SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

B.N. Zwirn Special Opportunities Fund, L.P. v. Brin Investment Corp.

96 A.D.3d 447 (N.Y. App. Div. 1st Dep't 2012) · Decided June 7, 2012

SUMMARY

The court affirmed an amended judgment entered after a jury verdict against Brin Investment Corp. The court held that the jury was properly instructed on ratification and novation, that an insufficiency claim was unpreserved, and that the trial court properly ruled on the admissibility of settlement materials, business records, and an opposing party’s letter.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Gonzalez, P.J.; Friedman, J.; Renwick, J.; Manzanet-Daniels, J.; Roman, J.
JURISDICTION	New York
DECIDED	June 7, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an amended judgment entered after a jury verdict in favor of B.N. Zwirn Special Opportunities Fund, L.P. and Brin Management LLC against Brin Investment Corp.; a separate appeal from the judgment was dismissed as moot.
STANDARD OF REVIEW	The sufficiency challenge was unpreserved because Brin Investment did not move for a directed verdict at the close of the evidence. The court otherwise reviewed the trial court's evidentiary rulings and jury instructions for legal error and affirmed where the rulings were proper.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Brin Investment Corp. v. B.N. Zwirn Special Opportunities Fund, L.P., Brin Management LLC

TOPICS

contract formation | mutual assent | evidence | preservation of error | appellate procedure

PRACTICE AREAS

contract law | evidence | commercial litigation | appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court properly instructed the jury on ratification and novation as alternative theories for binding a nonsignatory to the agreement.
2. Whether the evidence was sufficient to support a finding of novation.
3. Whether the trial court properly excluded a spreadsheet prepared for settlement discussions.
4. Whether the trial court properly admitted an annotated email exchange as a business record.
5. Whether Brin Investment's letter asserting indemnity rights was properly admitted as an admission of fact.

HOLDINGS

1. The trial court correctly instructed the jury on ratification and novation as alternative legal theories under which Brin Investment, although a nonsignatory, could be bound by the agreement.
2. Brin Investment's challenge to the sufficiency of the evidence supporting novation was unpreserved because it did not move for a directed verdict at the close of the evidence; in any event, the jury rationally could have found a novation.
3. The trial court properly excluded the spreadsheet prepared for settlement discussions.
4. The trial court properly admitted the annotated email exchange made during negotiations as a business record.
5. The trial court properly admitted Brin Investment's letter claiming indemnity rights under the agreement as an admission of fact.

FACTUAL BACKGROUND

Brin Investment Corp. was a nonsignatory to an agreement but was alleged to be bound through ratification or novation. The jury could find that Brin Management's obligations under the agreement were extinguished and that Brin Investment was substituted as manager. During trial, the court excluded a spreadsheet prepared for settlement discussions, admitted an annotated email exchange made during negotiations as a business record, and admitted Brin Investment's letter asserting indemnity rights under the agreement as an admission of fact.

PROCEDURAL HISTORY

Supreme Court, New York County, entered an amended judgment on February 7, 2011, following a jury verdict for the Fund and Brin Management. The Appellate Division unanimously affirmed the amended judgment with costs and dismissed the separate appeal from the judgment as moot.

DISPOSITION

affirmed

CASES CITED

- Santiago v. New York City Hous. Auth., 268 A.D.2d 203 (N.Y. App. Div. 1st Dep't 2000)
- Wasserstrom v. Interstate Litho Corp., 114 A.D.2d 952, 954 (N.Y. App. Div. 1985)
- Central Petroleum Corp. v. Kyriakoudes, 121 A.D.2d 165 (N.Y. App. Div. 1st Dep't 1986), leave dismissed, 68 N.Y.2d 807 (1986)

OPINION

PER CURIAM.

Amended judgment, Supreme Court, New York County (Bernard J. Fried, J.), entered February 7, 2011, upon a jury verdict in favor of D.B. Zwirn Special Opportunities Fund, L.E and Brin Management LLC against Brin Investment Corp., unanimously affirmed, with costs. Appeal from judgment, same court and Justice, entered February 7, 2011, unanimously dismissed, without costs, as moot.

The trial court correctly instructed the jury on the alternative legal theories, ratification and novation, by which Brin Investment, a nonsignatory to the agreement, could be bound by the agreement. To the extent Brin Investment argues that the evidence was insufficient to support a finding of novation, its claim is unpreserved since it did not move for a directed verdict at the close of the evidence (see Santiago v New York City Hous.

Auth., 268 AD2d 203 [2000]). In any event, the jury could rationally have concluded that Brin Management's obligations under the agreement were extinguished and that Brin Investment was substituted as the manager under the agreement (see Wasserstrom v Interstate Litho Corp., 114 AD2d 952, 954 [1985]).

The court properly excluded from evidence a spreadsheet prepared for settlement discussions (see CELR 4547). It properly admitted into evidence as a business record an annotated e-mail exchange made during negotiations of the agreement (see CELR 4518 [a]), and admitted as an admission of fact Brin Investment's letter claiming indemnity rights under the agreement at issue (see e.g. Central Petroleum Corp. v Kyriakoudes, 121 AD2d 165 [1986], lv dismissed 68 NY2d 807 [1986]).

Concur— Gonzalez, P.J., Friedman, Renwick, Manzanet-Daniels and Roman, JJ.