SUPREME COURT OF NORTH DAKOTA

Bearce v. Yellowstone Energy Development, LLC

2019 ND 89 (2019) · No. 20180256 · Decided March 22, 2019

SUMMARY

The North Dakota Supreme Court affirmed dismissal of the Bearces' fraudulent-inducement and breach-of-contract claims, holding that parol evidence was inadmissible because the Bearces did not seek rescission of the contract. The court reversed dismissal of the fiduciary-duty claim because the parties' obligations after the planned ethanol plant was abandoned were ambiguous and factual issues remained regarding the timing and terms of the Bearces' equity interest. The case was remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Jon J. Jensen, Justice; Jon J. Jensen; Daniel J. Crothers; Jerod E. Tufte; William A. Neumann, S.J.; Gerald W. VandeWalle, C.J.
JURISDICTION	North Dakota
DECIDED	March 22, 2019
DOCKET	20180256
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a judgment granting Yellowstone's motion for summary judgment and denying the Bearces' cross-motion for summary judgment on claims for breach of fiduciary duty, fraudulent inducement, and breach of contract.
STANDARD OF REVIEW	Questions concerning admission of parol evidence and interpretation of a contract are questions of law reviewed de novo. The Supreme Court independently examines and construes the contract. Summary judgment is inappropriate when reasonable persons can draw more than one conclusion from the evidence.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Daniel T. Bearce, Debra Ann Bearce v. Yellowstone Energy Development, LLC, acting by and through its Board of Directors

TOPICS

contract interpretation conditions precedent parol evidence rule fraudulent inducement appellate procedure

PRACTICE AREAS

contracts real estate evidence business organizations appellate procedure

QUESTIONS PRESENTED

1. Whether the parol evidence rule barred evidence of an alleged fraudulent inducement when the Bearces sought damages or other relief but did not seek rescission of the modified contract for deed.
2. Whether the failure of the ethanol-plant financing condition precedent terminated the parties' obligations or whether the parties agreed to continue the transaction under substituted terms.
3. Whether the contract for deed was ambiguous regarding when the Bearces acquired their ownership interest and whether summary judgment was proper on their fiduciary-duty claim.
4. Whether the Bearces waived appellate review of dismissal of their breach-of-contract claim by failing to brief the issue.

HOLDINGS

1. Parol evidence of fraudulent inducement is admissible to challenge the validity of a contract only when accompanied by a request for rescission; because the Bearces did not seek rescission of the modified contract for deed, the district court properly excluded the evidence and dismissed the fraud claim.
2. Failure of a condition precedent does not preclude parties from continuing with their agreement; parties may waive the condition or enter into an accord or novation. Here, the parties clearly agreed to continue the land sale after learning the ethanol plant would not be built, but the terms of that continuing agreement remained disputed.
3. The contract for deed was ambiguous regarding when the Bearces' ownership units were to be paid after the ethanol-plant condition failed. Because both the district court's and the Bearces' interpretations were reasonable, summary judgment was improper, and extrinsic evidence may be considered on remand to determine when the interest was acquired and whether a fiduciary duty existed and was breached.
4. The Bearces waived any appellate issue concerning dismissal of their breach-of-contract claim by failing to brief or otherwise challenge that dismissal with supporting argument and authority.

KEY QUOTATIONS

> *"Parol evidence of fraudulent inducement is only admissible to challenge the validity of a contract and a corresponding request for the remedy of rescission."* (¶ 12)

> *"the failure of a condition precedent does not preclude the parties from continuing with their agreement."* (¶ 17)

> *"Because reasonable persons can draw more than one conclusion, the entry of summary judgment was not appropriate and this case must be remanded for a determination of the terms under which the parties agreed*

> *to continue their agreement.”* (¶ 20)

> *“a contract is ambiguous when reasonable arguments can be made for different positions on its meaning.”* (¶ 27)

FACTUAL BACKGROUND

The Bearces agreed to sell 170 acres to Yellowstone, which entered into an original contract for deed in 2008 and a modified contract for deed in 2009. The agreements provided that $100,000 of the purchase price would be paid in shares of Yellowstone following financial close of financing for an ethanol plant, but Yellowstone later abandoned that plant and negotiated an oil-train-loading-facility lease. The Bearces transferred the property by deed in August 2010 after Yellowstone stated they would still receive their ownership interest when shares were issued to all members. Yellowstone later applied two 3:1 multipliers to initial cash investors but issued the Bearces one unit for each dollar of their promised $100,000 interest.

PROCEDURAL HISTORY

The Bearces sued Yellowstone over the treatment of their promised ownership interest in Yellowstone after the planned ethanol plant was abandoned and Yellowstone applied 3:1 ownership multipliers to initial cash investors but not to the Bearces. On cross-motions for summary judgment, the district court granted judgment to Yellowstone, excluded parol evidence supporting the fraudulent-inducement claim, concluded no fiduciary duty was owed, and dismissed the contract claims. The Supreme Court affirmed dismissal of the fraud and breach-of-contract claims, reversed dismissal of the fiduciary-duty claim, and remanded.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

The district court must determine the terms, if any, of the parties' agreement to continue the transaction after the ethanol plant was abandoned; when the Bearces acquired their interest in Yellowstone; whether a fiduciary duty arose if the interest was acquired in August 2010; and whether that fiduciary duty was breached by applying the 3:1 multiplier only to cash investors. The district court may consider extrinsic evidence in resolving the ambiguity.

CASES CITED

- Finstad v. Gord, 2014 ND 72, ¶ 13, 844 N.W.2d 913
- Myaer v. Nodak Mut. Ins. Co., 2012 ND 21, ¶ 20, 812 N.W.2d 345
- Golden Eye Res., LLC v. Ganske, 2014 ND 179, ¶ 17, 853 N.W.2d 544
- Flaten v. Couture, 2018 ND 136, ¶ 14, 912 N.W.2d 330
- Bishop Ryan High School v. Lindberg, 370 N.W.2d 726, 729 (N.D. 1985)
- United Bank of Bismarck v. Trout, 480 N.W.2d 742, 748 (N.D. 1992)
- Kruger v. Soreide, 246 N.W.2d 764, 769 (N.D. 1976)

- Quinn Distrib. Co. v. North Hill Bowl, Inc., 139 N.W.2d 860, 863-64 (N.D. 1966)
- Wachter v. Gratech Co., Ltd., 2000 ND 62, ¶ 22, 608 N.W.2d 279
- Herb Hill Ins., Inc. v. Radtke, 380 N.W.2d 651, 654 (N.D. 1986)
- Shirazi v. United Overseas, Inc., 354 N.W.2d 651, 654 (N.D. 1984)
- Hall GMC, Inc. v. Crane Carrier Co., 332 N.W.2d 54, 61 (N.D. 1983)
- Navine v. Peltier, 48 Wis.2d 588, 180 N.W.2d 613, 616 (1970)
- Hyde v. Hyde, 78 S.D. 176, 99 N.W.2d 788, 791-92 (1959)
- Moen v. Meidinger, 547 N.W.2d 544, 547 (N.D. 1996)
- Interest of J.J.T., 2018 ND 165, ¶ 29, 915 N.W.2d 106
