to prevail on a negligence claim. The Court held that if the jury found that Gillis had breached the standard of care by failing to properly monitor Bryant's Coumadin dosage it could also find that his negligence began the chain of events that caused Bryant's death.

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Waldrop, et al. v. Northwest-Shoals Community College, et al., No. 2100328. In May 2008, a Secretary III position was vacated at Northwest-Shoals Community College. Because this vacancy left the Vice President's office shorthanded, Adrian Wuotto, who was working as a client-relations specialist, began performing some duties in the Vice President's office. Ultimately, the College received a notice of vacancy for the Secretary III position in January 2009. The College posted several applications, including from Wuotto and from the Plaintiffs. In June 2009, the College offered Wuotto the Secretary III position, and she accepted. In February 2010, the Plaintiffs filed suit against the College and Humphrey Lee, the President of the College, seeking a declaratory judgment that the College had failed to comply with Alabama Code Section 16-22-15 regarding the hiring of Wuotto. The trial court entered summary judgment in favor of the Defendants without opinion. The Plaintiffs appealed. Addressing the issue of whether the doctrine of sovereign immunity precluded an action against the College, the Alabama Court of Civil Appeals held that sovereign immunity extends to the State's institutions of higher learning. Accordingly, the Plaintiffs could not maintain a claim against the College. Nevertheless, the Plaintiffs could maintain their claims against Lee because the declaratory judgment action could not be construed as an action against the State. Accordingly, the Court reviewed the record on appeal to determine whether Wuotto was prematurely awarded the Secretary III position in violation of § 16-22-15. The Court found that, because Wuotto remained a client-relations specialist and only provided help to the Vice President's office when it was shorthanded, she was not awarded the position in violation of § 16-22-15's bidding requirements. In fact, by posting the position in January 2009, Lee undertook a thorough process to fill the vacancy in accordance with the statute. Furthermore, the Court dispelled Plaintiffs' argument that § 16-22-15 requires notice within 14 days of the vacancy. Instead, the Court determined that the statute only requires that notice of the vacancy be posted at least 14 days prior to filling the vacancy—a requirement with which the College complied. Accordingly, the Court affirmed the summary judgment in favor of both the College and Lee.

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