

SUPREME COURT OF NEBRASKA

Par 3, Inc. v. Livingston; Cornhusker Nursery, Inc. v. Livingston

686 N.W.2d 369, 268 Neb. 636 (2004) · No. Nos. S-03-494, S-03-495 · Decided September 10, 2004

SUMMARY

The Nebraska Supreme Court affirmed dismissal of breach-of-contract claims against Dan Livingston brought by Par 3, Inc. and Cornhusker Nursery, Inc. The court held that Livingston signed the contract as an agent for Castle Development, an existing corporation, rather than in his personal capacity, making Nebraska's promoter-liability statute inapplicable. The court also rejected arguments that the district court had reformed the contract or improperly used extrinsic and parol evidence.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Hendry, C.J.; Connolly, J.; Gerrard, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	September 10, 2004
DOCKET	Nos. S-03-494, S-03-495
DISPOSITION	affirmed
PROCEDURAL POSTURE	Consolidated appeals from a bench-trial judgment dismissing two breach-of-contract petitions against Dan Livingston.
STANDARD OF REVIEW	In a bench trial of a law action, factual findings have the effect of a jury verdict and will not be disturbed unless clearly wrong. The denial of a motion for new trial is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion
PARTIES	Par 3, Inc., Cornhusker Nursery, Inc. v. Dan Livingston

TOPICS

- breach of contract
- contract interpretation
- parol evidence rule
- corporate law
- standard of review

PRACTICE AREAS

- contracts
- corporate law
- commercial litigation
- appellate procedure
- evidence

QUESTIONS PRESENTED

1. Whether Dan Livingston was personally liable for breach of the tree-purchase contract.
2. Whether the district court improperly reformed the contract.
3. Whether the district court improperly used extrinsic or parol evidence to add to or vary a clear and unambiguous written contract.
4. Whether the district court abused its discretion by overruling the appellants' motions for new trial.

HOLDINGS

1. Livingston was not personally liable because the evidence supported the finding that he signed the contract as an agent for Castle Development, an existing corporation, and not in his personal capacity. Nebraska Revised Statute section 21-2020 therefore did not apply.
2. The district court did not reform the contract; it interpreted the evidence to determine whether Livingston undertook personal liability.
3. The district court did not improperly use extrinsic or parol evidence to add to or vary the contract because it used the evidence to determine the parties' intent concerning Livingston's personal liability, not to alter the contract's terms.
4. The district court did not abuse its discretion in overruling the motions for new trial.

KEY QUOTATIONS

“The parol evidence rule renders ineffective proof of a prior or contemporaneous oral agreement which alters, varies, or contradicts the terms of a written agreement.” (374)

“Since the court was not clearly wrong in finding that Livingston was contracting as an agent for a corporation that was in existence when the contract was executed, § 21-2020 is not applicable to the case at bar.” (373)

FACTUAL BACKGROUND

In 1995, Dan Livingston and an associate organized Castle Development, Inc., with Livingston serving as president. In 1996, a contract provided that an entity identified as Castlebrook would purchase trees from Par 3, with the trees supplied by Cornhusker; Livingston signed beneath the designation "TITLE/CASTLEBROOK" and wrote "Pres." above "TITLE." The Castle Brook project never occurred, and no purchase price was paid. The trial evidence included Livingston's dealings on Castle Development letterhead and a check modified to identify Castle Development, supporting the finding that the parties understood Livingston to be acting for an existing corporation rather than personally.

PROCEDURAL HISTORY

Par 3 and Cornhusker Nursery separately sued Livingston for breach of contract, seeking lost profits and damages for unsold trees. The Douglas County District Court consolidated the actions, found that Livingston signed the contract as president of an existing corporation rather than in his personal capacity, and dismissed both petitions. The court overruled the corporations' motions for new trial, and they appealed.

DISPOSITION

affirmed

CASES CITED

- Anderson Excavating v. SID No. 177, 265 Neb. 61, 654 N.W.2d 376 (2002)
- Carlson v. Okerstrom, 267 Neb. 397, 675 N.W.2d 89 (2004)
- Twin Towers Dev. v. Butternut Apartments, 257 Neb. 511, 599 N.W.2d 839 (1999)
- Sack Bros. v. Tri-Valley Co-op., 260 Neb. 312, 616 N.W.2d 786 (2000)

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