

## **SUPREME COURT LIVE**

February 24, 2016  
West High School, Anchorage

### **ORAL ARGUMENT CASE SUMMARY**

***Recreational Data Services, Inc.,***

*Appellant,*

v.

***Trimble Navigation Limited, A California Corporation,***

*Appellee.*

Supreme Court Case No. S-15893

***Disclaimer:*** *This summary of the case highlights the major issues raised but is not intended to be comprehensive. It has been prepared for educational purposes only by the Supreme Court LIVE program staff and does not reflect the input or views of any member of the court.*

### **OVERVIEW OF THE CASE**

This case arose from a broken business deal. Two companies agreed to work together to develop and market a product. The agreement fell apart, and one of the companies sued the other for damages. The case went to trial in front of a jury, and the jury found in favor of one of the companies, awarding it a large amount of damages. The company that lost asked the trial judge to set aside the jury's verdict, arguing that the evidence did not support the verdict. The judge agreed and set aside the jury's verdict. The company that won the jury verdict has appealed to the Alaska Supreme Court; it wants the Supreme Court to overrule the judge's decision and to reinstate the jury's verdict.

### **ATTORNEYS**

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### **QUESTION PRESENTED ON APPEAL**

Did the trial court correctly decide to set aside the jury's verdict because Recreational Data Services, Inc. failed to provide adequate proof of damages?

### **MAJOR AUTHORITIES TO CONSIDER**

- **Alaska Constitution, Article 1, § 16**, Civil Suits; Trial by Jury.
- **Alaska Statutes 09.20.010–.100**, Jurors and Verdict.

### **Supreme Court Case Law**

- ***Reeves v. Sanderson Plumbing Products, Inc.***, 530 U.S. 133 (2000) (federal standard for motions for judgment as a matter of law).

### **Alaska Rules of Court**

- **Alaska Rule of Civil Procedure 50**, Motion for a Directed Verdict and for Judgment.
- **Alaska Rule of Civil Procedure 82**, Attorney's Fees.

### **Alaska Supreme Court Case Law**

- ***Geolar, Inc. v. Gilbert/Commonwealth Inc. of Michigan***, 874 P.2d 937 (Alaska 1994) (proof of damages for breach of contract).
- ***Cameron v. Chang-Craft***, 251 P.3d 1008 (Alaska 2011) (standard of review for motion for directed verdict).
- ***Guard v. P & R Enterprises, Inc.***, 631 P.2d 1068 (Alaska 1981) (proof of lost profits).
- ***Alaska Travel Specialists, Inc. v. First National Bank of Anchorage***, 919 P.2d 759 (Alaska 1996) (speculative damages).
- ***Anchorage Chrysler Center, Inc. v. DaimlerChrysler Motors Corp.***,

- 221 P.3d 977 (Alaska 2009) (actual and nominal damages in tort).
- ***Sisters of Providence in Washington v. A.A. Pain Clinic, Inc.***, 81 P.3d 989 (Alaska 2003) (review of JNOV and proof of damages).
- ***Native Alaskan Reclamation & Pest Control, Inc. v. United Bank Alaska***, 685 P.3d 1211 (Alaska 1984) (certainty of damages).

## SUMMARY OF THE CASE

Recreational Data Services, Inc. (RDS) is an Alaska **corporation** that was organized to develop software for hunters and fishers. One of the founders of the company, Brian Feucht, had an idea to create some type of GPS-enabled device that hunters could use to find out what hunting regulations were in effect at any location they happened to be while hunting. Another Alaskan, Jim Belz, had developed a program that would let a hunter know if he had crossed a hunting boundary. This information would be important for people in an area without clearly marked boundaries to ensure they complied with hunting and fishing regulations. Belz and Feucht started RDS in 2009 to develop and market their ideas.

Feucht contacted Trimble Navigation, a California corporation whose business included GPS-based products. Trimble expressed interest in RDS's ideas, and the two companies signed a **contract** called a mutual **nondisclosure agreement**, which the **parties** refer to as the NDA. They agreed that they would not pass on to anyone else any confidential information the other party revealed in discussions about developing the product. One purpose of the nondisclosure agreement was to allow the parties to discuss ideas freely, without worrying about whether their ideas might be given to others, who could use these ideas to develop products to compete with them.

Trimble and RDS also wanted to bring an established company with name recognition and a customer base into the effort so that marketing the end product would be easier. RDS contacted Remington Arms, and Remington expressed interest. Representatives of the three companies met at a lodge in Copper Center, where they came up with a plan to develop and market a type of cell phone that would come loaded with specialized software. Not long after the meeting in Copper Center, Remington asked the other companies to sign an agreement that the companies were not creating a **partnership** but were instead acting as an alliance of independent businesses. Only Remington signed this document.

Remington conducted market research to see if a phone like the one the companies planned to make would sell. Using the market research and other data, representatives from the three companies derived an estimated profit-and-loss statement. The companies had some meetings over the next year with other companies to promote the product they hoped to develop.

Remington pulled out of the project in late 2010 or early 2011 because its new

management did not think the product would be profitable. Because the project still needed someone to help with marketing, RDS contacted Cabela's to see if it might be interested in joining the effort to develop and market the phone. When RDS representatives went to a meeting with Cabela's in early 2012, they saw advertisements for Recon Hunt, a software application they thought was very similar to what they planned to develop. The software application was manufactured by another division of Trimble, and Trimble had worked with Cabela's on the competing product. Cabela's decided not to get involved with RDS in developing the cell phone, and Trimble later withdrew from the project with RDS.

RDS then sued several companies. The only company remaining by the time of trial was Trimble. The case involved several **common law** claims, including **breach of contract** and the **tort of misrepresentation**.

### **DECISION BELOW**

The case was tried to a **jury**, and the trial lasted 11 days. At the end of the trial, the jury returned a verdict for RDS. The jury verdict was not unanimous, but because this was a **civil case**, only five-sixths (10 out of 12) of the jurors needed to agree to reach a verdict. The jury awarded RDS over \$50 million in damages for their lost profits.

After the jury verdict, Trimble asked the judge to reverse the jury's verdict. Trimble made several arguments about what the judge should do, and it explained why it thought the jury's verdict was legally incorrect. Trimble asked the judge either to grant it a **new trial** or a **judgment notwithstanding the verdict**, which is also called **JNOV** (**judgment non obstante veredicto**, a Latin phrase that means judgment notwithstanding the verdict). RDS opposed the motion, but it asked the judge in the alternative to grant a **remittitur**, which is an order that leaves the jury's decision intact but lowers the amount of damages.

The judge agreed with Trimble that RDS had not met its burden of proving damages. Because RDS was not an established business, special rules applied to the evidence needed to show damages for lost profits. The judge decided that RDS had not provided evidence that was legally adequate. She explained why she did not grant a new trial and why she did not simply lower the amount of damages.

After the judge granted JNOV, Trimble became the winning party. Under Alaska law, the losing side in a civil case has to pay part of the winning side's attorney's fees. The **final judgment** in the case awarded Trimble almost \$650,000 in costs and attorney's fees. RDS **appealed** the decision to grant JNOV to the Alaska Supreme Court, asking the Supreme Court to overturn the trial judge's decision and reinstate the jury's verdict.

### **LEGAL ISSUES GENERALLY**

Legal cases are divided in a number of ways, but one of the most important divisions is between **civil** and **criminal** cases. Criminal cases are cases brought by the government and have the purpose of punishing people who commit specific wrongs, usually by putting them in jail. Civil cases are just about everything else. This is a civil case.

In our legal system, **judges** and **juries** play important but different roles. When people go to court, they usually disagree about what happened, and they may also disagree about what the law is as it applies to their case. A judge decides what law applies to the case. Both judges and juries can decide what the **facts** of a case are and how the law applies to those facts. The Alaska Constitution gives parties the right to a jury trial in a civil case.

In a civil case, either **the plaintiff** (the person who brought the case) or **the defendant** (the person being sued) can ask for a jury trial. If no one asks for a jury trial in a civil case, a judge hears the evidence and decides all of the issues in the case. But if a jury is requested in a civil case, members of the community are summoned to court to serve as jurors. Because not everyone can serve on a case, the court summons a large number of people, who have been selected randomly from lists of adults who received Permanent Fund Dividends. The judge and the lawyers for the parties question people from this large group to find jurors for a particular case. Once the jury is picked, the trial can begin.

After the parties have presented their evidence and made arguments, the judge gives the jury a set of **jury instructions**; the instructions tell the jury what facts they need to determine in order to resolve the case. The jury instructions also tell the jury the law that applies in the case.

There are several sources of law; for example, the legislature enacts **statutes**. Another source of law is the **common law**. The common law is judge-made law that started in England and was brought to the United States by colonists. The legislature can, and does, modify the common law, but the common law is mostly judicially created through **case law**. Cases such as this one result in opinions that make up case law. In this case, RDS brought common law claims against Trimble. The jury instructions in this case told the jury the **elements** (the facts that must be proved to win the lawsuit) of RDS's case.

One of the elements in RDS's case was **damages**. The purpose of a lawsuit at common law is to make a person whole after he is harmed; if there is no harm, there is no need for a lawsuit. A plaintiff in a common law case usually has to show both the fact that it suffered some loss and the amount of the loss. Here RDS had to show that it suffered some measurable loss because of what Trimble did. RDS claimed that it suffered **lost profits** because Trimble made it believe that the two companies were

working together to develop and sell a product while in reality Trimble was working with someone else to develop a similar product.

The jury gets to decide whether to believe witnesses and how much **weight**, or importance, to give to different pieces of evidence. Jurors **deliberate**, or discuss the case, in private, and when enough of them agree, they reach a **verdict**. (**Verdict** comes from Latin words meaning “truth” and “speech,” so the jury is deciding what the truth is.) In this case, the jury decided in favor of RDS and awarded it a substantial amount of damages.

Because the judge in the case acts as a kind of gatekeeper, a person who loses a jury trial can ask a judge to overrule a jury’s verdict or have a new trial; this type of request has to be based on a legal reason that the jury was wrong rather than a factual reason. In this case Trimble asked the judge to overrule the jury verdict because Trimble thought RDS had not given the jury enough evidence to show with reasonable certainty that RDS would have lost over \$50 million in profits or that Trimble was the cause of any damage to RDS. The judge agreed with Trimble.

### **Standard of Review**

In an appeal the party who lost in the trial court is asking a higher court to review the case and decide whether the trial court made a mistake. Appellate courts use different **standards of review**, depending on the type of question being considered, when they review a trial court decision. Because trial courts and juries are the actors in the judicial system who are assigned the role of finding facts, an appellate court usually applies a deferential standard of review to fact questions. And because an appellate court’s role is to decide the law, it uses its own judgment for legal questions.

In this case, the trial judge had to decide whether RDS offered enough evidence the jury could use to make the decision it did. Because the trial judge overruled what the jury did, the parties are arguing about the standard of review a trial court has to use to evaluate the evidence in addition to arguing about the standard of review the Alaska Supreme Court should use.

***RDS’s Position:*** The trial judge should have looked only at evidence that supported the jury’s verdict. The court should not consider evidence that might undercut the jury’s verdict, even if RDS submitted the evidence.

***Trimble’s Position:*** The trial judge can look at all the evidence. The trial court correctly considered testimony from RDS that supported Trimble’s position.

### **Evidence About Damages**

RDS was the plaintiff, and it had to show both the fact of damages and the amount of damages. RDS had to show that but for Trimble's actions, it would not have been damaged. It also had to show how much it would have made if Trimble had not done what it did.

RDS was not an established business with a history of producing goods or services that it had marketed. Because RDS did not have a record of profits or losses it had made in the past, it had to use other types of evidence to show how much it could have made if Trimble had not breached its contract or made misrepresentations. One of the main points of disagreement in this case is whether RDS presented enough evidence to the jury that would support the jury's award of damages.

A new business can recover damages for lost profits, but it has to prove the amount of damages with "reasonable certainty." The evidence to show lost profits for a new business has to be established by facts, not "by mere conclusions of witnesses."

In this case RDS relied mostly on two pieces of evidence to establish lost profits: a profit-and-loss projection and a copy of a photo of a whiteboard. RDS claimed that Trimble offered to buy it out at one point, and RDS said the whiteboard showed the value Trimble placed on RDS. (Trimble disputed what RDS said about the whiteboard.) The projected profit-and-loss statement was developed with Remington, before Remington stopped working on the project.

***RDS's Position:*** RDS met its burden of proving with reasonable certainty that Trimble caused it to lose more than \$50 million in lost profits. Remington and Trimble both helped prepare the profit-and-loss projection, so it was reliable evidence for the jury to use. The whiteboard was based on projections Trimble made, so it should be reliable evidence for the jury to use.

***Trimble's Position:*** The trial judge was correct in concluding that RDS did not offer enough evidence to support the jury's damages award. The law requires more than speculation about what a business might have made; it requires facts and actual data to support an award of lost profits. RDS did not show the jury actual facts that showed what profits it could have made. The judge could not simply ignore evidence, and some of the evidence RDS presented to the jury did not support the jury's verdict.

### **Other Reasons to Affirm**

Besides arguing that the trial court was right to grant the JNOV, Trimble asks the Alaska Supreme Court to consider other arguments showing that the trial court's decision was right, even if the Supreme Court does not agree with its decision about damages.

An appellate court can **affirm** a trial court decision for any legal reason, even if the trial court did not use that legal reason. In this case Trimble argues that there was not enough evidence for the jury to find that there was a partnership, a breach of **fiduciary duty**, or a misrepresentation. Because Trimble made this argument in its appellee's brief, RDS only talks about the argument in its reply brief.

***RDS's Position:*** There was more than enough evidence to support the jury's decision about all of the legal causes of action. Trimble is not stating the facts most favorable to RDS, as it is required to. No matter what witnesses said at trial, the companies acted like partners. There were many ways Trimble breached its fiduciary duty. RDS relied on Trimble's false statements, so it showed the elements of misrepresentation.

***Trimble's Position:*** RDS did not present evidence to show that there was a partnership because its own witnesses said the businesses did not agree to be co-owners of a business. Even if RDS showed there was a partnership, they did not show specifically how Trimble breached any fiduciary duty. RDS's evidence showed that RDS did not rely on any false statements Trimble might have made; RDS did not think Trimble was telling the truth, so it could not have been deceived. Because RDS did not prove all the elements of misrepresentation, the jury should not have decided in RDS's favor.

### **QUESTIONS FOR STUDENTS TO CONSIDER**

1. Why is a jury trial an important right in the United States? What are some reasons a person might want a jury instead of a judge to decide their case?
2. What is a corporation and why do some businesses organize as corporations? How many corporations were involved in this business deal? Who were they and what roles did they play?
3. The jury in this case decided that RDS and Trimble entered into a partnership. What is a partnership? How is it different from a corporation? What evidence do you think supported the jury's decision? Was there evidence that did not support it? If so, what evidence shows that no partnership was formed?
4. Why do you think a new business has to provide a different type of evidence to show lost profits? Do you think this kind of rule is fair? Why or why not?
5. Why are judges allowed to grant new trials or overturn a jury's verdict? Do you



think judges should be allowed to do that? Why or why not?

6. Look at the judge's order granting JNOV. What were the judge's reasons for overruling the jury's verdict? Do you think the judge was looking more at the amount of damages or the cause of damage? Give examples to support your answer.
7. The jury verdict in this case was not unanimous. Look at the jury's verdict (at Excerpt 49-51). What was the vote on different issues? Did all of the jurors agree on any of the questions? If so, which one(s)? Do you think it is a good idea that jury verdicts in civil cases do not need to be unanimous?
8. The parties both talk about a reasonable jury. What do you think a reasonable jury is? How does someone decide what a reasonable jury would think?
9. Do you think it is fair for an appellate court to affirm a trial court for reasons the trial court may not have used? Why or why not?
10. What do you think is RDS's strongest argument on appeal? What do you think is its weakest argument? Explain.
11. What do you think Trimble's strongest argument is? What do you think is its weakest argument? Explain.
12. If you were a justice on the Alaska Supreme Court, how would you decide this case? Explain.