



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**JAMES C. SELL v. HON. RICHARD GAMA et al.,
CV-12-0211-PR**

PARTIES:

Petitioner: Plaintiff James C. Sell, Bankruptcy Trustee, on behalf of the Trust's Participating Investors

Respondents: Defendants/Real Parties in Interest Squire & Company, PC; Lewis & Roca LLP; and Keith Beauchamp and Juliet Lim, husband and wife

FACTS:

This petition asks the Court to address whether, in light of the United States Supreme Court case in *Central Bank of Denver v. First Interstate Bank of Denver*, 511 U.S. 164 (1994) (rejecting a cause of action alleging the defendants aided and abetted others in violating federal securities laws), Arizona still recognizes such a cause of action under the Arizona Securities Act. *See State v. Superior Court (Davis)*, 599 P.2d 777 (Ariz. 1979) (pre-dating *Central Bank* and relying on then-existing federal law to establish an aiding and abetting claim under Arizona law). (*Davis* was later overruled on other grounds, not affecting its holding with respect to aiding and abetting.)

Sell, Trustee of a trust in a bankruptcy reorganization plan formed for this action, brought a securities fraud suit "on behalf of" persons who had invested in a fraudulent investment fund operated by the bankrupt debtors. Sell alleged violations of the Arizona Securities Act in Count 1, and in Count 2 he alleged that the Respondents in this case ("Squire") had aided and abetted those violations. The claims against Squire related to its audit of the investment fund's financial statements from December 1, 2003 through December 31, 2003.

Squire sought summary judgment, arguing in part Arizona does not recognize a claim for aiding and abetting a violation of the Arizona Securities Act. Judge Barton dismissed both Counts 1 and 2 against Squire, but allowed Sell's negligent misrepresentation claim to proceed. In dismissing Count 2, the judge held, "There is no express language in the Arizona Securities Act that would indicate our Legislature intended to create aiding and abetting liability. Consistent with the United States Supreme Court's holding in *Central Bank*, this Court finds there is no aiding and abetting liability under the Arizona Securities Act."

After Judge Rayes was assigned to this case, Sell moved for reconsideration of Judge Barton's ruling. Judge Rayes denied the motion as to Count 1, but granted it on Count 2, ruling "*State v. Superior Court (Davis)* is still the controlling case with respect to Arizona law, even if the reasoning underlying the court's decision can be questioned."

Later, Judge Gama was assigned to the case, and Squire again brought the issue before the court, again seeking summary judgment on Count 2. He argued that 1) a private aiding and abetting remedy cannot be implied in the Arizona Securities Act; and 2) evidence established Squire lacked the necessary knowledge of the violation and did not substantially assist any primary violations of the Act. Judge Gama granted summary judgment, ruling as follows:

Our Supreme Court has not confronted the issue of aiding and abetting liability since *Central Bank*. . . . The Court finds nothing to suggest our Supreme Court will deviate from *Central Bank* when it does confront the issue.

The Court finds that Judge Barton correctly decided this issue. The Legislature knows how to create aiding and abetting liability when it wants to. . . . It has not done so with regard to a violation of the [Arizona Securities Act]. . . .

Sell filed a special action petition in the court of appeals, which declined to accept jurisdiction.

ISSUES:

1. Whether the Arizona Securities Act, A.R.S. §§44-1801 to 44-2126 authorizes a claim for aiding and abetting securities fraud as recognized by *State v. Superior Court (Davis)*, 599 P.2d 777 ([Ariz.] 1979).
2. Whether the superior court has the authority to disregard *Davis* based on the belief that this Court would overrule *Davis* one day.
3. Whether the court of appeals abused its discretion in declining special action jurisdiction to consider the first two questions.

This Summary was prepared by the Arizona Supreme Court Staff Attorneys' Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum, or other pleading filed in this case.