UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Fortress Systems, L.L.C. v. Bank of the West

559 F.3d 848 (8th Cir. 2009) · No. Nos. 08-1802, 08-1874 · Decided February 23, 2009

SUMMARY

The Eighth Circuit considered claims by Fortress Systems against Bank of the West arising from the bank's refusal to fund a proposed loan. Applying Nebraska law, the court held that the nonbinding commitment letter and alleged oral promise could not support breach-of-contract, promissory-estoppel, or good-faith claims because of Nebraska's credit-agreement statute of frauds. The court affirmed judgment for the bank on the breach claims, reversed judgment for Fortress on promissory estoppel, and remanded for entry of final judgment for the bank.

CASE DETAILS

COURT	United States Court of Appeals for the Eighth Circuit
WRITING FOR THE COURT	MURPHY, Circuit Judge; SMITH, Circuit Judge; LIMBAUGH, District Judge, sitting by designation
JURISDICTION	Federal
DECIDED	February 23, 2009
DOCKET	Nos. 08-1802, 08-1874
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Fortress sued Bank of the West under Nebraska law for breach of contract, promissory estoppel, and breach of the duty of good faith and fair dealing. The district court granted the Bank summary judgment on the contract and good-faith claims, tried the promissory-estoppel claim, and entered judgment for Fortress with $1.6 million in damages. The Bank appealed and Fortress cross-appealed.
STANDARD OF REVIEW	Summary judgment is reviewed de novo, viewing the facts and reasonable inferences in the light most favorable to the nonmoving party. Following trial, conclusions of law are reviewed de novo and findings of fact for clear error.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Bank of the West v. Fortress Systems, L.L.C.

TOPICS

statute of frauds | promissory estoppel | contract formation | contracts | appellate procedure

PRACTICE AREAS

Contracts | Commercial Litigation | Remedies | Appellate Procedure

QUESTIONS PRESENTED

1. Whether the November 30 commitment letter or an alleged oral promise by a bank officer created or modified an enforceable credit agreement under Nebraska law.
2. Whether Fortress could recover on a promissory-estoppel theory based on the alleged oral promise to fund the loan despite Nebraska's statute of frauds for credit agreements.
3. Whether Fortress could maintain a claim for breach of the implied duty of good faith and fair dealing absent an enforceable contract.
4. Whether the damages calculation needed review.

HOLDINGS

1. The commitment letter was unambiguously nonbinding because it contemplated execution of formal loan documents and satisfaction of additional conditions before the Bank would be obligated to fund; it therefore could not support Fortress's breach-of-contract claim.
2. The alleged oral promise to fund the loan if Fortress settled the Broderick litigation could neither create a contract nor modify the commitment letter because Nebraska's credit-agreement statute of frauds requires such promises or amendments to be in a writing signed by both creditor and debtor.
3. Fortress could not recover under promissory estoppel based on the alleged oral promise because the promise was a bilateral credit agreement within Nebraska's statute of frauds and was not memorialized in a writing signed by both parties.
4. Because Fortress failed to establish an enforceable contract, it could not maintain a claim for breach of the implied duty of good faith and fair dealing.

KEY QUOTATIONS

> *“The letter of commitment in this case was unambiguously nonbinding.”* (851)

> *“Fortress's attempt to avoid the necessity of a written agreement by pleading promissory estoppel would, if successful, circumvent the statute, "render[ing] it meaningless and nugatory."”* (854)

FACTUAL BACKGROUND

Fortress sought financing from Bank of the West for a new production facility. The Bank issued a November 30, 2001, commitment letter outlining proposed loan terms, but expressly conditioned any obligation to fund on execution of formal loan documents and satisfaction of all conditions to the Bank's satisfaction. After Fortress disclosed litigation involving minority shareholders and pursued a large settlement contingent on obtaining the loan, a bank officer allegedly promised orally that the loan would be funded if the litigation were satisfactorily resolved; the Bank ultimately declined to make the loan.

PROCEDURAL HISTORY

Fortress filed suit in Nebraska state court in March 2006, and the Bank removed the case to the United States District Court for the District of Nebraska. The district court granted summary judgment to the Bank on the breach of contract and good-faith claims, then entered judgment for Fortress after trial on promissory estoppel and awarded $1.6 million in damages. The Eighth Circuit affirmed the judgment for the Bank, reversed the judgment for Fortress, and remanded for entry of final judgment in favor of the Bank.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case is remanded for entry of final judgment in favor of the Bank.

CASES CITED

- Carraher v. Target Corp., 503 F.3d 714, 716 (8th Cir. 2007)
- Tadlock v. Powell, 291 F.3d 541, 546 (8th Cir. 2002)
- Neb. Nutrients, Inc. v. Shepherd, 261 Neb. 723, 626 N.W.2d 472, 499 (2001)
- Spanish Oaks, Inc. v. Hy-Vee, Inc., 265 Neb. 133, 655 N.W.2d 390, 400 (2003)
- 168th & Dodge, LP v. Rave Review Cinemas, LLC, 501 F.3d 945, 955 (8th Cir. 2007)
- Rosnick v. Dinsmore, 235 Neb. 738, 457 N.W.2d 793, 799, 801 (1990)
- Farmland Serv. Coop., Inc. v. Klein, 196 Neb. 538, 244 N.W.2d 86, 90 (1976)
- Whorley v. First Westside Bank, 240 Neb. 975, 485 N.W.2d 578 (1992)
- Cass County Bank v. Dana Partnership, 275 Neb. 933, 750 N.W.2d 701 (2008)
- Hecht v. Marsh, 105 Neb. 502, 181 N.W. 135, 137 (1920)