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Supreme Court rules that the New Mexico Unfair Practices Act does not allow competitive injury claims seeking lost profits

SANTA FE – The state Supreme Court ruled today that one of the state's consumer protection laws, the state's Unfair Practices Act (UPA), does not permit a seller of services to bring a lawsuit against another seller for "competitive injury."

The case involves a dispute between two Albuquerque firms that both provide railroad construction and repair services to BNSF Railway Company. GandyDancer, LLC, sued to recover damages and asserted one of their claims under the UPA, contending that Rock House CGM, LLC, won BNSF contracts through unfair competition. GandyDancer argued that it would have obtained the contracts if Rock House had disclosed to BNSF that Rock House lacked the necessary state licensing and experience for the railroad contracting services.

The Supreme Court said the Legislature changed the scope of the law in 1971 by removing "unfair methods of competition" from the acts prohibited by the law.

"The historical amendments to the UPA limited the zone of interest protected. Harmonizing the UPA with its foundational principle and existing law allows only one conclusion: Currently, the UPA does not provide a cause of action for competitive injury claims," the Court said in an opinion written by Justice David K. Thomson.

The justices ordered the dismissal of the claim, although GandyDancer may pursue its other claims based on other theories of recovery for competitive injury. This opinion reversed a decision by the state Court of Appeals last year that allowed GandyDancer's UPA claim against Rock House and its owner, Karl Pergola. BNSF, the consumer of the construction services, was not a party in the lawsuit. A district court in Albuquerque had declined to dismiss the claim, but before the case went to trial on GandyDancer's other claims the Court of Appeals was asked to resolve the legal question of whether a seller could sue a competitor because of allegedly unfair business practices.

GandyDancer contended that its claim should be allowed to move forward because the company meets the definition of a person in the UPA and because the law does not explicitly limit its protections to consumers or buyers. The company also argued that the law prohibits false or misleading statements such as Rock House's alleged licensing misrepresentation.

The Supreme Court reasoned, "The result in this case does not turn on whether GandyDancer is a person under the act, which by definition GandyDancer is. Instead, the result turns on whether the Legislature intended the UPA to provide a competitor with a remedy for competitive injury. Stated another way, the result turns on whether the UPA protects GandyDancer's interest. We concluded that it does not."

The Legislature's decision to eliminate the phrase "unfair methods of competition" from the UPA "evinces an intent to limit the zone of interest protected from unfair trade practices by the UPA to consumers, not competitors" the Court concluded.

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To read the decision in *GandyDancer, LLC v. Rock House CGM, LLC*, No. S-1-SC-37201, please visit the New Mexico Compilation Commission's website using the following link:

https://decisia.lexum.com/nmos/nmsc/en/item/424312/index.do