UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Texxon Petrochemicals, L.L.C. v. Getty Leasing, Incorporated

No. 22-40537, United States Court of Appeals for the Fifth Circuit (May 3, 2023)

SUMMARY

In this published Fifth Circuit bankruptcy appeal, the court affirmed the denial of a debtor's motion to assume an executory contract for the purchase of real property, holding that a brief two-email exchange did not constitute a valid contract under Texas law because it lacked an unequivocal offer or acceptance and failed to identify the property with reasonable certainty. The court declined to resolve whether the dismissal of the underlying bankruptcy proceeding mooted the appeal under the equitable mootness doctrine, as it could affirm on the merits. Key legal topics include bankruptcy assumption of executory contracts, Texas contract formation requirements for real estate, and the sufficiency of email communications to create binding offers.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Stephen A. Higginson; Edith Brown Clement; James E. Graves Jr.
JURISDICTION	Federal
DECIDED	May 3, 2023
DOCKET	22-40537
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the Eastern District of Texas, USDC No. 4:21-CV-864, affirming bankruptcy court's denial of motion to assume executory contract.
STANDARD OF REVIEW	We review conclusions of law and mixed questions of law and fact de novo and review findings of fact for clear error.
PRECEDENTIAL VALUE	Published
PARTIES	Texxon Petrochemicals, L.L.C. v. Getty Leasing, Incorporated

TOPICS

bankruptcy · contracts · real estate · appellate procedure · standard of review

PRACTICE AREAS

Bankruptcy Contracts Real Estate Appellate Procedure Standard of Review

QUESTIONS PRESENTED

1. Whether the email exchange constituted an offer and acceptance sufficient to form a binding contract under Texas law.

HOLDINGS

1. The email exchange did not constitute an offer or acceptance because the statement of interest was not an offer, the terms were not clear and definite, and the property description was insufficient.

KEY QUOTATIONS

> *"The exchange went as follows. On March 28, 2018, Bendzin emailed Raghavan with the subject line 'Lamar Blvd., Austin, Texas.' Bendzin wrote, 'Saravana, We are interested in selling the property for $350,000. You would need to pay the open A/R balance as well.' Attached to the email was a lease ledger from 'Getty Reality Corp.' for Texxon Petrochemicals, LLC. The next day, March 29, 2018, Raghavan replied, writing: Gary Sure. Thanks for your help man. Michael always help on the real estate closer. We both will work with you and get this done asap. Michael – Lets meet today and discuss this property."* (at 5-6)

> *"we similarly hold that this brief email exchange did not demonstrate an offer or acceptance, as required for a contract to be binding under Texas law."* (at 7)

> *"A statement that a party is 'interested' in selling a property is not an offer to sell that property—it is an offer to begin discussions about a sale."* (at 7)

FACTUAL BACKGROUND

Texxon operated a gas station, convenience store, and car wash on property in Austin, Texas, leased from Getty Realty Corporation. In 2018, Saravana Raghavan (Texxon's owner) had a two-email exchange with Gary Bendzin (an asset manager from Getty Realty, not Getty Leasing). Bendzin emailed: 'We are interested in selling the property for $350,000. You would need to pay the open A/R balance as well.' Raghavan replied: 'Sure. Thanks for your help man. Michael always help on the real estate closer. We both will work with you and get this done asap. Michael – Lets meet today and discuss this property.' No further action was taken until 2021 when Texxon filed a motion to assume the alleged contract in bankruptcy.

PROCEDURAL HISTORY

Texxon filed for bankruptcy in late 2020. It filed a motion to assume an executory contract to purchase property from Getty Leasing. The bankruptcy court denied the motion after an evidentiary hearing. The district court affirmed. Texxon appeals. While the appeal was pending, the bankruptcy court dismissed the underlying bankruptcy proceeding.

DISPOSITION

affirmed

CASES CITED

- In re Pac. Lumber Co., 584 F.3d 229 (5th Cir. 2009)
- In re Manges, 29 F.3d 1034 (5th Cir. 1994)
- In re Sundaram, 9 F.4th 16 (1st Cir. 2021)
- Already, LLC v. Nike, Inc., 568 U.S. 85 (2013)
- In re Hilal, 534 F.3d 498 (5th Cir. 2008)
- In re Continental Airlines, 91 F.3d 553 (3d Cir. 1996) (en banc) (Alito, J., dissenting)
- Lifemark Hosp. of La., Inc. v. Lijeberg Enters., Inc., No. 98-30610, 1999 WL 195247 (5th Cir. 1999)
- Duff v. Central Sleep Diagnostics, LLC, 801 F.3d 833 (7th Cir. 2015)
- In re Dean, 18 F.4th 842 (5th Cir. 2021)
- Angel, Tr. for Gobsmack Gift Tr. v. Tauch, 642 S.W.3d 481 (Tex. 2022)
- Domingo v. Mitchell, 257 S.W.3d 34 (Tex. App.—Amarillo 2008, pet. denied)
- Brown v. Haywood, No. 07-02-0424-CV, 2004 WL 757962 (Tex. App.—Amarillo Apr. 8, 2004) (pet. denied)
- Maddox v. Vantage Energy, LLC, 361 S.W.3d 752 (Tex. App.—Fort Worth 2012)
- Naumann v. Johnson, No. 03-19-00380-CV, 2021 WL 2212725 (Tex. App.—Austin June 1, 2021)
- Morrow v. Shotwell, 477 S.W.2d 538 (Tex. 1972)
- Davis v. Mueller, 528 S.W.3d 97 (Tex. 2017)
- Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion), 4 F.3d 1095 (2d Cir. 1993)
- In re Transcom Enhanced Servs., LLC, 427 B.R. 585 (Bankr. N.D. Tex. 2005)
- AT&T Corp. v. Transcom Enhanced Servs., LLC, No. 3:05-CV-1209-B, 2006 WL 8437448 (N.D. Tex. 2006)
- Porges v. Gruntal & Co., Inc. (In re Porges), 44 F.3d 159 (2d Cir. 1995)
- Empire State Building Co. LLC v. New York Skyline, Inc. (In re N.Y. Skyline), 471 B.R. 69 (Bankr. S.D.N.Y. 2012)
- Stardust Inn, Inc. v. Doshi (In re Stardust Inn), 70 B.R. 888 (Bankr. E.D. Pa. 1987)
- Env. Conservation Org. v. City of Dallas, 529 F.3d 519 (5th Cir. 2008)