

IN THE COURT OF APPEALS

9/9/97

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-00446 COA

MEDI-MART PHARMACIES OF
MISSISSIPPI, INC. APPELLANT

v.

INGALLS SHIPBUILDING, INC., AND ROBERT
MITCHELL AND JOHN DOES 1-3 APPELLEES

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. BILL JONES

COURT FROM WHICH APPEALED: JACKSON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: MARK V. KNIGHTEN

ATTORNEYS FOR APPELLEES: WILLIAM T. REED

WILLIAM J. POWERS

GEORGE M. SIMMERMAN

NATURE OF THE CASE: PROCEDURAL - STATUTORY INTERPRETATION

TRIAL COURT DISPOSITION: PLAINTIFF'S COMPLAINT DISMISSED

MANDATE ISSUED: 9/30/97

BEFORE BRIDGES, C.J., HINKEBEIN, AND KING, JJ.

BRIDGES, C.J., FOR THE COURT:

On March 16, 1995, the Circuit Court of Jackson County dismissed the complaint that was filed by Medi-Mart Pharmacies of Mississippi, Inc. (hereinafter "Medi-Mart") against Ingalls Shipbuilding, Inc., Robert Mitchell, and John Does 1-3 (hereinafter collectively "Ingalls"). The complaint was dismissed because Medi-Mart was not a corporation under the laws of Mississippi at the time of its filing. We agree with the Circuit Court's grant of Ingalls' motion to dismiss, and accordingly, we affirm.

FACTS

For some twenty years, Medi-Mart has been a primary provider of pharmaceutical care in Moss Point, Mississippi, providing pharmacy services through most of the area's major health insurance plans, including the Ingalls Alta Rx Plan. The facts of this case are best illustrated through the following time line:

February 16, 1990 - Medi-Mart was administratively dissolved because of their failure to file the appropriate corporate forms and failure to pay their franchise taxes. They were given two (2) years to affect its reinstatement pursuant to Sections 79-4-14.21 and 79-4-14.22 of the Mississippi Code of 1972.

February 16, 1992 - By failing to affect reinstatement within two (2) years, Medi-Mart ceased to be recognized by the State of Mississippi as a corporation and could only exist to wind up and liquidate its business and affairs as dictated by Section 79-4-14.05 of the Mississippi Code of 1972.

April 30, 1993 - Medi-Mart alleged that it received written notification from Alta Rx that it had been requested by its client, Ingalls, to terminate the Contract Pharmacy Agreement previously entered into between Medi-Mart and Alta Rx.

July 1, 1993 - Section 79-4-14.22 of the Mississippi Code of 1972 was amended changing the time in which a corporation may apply to the Secretary of State for reinstatement from two (2) years to five (5) years after the effective date of dissolution.

November 21, 1994 - Medi-Mart filed suit against Ingalls in the Circuit Court of Jackson County alleging defamation and interference with their right to contract based on the termination of its contract with Alta Rx. In Paragraph One (1) of its complaint, Medi-Mart stated that it was a Mississippi Corporation.

December 29, 1994 - Ingalls filed with the court its Motion to Dismiss pursuant to Rule 12(b)(1), (2), and (6) of the Mississippi Rules of Civil Procedure. In support of this motion, Ingalls stated that Medi-Mart did not exist and did not have the authority to enter into the contract in question or to file suit.

January 12, 1995 - Medi-Mart is reinstated as a Mississippi Corporation pursuant to the amended Section 79-4-14.22 of the Mississippi Code of 1972.

ARGUMENT AND DISCUSSION OF LAW

I. WHETHER THE CIRCUIT COURT ERRED IN DISMISSING MEDI-MART'S COMPLAINT.

Ingalls successfully argued to the trial judge that since Medi-Mart had been administratively dissolved, its complaint should be dismissed. In support of this argument, Ingalls brought to the court's attention the fact that the complaint contained the statement that Medi-Mart was a Mississippi Corporation. Medi-Mart argues that its January 12, 1995 reinstatement relates back to the date of its original administrative dissolution, February 16, 1990. Medi-Mart further argues that this relation back somehow cures its defective complaint in November of 1994. We disagree. The crucial time for this Court's focus is the day that the complaint was filed, November 21, 1994. If Medi-Mart was a corporation under the laws of Mississippi on that day, it may file suit. If Medi-Mart was not a corporation on that day, its authority to file suit was limited to those actions necessary to collect its assets and wind up its affairs. There is no evidence in the record to suggest that the cause of action asserted in this suit existed as of the date of administrative dissolution, and this action cannot, therefore, be classed as a suit permitted under section 73-4-14.05(b)(5). That being the sole authority under which the corporation could proceed on the date suit was filed, we determine that this action was not one authorized by law and that the trial court was correct in dismissing the action."

The case of *Bryant Construction Company, Inc. v. Cook Construction Company, Inc.* proves to be very instructive on this question. *Bryant Construction Company, Inc. v. Cook Construction Company, Inc.*, 518 So. 2d 625, 626 (Miss. 1987). In *Bryant*, a subcontractor corporation brought suit against a contractor corporation, Cook, alleging breach of contract. Cook, like Ingalls in the case *sub judice*, had its motion to dismiss granted because Bryant had been suspended by the state at the time filing because it had not filed its tax returns. The court said the following about a corporation's power to sue:

The power to sue in the corporate name, like the power to contract, is statutory. (citations omitted). The corporation has the power to sue in the corporate name only insofar as the state grants that power. When the corporation is suspended, it loses all rights 'acquired by the form of the organization,' § 27-13-27⁽¹⁾, one of which, no doubt, is the right to sue in the corporate name.

Bryant, 518 So. 2d 625, 631 (Miss. 1987).

On the day that Medi-Mart filed suit against Ingalls, November 21, 1994, it was not a corporation under the laws of Mississippi. It had not been a corporation since February 16, 1990. As such, it lost all rights acquired by the form of the organization, including the right to sue, except in those limited instances contemplated by section 73-4-14.05, the provisions of which have no application in this case for the reason previously stated. The fact that Medi-Mart then was reinstated does not remove the fatal defect in paragraph one of the complaint it filed on November 21, 1994, where it described itself as a Mississippi Corporation. We would like to add, however, that the above discussion is not intended in any way to limit Medi-Mart's ability to re-file their complaint against Ingalls provided they are a corporation that is both recognized by and in compliance with Mississippi law. In accordance with the foregoing discussion, we affirm the trial court's grant of Ingalls' motion to dismiss.

THE ORDER OF THE CIRCUIT COURT OF JACKSON COUNTY DISMISSING THE COMPLAINT OF THE APPELLANT IS HEREBY AFFIRMED. ALL COSTS OF THIS APPEAL ARE HEREBY TAXED TO THE APPELLANT.

McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.

1. Section 27-13-27 deals with a corporation's suspension strictly for failure to pay franchise taxes. While we feel that 27-13-27 is applicable in the case *sub judice*, Medi-Mart was dissolved pursuant to Section 79-4-14.20 which encompasses other grounds for dissolution in addition to the failure to pay franchise taxes.