NORTH DAKOTA SUPREME COURT

Kost v. Kraft, 2011 ND 69

795 N.W.2d 712 (N.D. 2011) · Decided March 25, 2011

SUMMARY

The North Dakota Supreme Court reviewed summary judgment dismissing Allen Kraft's counterclaims against Jim Kost for payment allegedly due under oral agreements involving leased combining equipment and custom combining services. The court held that disputed issues of material fact existed regarding whether the oral equipment lease was enforceable under the Uniform Commercial Code's statute-of-frauds exception for goods received and accepted. The court also held that the record did not establish that Kraft's bankruptcy proceeding precluded him from pursuing the counterclaims, reversed the summary judgment, and remanded.

CASE DETAILS

COURT	North Dakota Supreme Court
WRITING FOR THE COURT	Maring, Justice; Gerald W. Vande Walle, C.J.; Wickham Corwin, D.J.; Carol Ronning Kapsner, J.; Daniel J. Crothers, J.; Maring, J.
JURISDICTION	North Dakota
DECIDED	March 25, 2011
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from summary judgment dismissing Kraft's counterclaims for payment under alleged oral equipment-lease and custom-combining agreements.
STANDARD OF REVIEW	Summary judgment is reviewed de novo on the record. The evidence is viewed in the light most favorable to the party opposing summary judgment, with that party receiving the benefit of all favorable reasonable inferences.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential
PARTIES	Allen Kraft v. Jim Kost

TOPICS

statute of frauds · uniform commercial code · summary judgment · bankruptcy · res judicata

PRACTICE AREAS

contract law · commercial law · bankruptcy · civil procedure

QUESTIONS PRESENTED

1. Whether disputed issues of material fact existed concerning whether the alleged oral lease of combining equipment was enforceable under the received-and-accepted exception to the Uniform Commercial Code statute of frauds for leases.
2. Whether Kraft's failure to list his counterclaims in his bankruptcy schedules, in light of the trustee's later assignment of the bankruptcy estate's interest in the litigation with bankruptcy-court approval, barred him from pursuing the counterclaims.

HOLDINGS

1. The received-and-accepted exception in N.D.C.C. § 41-02.1-10(4)(c), the U.C.C. statute of frauds for leases, is construed consistently with the identical exception for sales of goods. Because disputed issues of material fact existed regarding whether Kost received and accepted the leased equipment, summary judgment on the alleged oral lease claim was improper.
2. The record did not establish as a matter of law that Kraft's bankruptcy proceeding precluded him from pursuing his counterclaims because the proceeding had not been shown to be closed or the trustee discharged, and the trustee had assigned the bankruptcy estate's interest in the litigation to Kraft with bankruptcy-court approval.

KEY QUOTATIONS

> *"Although there may be some differences between sale and lease transactions, we decline Kost's invitation to construe that identical language differently."* (795 N.W.2d at 716)

> *"On the record provided to the district court, Littlefield is not controlling, and we conclude Kost has not shown as a matter of law that Kraft is precluded from pursuing his counterclaims in this action."* (795 N.W.2d at 718)

FACTUAL BACKGROUND

Kost and Kraft formerly operated a custom-combining partnership but continued sharing equipment and work after the partnership ended in 2003. Kraft alleged that Kost orally agreed to pay fair rental value for use of Kraft's combining equipment in 2003 and 2004 and that Kost failed to pay approximately $150,000. Kraft also alleged that he performed $10,000 of custom combining work for Kost in 2005 without payment. Kraft had previously filed a bankruptcy case, but the bankruptcy trustee later assigned the estate's interest in the Kost-Kraft litigation to Kraft with bankruptcy-court approval.

PROCEDURAL HISTORY

Kost sued Kraft concerning dissolution of their former harvesting partnership, equipment-sale proceeds, and alleged conversion. Kraft counterclaimed for approximately $150,000 in unpaid rental value for combining equipment used in 2003 and 2004 and $10,000 for custom combining performed in 2005. The district court granted Kost summary judgment, concluding the oral agreements were barred by the statute of frauds and that

Kraft's failure to disclose the claims in bankruptcy precluded them. The North Dakota Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Proceed consistently with the decision, including further proceedings on Kraft's counterclaims in light of the factual disputes concerning the alleged oral lease and the unresolved bankruptcy-preclusion issue.

CASES CITED

- Bragg v. Burlington Res. Oil & Gas Co. LP, 2009 ND 33, 763 N.W.2d 481
- Erickson v. Brown, 2008 ND 57, 747 N.W.2d 34
- Buettner v. Nostdahl, 204 N.W.2d 187 (N.D. 1973)
- Shark v. Thompson, 373 N.W.2d 859 (N.D. 1985)
- Hofmann v. Stoller, 320 N.W.2d 786 (N.D. 1982)
- B.D.H. ex rel. S.K.L. v. Mickelson, 2010 ND 235, 792 N.W.2d 169
- Amerada Hess Corp. v. State ex rel. Tax Comm'r, 2005 ND 155, 704 N.W.2d 8
- Littlefield v. Union State Bank, 500 N.W.2d 881 (N.D. 1993)