

Bond Case Briefs

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ANNEXATION - ARKANSAS

City of Tontitown v. First Security Bank

Court of Appeals of Arkansas, Division IV - May 24, 2017 - S.W.3d - 2017 Ark. App. 326 - 2017 WL 2266762

City brought action against adjacent city and bank to challenge the adjacent city's annexation of land owned by bank, which the bank had requested in connection with a dispute concerning the sufficiency of city's response to bank's request for municipal services.

After the addition of the purchaser of bank's land as a party and after granting bank's motion to dismiss, the Circuit Court dismissed entire case with prejudice. City appealed.

The Court of Appeals held that:

- City's service of process on bank was insufficient;
- Bank's joint motions for summary judgment and its motion denying city's demand for a jury trial did not waive bank's objection to the sufficiency of service of process;
- Savings statute did not apply to toll the 20-day limitations period so as to allow city to avoid dismissal with prejudice; and
- Annexation statute does not require the municipalities, the landowner who requested annexation, and a landowner who began owning land after the annexation request to be or remain parties in every lawsuit filed.

City's service of process on bank was insufficient in city's action challenging the adjacent city's annexation of bank's land, where city's counsel mailed a letter and a copy of the petition to bank's attorney, but the letter stated that a "courtesy copy" of the petition was enclosed.

Bank's joint motions for summary judgment and its motion denying city's demand for a jury trial did not waive bank's objection to the sufficiency of service of process in city's action challenging the adjacent city's annexation per bank's request of bank's land. Bank's denial of city's request for a jury trial and its joint motions for summary judgment were not requests for affirmative relief, and bank asserted in its answer lack of personal jurisdiction, insufficiency of process, and insufficiency of service of process.

Savings statute did not apply to toll the 20-day limitations period so as to allow city to avoid dismissal with prejudice for defective service of its action against bank regarding city's challenge to adjacent city's annexation per bank's request of bank's land, despite argument that city filed its petition within the 20-day limitations period to challenge an annexation. City did not complete any service on bank at all, and in order for the savings statute to apply, a party must have filed the complaint within the limitations period and completed timely service on the other party.