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CASE SUMMARIES

SUPREME COURT OF ALABAMA

T-Mobile South, LLC, et al. v. Bonet, et al., No. 1100107. This appeal arose out of a dispute over the collection of 911 service charges for purchasers of prepaid wireless service. Plaintiffs provide wireless services to consumers who prepay up front, or post-pay, on a monthly basis. The Alabama Commercial Mobile Radio Services Board ("CMRS"), a state agency, assessed emergency telephone service charges on Plaintiffs under the Alabama Emergency Telephone Service Act ("AETSA"). Plaintiffs paid the proportionate charges for their monthly customers but not for their prepaying customers. Plaintiffs then sought a declaratory judgment that the imposition of these charges against wireless providers based on prepaying customers is unlawful. Plaintiffs also requested an injunction to prevent future charges. The trial court denied relief and granted CMRS's counterclaim for declaratory relief. Plaintiffs appealed. The Alabama Supreme Court affirmed, holding that, based on plain language and legislative intent, the AESTA allowed CMRS to assess emergency service fees for every wireless phone number subscribed, regardless of the billing method. The Court also determined that the emergency phone service fee was not an impermissible tax. The service fees charged under the AESTA were used to defray the costs of implementing and operating an emergency 911 system and thus were distinguishable from taxes which generate revenue. Having concluded that the service charge was not a tax, the Court then rejected Plaintiffs' argument that the charge violated the Federal Commerce Clause. Finally, the Court found that T-Mobile was underpaying the AESTA emergency service charge by using its "average revenue per user" method of calculating the service charge owed. The Court denied relief to T-Mobile and affirmed the decision of the trial court.

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Travelers Indemnity Co. v. Miller, No. 1100619. Plaintiff filed a claim against Smith Movers, Inc. ("Smith") alleging breach of contract, negligence and wantonness. After Smith was served with notice and failed to appear, a default judgment was entered in Plaintiff's favor. After the entry of default judgment, Plaintiff's counsel contacted the agent on Smith's commercial general-liability ("CGL") and automobile policies (together, "the policies") with Travelers Indemnity Company of Connecticut ("Travelers"), who ultimately forwarded the correspondence and a brief statement of the claim to Travelers. Travelers denied coverage of the claim for lack of notice, among other things. Upon learning that Travelers denied the claim, Plaintiff sued Travelers seeking to apply the proceeds of Smith's policies issued by Travelers to the default judgment. The trial court entered judgment in favor of Plaintiff, and Travelers timely appealed to the Alabama Supreme Court. The Court considered whether Travelers was bound to provide Smith coverage, and therefore Plaintiff was entitled to the proceeds to satisfy the default judgment against Smith. Travelers argued that Plaintiff's recovery under Smith's policies was barred because it was given late notice of the occurrence giving rise to the claim. Under the terms of Smith's policies, Travelers must have received notice, either from Smith or Plaintiff, within a "reasonable time" of the occurrence, which is determined by the length of the delay and the reasons for the delay. The Court declined to extend the "reasonable time" period in which an injured party may give notice until after default judgment has been entered, noting that the insured would not have such a right. Accordingly, because neither Smith nor Plaintiff provided Travelers notice of the occurrence or forwarded Travelers a copy of the complaint prior to the entry of default judgment, notice was untimely and Plaintiff was barred from recovering under the policies. The Court reversed the trial court's judgment and remanded the case for proceedings consistent with its opinion.

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GE Capital Aviation Services, Inc. v. Pemco World Air Services, Inc., et al., No. 1090350. Plaintiff entered into a contract with Defendant to perform maintenance on several large aircrafts owned by Defendant. After disputes arose regarding contractual payments, Plaintiff filed suit against Defendant and each party alleged various claims based on breach of contract and fraud against the other. At trial, the jury found in favor of Plaintiff, and the trial court denied Defendant's motion for judgment as a matter of law and/or new trial. Defendant appealed. The Alabama Supreme Court, in reversing the trial court, held that Defendant's motion for judgment as a matter was due to be granted in part because Plaintiff's claims for fraud and implied breach of contract were improperly submitted to the jury. First, the Court determined that the trial court erred in submitting Plaintiff's fraud claims to the jury because Plaintiff failed to present substantial evidence that Defendant engaged in any fraudulent conduct. Next, the Court held that the trial court erred in submitting Plaintiff's implied breach of contract claim to the jury because the written agreement between the parties rendered such a claim improper on its face. The Court, however, noted that Plaintiff's breach of contract claim, which was based on the written contract between the parties, was properly submitted to the jury. In addressing Defendant's motion for a new trial, the Court determined that, because the jury's verdict was entered generally as to all of Plaintiff's claims, it was unable to determine the claim upon which the jury's verdict was based. As such, the Court, in remanding the case, held that a trial court erred in denying Defendant's motion for new trial and ordered the trial court to have a new trial on Plaintiff's breach of contract claim. Justice Murdock concurred in the result without writing.

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Cornelius v. Browning, No. 1091378. Plaintiffs sued Defendant and, after an unsuccessful attempt to serve Defendant by certified mail at his home address, Plaintiffs obtained service of the complaint by process server. Defendant appeared *pro se* and listed as his address a post office box address. Plaintiffs served Defendant with a notice of deposition by mail at the post office box. The notice was returned as "not deliverable as addressed, unable to forward." Plaintiffs subsequently moved for a default judgment and served the motion by mail at the post office box. After Defendant failed to respond, the trial court granted the motion, and Plaintiffs initiated garnishment proceedings. Defendant was served at his home address with notice of the garnishment. Defendant moved the trial court to set aside the default judgment and garnishment proceeding because he did not receive a copy of the default judgment motion. The trial court denied his motion. Defendant appealed this denial to the Alabama Supreme Court arguing that the default judgment was void because the trial court acted in a manner inconsistent with due process. Defendant contended that he did not receive due process because he was not given notice of the filing of the default judgment motion. The Court found that Plaintiffs' attempt to notify Defendant of the default judgment motion, by mailing the motion to an address at which Plaintiffs knew Defendant would not receive it, was not reasonably calculated to apprise Defendant of the pendency of the motion and to afford him an opportunity to present his objections. Thus, the Court held that the default judgment entered against Defendant was void as inconsistent with due process. Therefore, the Court reversed the trial court's judgment denying Defendant's motion to set aside the default judgment and remanded the case for further proceedings consistent with its opinion.

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ALABAMA COURT OF CIVIL APPEALS

Turner v. Green, No. 2100998. Carl Angela Green ("Carl") sued Shirley Denise Turner ("Shirley") alleging that his and Shirley's deceased mother ("Helen") had devised a parcel of real property to him in her will, and that Shirley had subsequently had another of Helen's children convey to Shirley any interest she had in the property. Carl sought a determination that he owned the property. The trial court conducted a bench trial, despite the fact that the rest of Helen's next of kin other than Shirley had not been served with process. The trial court entered judgment on February 2, 2010, finding that Carl owned the property and that Shirley and the rest of Helen's next of kin had no interest in that property. Fifty-six days after the entry of judgment, Shirley filed a Motion to Reconsider, asserting that February 2, 2010, judgment was void because the next of kin, who were defendants in the action, had not been served with process. Shirley also requested leave to assert a counterclaim in that motion, alleging adverse possession and unjust enrichment. On June 3, 2010, the trial court set aside its February 2, 2010 order. The trial court subsequently held a new trial once all the defendants had been served with process, and entered a judgment on February 22, 2011, finding the property to be owned by Carl, and not Shirley or any of the other next of kin. Shirley appealed. The Alabama Court of Civil Appeals dismissed the appeal. The Court reasoned that the trial court's February 2, 2010, order was final with regard to Shirley, because she had been served with process at the time of trial. However, Shirley failed to file a timely motion to alter, amend or vacate (within 30 days) or notice of appeal (within 42 days) following that judgment. Further, although under Ala. R. Civ. P. 60(b), a party's motion made more than 30 days after entry of final judgment can relieve a party from that judgment based on certain grounds, Shirley's Motion to Reconsider was not based on those enumerated grounds, nor did the trial court's order vacating the February 2, 2010 judgment cite any of those grounds. Moreover, the February 2, 2010, judgment barred Shirley from asserting the counterclaim included in her "Motion to Reconsider," as Shirley failed to assert that compulsory counterclaim in the original proceeding. Thus, to the extent the February 22, 2011 judgment purported to rule against Shirley with respect to Carl's claim against her and her claims against him, it was a nullity. The February 22, 2011, order was final with respect to the next of kin, and none of them appealed that ruling. The Court had no jurisdiction over the appeal before it, and therefore dismissed it.

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Chess v. Burt, No. 2100838. Richard Grammer and Diane Grammer ("Diane") mortgaged certain real property to Peachtree Bank. Subsequently, Peachtree published a notice that the property would be sold at a foreclosure sale on February 18, 2010. On February 16, 2010, Diane assigned her right of redemption from the foreclosure of the mortgage and all other rights and interests in the property to Steven Chess (the "Assignment"). On February 18, 2010, Wade Burt was the highest bidder at the foreclosure sale and received a foreclosure deed for the property. Chess then sued Burt seeking to redeem the property and alleging that Burt had failed to respond to his demand for a written statement of the lawful charges to redeem the property within ten days of his request, as required by law. Chess argued that he was relieved of his obligation to tender payment of the amount required to redeem the property when he filed his complaint because of Burt's failure to respond to his letter within ten days. In response, Burt argued that the Assignment was invalid because Diane's statutory right of redemption did not exist until the mortgage was foreclosed two days after Diane had executed the Assignment. The trial court later entered summary judgment in favor of Burt. On appeal, the Alabama Court of Civil Appeals reversed and remanded, holding that the language of the Assignment which conveyed all of Diane's rights to the property conveyed Diane's equity of redemption even though it did not convey Diane's statutory right of redemption. Under the Assignment, Chess was permitted to exercise a statutory right of redemption when his equity of redemption was extinguished upon foreclosure. The Court further held that there was a genuine issue of material fact as to when Burt received Chess' letter requesting a written statement of lawful charges and, consequently, a genuine issue of material fact existed as to whether Chess was required to tender the amount necessary to redeem the property when he filed his complaint. Finally, the Court held that Burt was not entitled to summary judgment determining that he is entitled to redeem the property because Burt is not entitled to redeem the property if Chess is entitled to redeem the property under Ala. Code § 6-5-248(d), and a genuine issue of material fact existed regarding whether Chess is entitled to redeem the property.

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B & B Wrecker Service, Inc. v. City of Citronelle, No. 2100820. B&B Wrecker Service, Inc. filed a complaint against the City of Citronelle, alleging that the local police department used an impounded vehicle at B&B's storage facility without paying storage fees. The city denied it was obligated to pay the storage fees, arguing that Ala. Code § 20-2-93(e)(2), which allows for payment by a city of fees, including storage fees, related only to forfeited property and did not authorize the city's payment of storage fees in this case because the vehicle had not been forfeited, but was instead returned to the owner. The trial court granted summary judgment in favor of the city. The Alabama Court of Civil Appeals reversed, finding that Ala. Code § 20-2-93 was not applicable because the vehicle was not forfeited. The Court also held that, because a municipal corporation may be held liable on a quasi or constructive contract, and because there was substantial evidence that the police department knowingly accepted the benefit of the vehicle being stored at B&B's storage facility and was aware of the cost of the service, B&B had established a prima facie case of quasi or constructive contract that implied a promise by the city to pay B&B for the storage of the vehicle.

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