SUPREME COURT OF OHIO

Perrysburg Township v. City of Rossford, 103 Ohio St. 3d 79

814 N.E.2d 44 (Ohio 2004) · Decided September 8, 2004

SUMMARY

The Ohio Supreme Court considered whether an agreement containing an unconditional promise to repay $5 million plus interest was a security under Ohio Revised Code 1707.01(B). The court held that promissory notes listed in the statute are presumptively securities and adopted the federal Reves family-resemblance test to determine whether a particular note qualifies. Applying that test at the pleading stage, the court concluded that the township could potentially prove the note was a security and affirmed reversal of the dismissal.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Pfeifer, J.; Moyer, C.J.; Gorman, J.; F.E. Sweeney, J.; Lundberg Stratton, J.; O'Connor, J.; O'Donnell, J.; Robert H. Gorman, J., sitting for Resnick, J.
JURISDICTION	Ohio
DECIDED	September 8, 2004
DISPOSITION	affirmed
PROCEDURAL POSTURE	Perrysburg Township brought claims against Rossford Arena Amphitheater Authority, the City of Rossford, and Mark Zuchowski, including securities-violations claims. The trial court dismissed the securities claims under Ohio Civ.R. 12(B)(6), the court of appeals reversed as to RAAA, and the Supreme Court of Ohio accepted a discretionary appeal and cross-appeal.
STANDARD OF REVIEW	De novo review of an order granting a Civ.R. 12(B)(6) motion to dismiss; factual allegations in the complaint are accepted as true.
PRECEDENTIAL VALUE	Published opinion; binding precedent of the Supreme Court of Ohio.
PARTIES	Perrysburg Township v. Rossford Arena Amphitheater Authority, City of Rossford, Mark Zuchowski

TOPICS

statutory interpretation · municipal law · commercial litigation · contracts

PRACTICE AREAS

securities regulation | statutory interpretation | municipal law | civil procedure

QUESTIONS PRESENTED

1. Whether an instrument containing an unconditional promise to repay a specified sum of money on a date certain may constitute a security under R.C. 1707.01(B).
2. Whether the agreement at issue was presumptively a security as a promissory note under R.C. 1707.01(B).
3. Whether the complaint sufficiently alleged that the note was a security to survive a Civ.R. 12(B)(6) motion to dismiss.

HOLDINGS

1. The second sentence of R.C. 1707.01(B) is substantive and lists instruments, including promissory notes, that are presumptively securities; it is not merely a list of examples restricted by the first sentence's general definition.
2. The agreement was a promissory note because it contained RAAA's written promise to repay a definite sum of $5 million plus eight percent annual interest, and it was therefore presumptively a security under R.C. 1707.01(B).
3. Ohio courts must apply the Reves family-resemblance test to determine whether a particular promissory note is a security.
4. The complaint alleged facts from which Perrysburg Township could prove that the note was a security; the Civ.R. 12(B)(6) motion therefore should not have been granted.

KEY QUOTATIONS

> *"To determine whether a particular promissory note is a security, we adopt the test set forth in Reves v. Ernst & Young"* (103 Ohio St. 3d at 79)

> *"the second sentence provides a list of certificates and instruments that are presumptively securities."* (103 Ohio St. 3d at 82)

> *"The Reves test begins with "a presumption that every note is a security.""* (103 Ohio St. 3d at 83)

FACTUAL BACKGROUND

Rossford authorized the creation of Rossford Arena Amphitheater Authority, a nonprofit corporation intended to finance and operate a public sports arena and amphitheater. RAAA entered into an agreement with Perrysburg Township under which the township would contribute $5 million and RAAA would repay the contribution with eight percent interest over two years. The arena was never built, RAAA defaulted, and Perrysburg Township sued, alleging securities violations among other claims.

PROCEDURAL HISTORY

Perrysburg Township alleged that RAAA defaulted on an agreement requiring repayment of a $5 million contribution plus interest. The trial court held that the promissory note was not a security and dismissed the securities claims. The court of appeals reversed the dismissal as to RAAA, and the Supreme Court of Ohio affirmed that judgment.

DISPOSITION

affirmed

CASES CITED

- Cincinnati v. Beretta U.S.A. Corp., 95 Ohio St. 3d 416, 2002-Ohio-2480, 768 N.E.2d 1136
- Mitchell v. Lawson Milk Co., 40 Ohio St. 3d 190, 532 N.E.2d 753 (1988)
- Gutmann v. Feldman, 97 Ohio St. 3d 473, 2002-Ohio-6721, 780 N.E.2d 562
- Cleveland Elec. Illum. Co. v. Cleveland, 37 Ohio St. 3d 50, 524 N.E.2d 441 (1988)
- Williams v. Waves, Cuts, Colour & Tanning, Inc., 92 Ohio App. 3d 224, 634 N.E.2d 692 (1994)
- In re Columbus Skyline Securities, Inc., 74 Ohio St. 3d 495, 660 N.E.2d 427 (1996)
- Reves v. Ernst & Young, 494 U.S. 56, 110 S. Ct. 945, 108 L. Ed. 2d 47 (1990)
- Securities & Exchange Commission v. W.J. Howey Co., 328 U.S. 293, 66 S. Ct. 1100, 90 L. Ed. 1244 (1946)
- Exchange National Bank of Chicago v. Touche, Ross & Co., 544 F.2d 1126 (2d Cir. 1976)
- State v. Silberberg, 166 Ohio St. 101, 139 N.E.2d 342 (1956)
- Pollack v. Laidlaw Holdings, Inc., 27 F.3d 808 (2d Cir. 1994)
- Bass v. Janney Montgomery Scott, Inc., 210 F.3d 577 (6th Cir. 2000)
- Marine Bank v. Weaver, 455 U.S. 551, 102 S. Ct. 1220, 71 L. Ed. 2d 409 (1982)
- McNabb v. Securities & Exchange Commission, 298 F.3d 1126 (9th Cir. 2002)