

SUPREME COURT OF UTAH

Jau-Fei Chen v. Stewart

2004 UT 82 (Utah 2004) · No. No. 20020927 · Decided October 8, 2004

SUMMARY

The Utah Supreme Court reviewed an interlocutory appeal concerning the appointment and authority of an interim chief executive officer or special master for E. Excel International, Inc., and a preliminary injunction barring defendants from competing with the company worldwide. The court held that the defendants' challenge to the appointment did not implicate subject matter jurisdiction and was waived, and that the trial court had equitable authority to make the appointment. The court also affirmed the preliminary injunction and rejected the due process challenge.

CASE DETAILS

COURT	Supreme Court of Utah
WRITING FOR THE COURT	Chief Justice Durham; Justice Parrish; Justice Nehring; Judge Orme; Judge Iwasaki
JURISDICTION	Utah
DECIDED	October 8, 2004
DOCKET	No. 20020927
DISPOSITION	affirmed
PROCEDURAL POSTURE	Interlocutory appeal from the denial of a motion to vacate orders appointing and empowering an interim CEO/special master and from a preliminary injunction barring defendants from competing worldwide with E. Excel.
STANDARD OF REVIEW	Findings of fact are reviewed for clear error; legal questions, including subject matter jurisdiction and constitutional due process, are reviewed for correctness; fact-sensitive applications of legal standards receive broadened discretion; preliminary injunctions and appointment of a receiver-like officer are reviewed for abuse of discretion. An appellant challenging factual findings must marshal the evidence.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Utah
PARTIES	Jau-Hwa Stewart, Taig Stewart, Beverly Warner, Angela Barclay, Dale Stewart, Hwan Lan Chen, Sheue Wen Smith, Kim O'Neill, Byron Murray, Apogee, Inc., Apogee Essence International Philippines, Inc.,

Excellent Essentials International Corporation, USA Apogee, Ltd., Shannon River, Inc., Shannon Heaton, Sam Tzu, Richard Hu, Bryan Hyman, Paul Cooper, John Does I through X v. Jau-Fei Chen, E. Excel International, Inc.

TOPICS

corporate governance injunctions subject matter jurisdiction waiver interlocutory appeal

PRACTICE AREAS

corporate law commercial litigation civil procedure appellate procedure constitutional law remedies

QUESTIONS PRESENTED

1. Whether defendants' challenge to the appointment and empowerment of the interim CEO raised a nonwaivable subject-matter-jurisdiction issue.
2. Whether defendants waived their objections to the appointment, empowerment, and activities of the interim CEO by failing to object timely.
3. Whether the trial court had equitable authority to appoint an interim CEO with powers substantially equivalent to those of a receiver.
4. Whether the trial court properly extended judicial immunity to the interim CEO acting under the court's direction.
5. Whether the preliminary injunction violated Hwan Lan Chen's due process rights because she was not served or formally joined before some of the hearings.
6. Whether the preliminary injunction barring defendants from worldwide competition with E. Excel was an abuse of discretion or impermissibly overbroad.

HOLDINGS

1. A challenge to the court's authority to appoint and empower an interim CEO in an otherwise properly filed action is not a subject matter jurisdiction challenge and is therefore subject to waiver.
2. Defendants waived their objections to the appointment, empowerment, and activities of the interim CEO by waiting an unreasonable period to object and by participating in the litigation while observing the officer's actions.
3. A trial court has inherent equitable authority to appoint an interim CEO or similar court officer with powers substantially equivalent to those of a receiver when necessary to preserve corporate assets and manage the corporation during litigation.
4. The trial court did not abuse its discretion by extending judicial immunity to the interim CEO for actions taken in the performance of court-directed responsibilities.
5. The preliminary injunction did not violate Hwan Lan Chen's due process rights because her appearance through counsel waived service, provided notice, and she had a meaningful opportunity to be heard and

to challenge the evidence.

6. The trial court acted within its discretion in entering and broadly framing the preliminary injunction barring defendants from worldwide competition with E. Excel.

KEY QUOTATIONS

“Accordingly, we hold that an objection to the appointment of a court appointed interim CEO is subject to waiver, and was waived by defendants.” (¶ 49)

“The court had the inherent equitable authority to appoint a receiver with the same powers it granted Mr. Holman.” (¶ 54)

“In the present case, the minimum requirements of due process were satisfied. Madame Chen had notice and the opportunity to fairly state her case.” (¶ 69)

“We also affirm the trial court's decision granting the preliminary injunction.” (¶ 84)

FACTUAL BACKGROUND

E. Excel International, a family-controlled corporation, became embroiled in a dispute among family members after Jau-Hwa Stewart and Hwan Lan Chen attempted to remove Jau-Fei Chen from corporate control and redirect corporate assets and business to a competing enterprise, Apogee. The trial court found that Stewart and others had transferred corporate funds, diverted inventory and business opportunities, and damaged E. Excel, which faced severe financial distress. The parties stipulated to an interim corporate-management arrangement, and the trial court appointed Larry Holman as interim CEO with broad executive authority subject to court and board oversight. After extensive hearings, the trial court entered a worldwide preliminary injunction against competition with E. Excel and denied defendants' motion to vacate the interim-CEO orders.

PROCEDURAL HISTORY

Jau-Fei Chen brought derivative claims against Jau-Hwa Stewart and E. Excel alleging corporate waste, breach of fiduciary duty, and improper removal of a director. The parties stipulated to Stewart's removal and the appointment of an interim CEO; after the trial court appointed Larry Holman and later entered a preliminary injunction, Hwan Lan Chen, joined by Jau-Hwa and Taig Stewart, moved to vacate the orders. The trial court denied the motion, and the Utah Supreme Court granted interlocutory review and affirmed.

DISPOSITION

affirmed

CASES CITED

- Utah Med. Prods., Inc. v. Searcy, 958 P.2d 228 (Utah 1998)
- Barnard v. Wasserman, 855 P.2d 243 (Utah 1993)
- Richardson v. Arizona Fuels Corp., 614 P.2d 636 (Utah 1980)
- Interlake Co. v. Von Hake, 697 P.2d 238 (Utah 1985)

- Soter's, Inc. v. Deseret Federal Savings & Loan Ass'n, 857 P.2d 935 (Utah 1993)
- Score v. Wilson, 611 P.2d 367 (Utah 1980)
- Ex parte Peterson, 253 U.S. 300 (1920)
- Sanders v. Leavitt, 2001 UT 78, 37 P.3d 1052
- Parker v. Dodgion, 971 P.2d 496 (Utah 1998)
- Dairy Products Services, Inc. v. City of Wellsville, 2000 UT 81, 13 P.3d 581
- V-1 Oil Co. v. Department of Environmental Quality, 939 P.2d 1192 (Utah 1997)
- McDonald v. Mabee, 243 U.S. 90 (1917)
- Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344 (1999)
- Wilson Supply, Inc. v. Fraden Mfg. Corp., 2002 UT 94, 54 P.3d 1177
- In re Estate of Beesley, 883 P.2d 1343 (Utah 1994)
- State v. Pena, 869 P.2d 932 (Utah 1994)
- Plumb v. State, 809 P.2d 734 (Utah 1990)
- La Buy v. Howes Leather Co., 352 U.S. 249 (1957)
- T & W Investment Co. v. Kurtz, 588 F.2d 801 (10th Cir. 1978)