

IN THE SUPREME COURT OF NORTH CAROLINA

No. 541A07

FILED: 18 JUNE 2009

JERRY ELLISON, Executor of the Estate of Kate H. Ellison,
Plaintiff

v.

GAMBILL OIL COMPANY, INC., J. GWYN GAMBILL, INCORPORATED, and JIM GAMBILL; GUNVANTPURI B. GOSAI and B&B MINI MART, INC.; and ARLIS TESTER d/b/a TESTERS GARAGE AND MUFFLER SHOP and/or TESTERS SHELL & MUFFLER SHOP, Defendants

J. GWYN GAMBILL, INCORPORATED, Third Party Plaintiff

v.

JEFF BARRETT d/b/a BARRETT PETROLEUM EQUIPMENT, Third Party Defendant

RUDRAM ENTERPRISES, INC., Cross-Plaintiff-Intervenor

v.

J. GWYN GAMBILL, INCORPORATED, JIM GAMBILL, and JEFF BARRETT d/b/a BARRETT PETROLEUM EQUIPMENT

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, 186 N.C. App. 167, 650 S.E.2d 819 (2007), reversing both a judgment entered 31 August 2005, and an order denying a motion for judgment notwithstanding the verdict or a new trial entered 10 November 2005, by Judge Charles Lamm in Superior Court, Watauga County, and remanding for a new trial. Heard in the Supreme Court 17 November 2008. On 11 December 2008, this Court *ex mero motu* withdrew its previous order, dated 10 April 2008, and allowed plaintiff's petition for discretionary review as to additional issues.

*Sigmon, Clark, Mackie, Hutton, Hanvey & Ferrell, P.A.,
by Warren A. Hutton and Forrest A. Ferrell, for
plaintiff-appellant.*

The Reeves Law Firm, PLLC, by Jimmy D. Reeves and John B. "Jak" Reeves; and Walker & DiVenere, by Tamara C. DiVenere, for defendant-appellees J. Gwyn Gambill, Incorporated and Jim Gambill.

di Santi Watson Capua & Wilson, by Frank C. Wilson, III, for defendant-appellees Gunvantpuri B. Gosai and B&B Mini Mart, Inc.

PER CURIAM.

The decision of the Court of Appeals is affirmed. Discretionary review was improvidently allowed as to the additional issues.

AFFIRMED; DISCRETIONARY REVIEW IMPROVIDENTLY ALLOWED.