

SUPREME COURT OF COLORADO

Condo v. Conners

266 P.3d 1110 (Colo. 2011) · Decided December 19, 2011

SUMMARY

The Colorado Supreme Court held that an LLC operating agreement's anti-assignment clause applied to both membership rights and duties, including the right to receive distributions. In the context of this closely held LLC, the clause rendered a member powerless to make an unapproved assignment even though it did not expressly state that the assignment was void or invalid. Because the assignment had no legal effect, the plaintiff's tortious-interference and civil-conspiracy claims failed for lack of a valid preexisting contract, and summary judgment for the defendants was affirmed.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Chief Justice Bender; Justice Eid
JURISDICTION	Colorado
DECIDED	December 19, 2011
DISPOSITION	affirmed
PROCEDURAL POSTURE	Elizabeth Condo sought certiorari review of the Colorado Court of Appeals' affirmance of summary judgment for the defendants in her tortious-interference and civil-conspiracy action.
STANDARD OF REVIEW	Summary judgment is reviewed de novo, with the record viewed in the light most favorable to the nonmoving party. Summary judgment is proper when the pleadings and supporting documents show no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published Colorado Supreme Court opinion; precedential.
PARTIES	Elizabeth Condo v. Thomas J. Conners, George Roberts, Wendell Porterfield

TOPICS

assignment and delegation

contract interpretation

limited liability companies

commercial litigation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the LLC operating agreement's anti-assignment clause applied to Banner's transfer of his right to receive distributions and voting interest.
2. Whether an anti-assignment clause in a closely held LLC operating agreement rendered an unapproved assignment legally ineffective even though the agreement did not expressly state that the assignment was void or invalid.
3. Whether summary judgment was proper on Condo's tort claims when the challenged assignment was ineffective and therefore could not constitute a valid contract with which defendants could interfere.

HOLDINGS

1. The operating agreement's prohibition on transferring 'any portion' of a membership interest applied to both membership rights and duties, including Banner's right to receive LLC distributions and his voting interest.
2. In the context of this closely held LLC and its operating agreement, the anti-assignment clause rendered Banner powerless to make the unapproved assignment; the assignment therefore had no legal effect even without 'magic words' stating that it was void or invalid.
3. Summary judgment for the defendants was proper because Condo's tortious-interference and civil-conspiracy claims depended on a valid, preexisting contract, and the Banner assignment had no legal effect.

KEY QUOTATIONS

"We conclude that the anti-assignment clause rendered Banner powerless to make this nonconforming transfer." (1112-13)

"Given these circumstances and the plain meaning of the Operating Agreement, we hold that the nonconforming Banner assignment had no legal effect and cannot support Condo's underlying claims of tortious interference with contract and civil conspiracy." (1119)

FACTUAL BACKGROUND

Thomas Banner held a one-third membership interest in Hut at Avon, LLC. As part of a divorce settlement, Banner executed an assignment to Elizabeth Condo purporting to transfer his right to receive distributions and effectively his voting interest. The LLC operating agreement prohibited a member from selling, assigning, pledging, or otherwise transferring any portion of the membership interest without the prior written approval of all members, and the other members refused to consent. Banner later sold his entire membership interest to Thomas Connors and George Roberts, after which Condo sued them and their attorney for tortious interference with contract and civil conspiracy.

PROCEDURAL HISTORY

Condo sued Thomas Conners, George Roberts, and Wendell Porterfield, alleging that they tortiously interfered with Thomas Banner's prior assignment of membership rights to Condo and conspired to destroy the assignment's value. The trial court granted summary judgment for the defendants, ruling that the assignment was void as against public policy because it lacked the other LLC members' consent. The Colorado Court of Appeals affirmed on the alternative ground that the assignment violated the operating agreement's anti-assignment clause and had no legal effect. The Colorado Supreme Court affirmed and remanded for return to the trial court for proceedings consistent with its opinion.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The case was remanded to the Colorado Court of Appeals to return the matter to the trial court for entry of judgment and proceedings consistent with the opinion.

CASES CITED

- Condo v. Conners, 271 P.3d 524, 2010 WL 2105926 (Colo. App. 2010)
- Parrish Chiropractic Centers, P.C. v. Progressive Casualty Insurance Co., 874 P.2d 1049, 1051-55 (Colo. 1994)
- Vigil v. Franklin, 108 P.3d 822, 827 (Colo. 2004)
- Greenwood Trust Co. v. Conley, 988 P.2d 1141, 1148 (Colo. 1999)
- Cotter Corp. v. Am. Empire Surplus Lines Ins. Co., 90 P.3d 814, 819 (Colo. 2004)
- Fasing v. LaFond, 944 P.2d 608, 612-13 (Colo. App. 1997)
- Walker v. Van Laningham, 148 P.3d 391, 396 (Colo. App. 2006)
- Thompson v. Maryland Casualty Co., 84 P.3d 496, 501, 503 (Colo. 2004)
- Parrish v. Rocky Mountain Hospital & Medical Service Co., 754 P.2d 1180, 1182 (Colo. App. 1988)
- In re Seneca Investments LLC, 970 A.2d 259, 261 (Del. Ch. 2008)
- In re Albright, 291 B.R. 538, 540 n.6 (Bankr. D. Colo. 2003)
- In re Weiss, 376 B.R. 867, 879 (Bankr. N.D. Ill. 2007)
- Rumbin v. Utica Mutual Insurance Co., 254 Conn. 259, 757 A.2d 526, 531-34 (2000)
- Travertine Corp. v. Lexington-Silverwood, 683 N.W.2d 267, 272-73 (Minn. 2004)
- Bank of America, N.A. v. Moglia, 330 F.3d 942, 948 (7th Cir. 2003)