

SUPREME COURT OF SOUTH DAKOTA

George D. Johnson and Johnson Ford Lincoln-Mercury, Inc. v.
Lawrence Coss, 2003 SD 86

667 N.W.2d 701 (S.D. 2003) · No. No. 22556 · Decided July 23, 2003

SUMMARY

The Supreme Court of South Dakota reviewed summary judgment in a dispute arising from an agreement to purchase an automobile dealership, conditioned on Ford Motor Company's approval of a franchise transfer. The court held that genuine issues of material fact existed regarding whether the purchaser materially contributed to the failure of the condition precedent under the prevention doctrine. It reversed the summary judgment and remanded for further proceedings, while affirming the denial of summary judgment to the purchaser.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Zinter, Justice; Gilbertson, Chief Justice; Sabers, Justice; Konenkamp, Justice; Meierhenry, Justice
JURISDICTION	South Dakota
DECIDED	July 23, 2003
DOCKET	No. 22556
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from an order granting the appellee partial summary judgment on breach-of-contract and breach-of-the-covenant-of-good-faith-and-fair-dealing claims and denying the appellant's cross-motion for summary judgment.
STANDARD OF REVIEW	Summary judgment is reviewed de novo to determine whether the moving party demonstrated the absence of any genuine issue of material fact and entitlement to judgment as a matter of law. Evidence is viewed most favorably to the nonmoving party, with reasonable doubts resolved against the moving party.
PRECEDENTIAL VALUE	Published opinion; precedential authority of the Supreme Court of South Dakota.

PARTIES

Lawrence Coss v. George D. Johnson, Johnson Ford Lincoln-Mercury, Inc.

TOPICS

conditions precedent

summary judgment

breach of contract

contract interpretation

appellate procedure

PRACTICE AREAS

Contract law

Commercial litigation

Civil procedure

Appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court properly found on summary judgment that Coss was legally responsible for the failure of the Ford franchise-transfer condition precedent.
2. Whether Coss was entitled to summary judgment dismissing Johnson's breach-of-contract claims because the unsatisfied condition precedent barred enforcement of the agreement.
3. Whether evidence concerning Coss's post-contract conduct and efforts to obtain Ford's approval was inadmissible parol evidence.
4. Whether the evidence concerning Coss's failure to deposit \$100,000 established abandonment of the contract as a matter of law.

HOLDINGS

1. Summary judgment was precluded because genuine issues of material fact existed as to whether Coss materially contributed to the failure to obtain Ford's approval or whether the failure resulted from Ford's discretionary requirements.
2. A party whose conduct materially contributes to the failure of a condition precedent may be prevented from relying on the condition's nonoccurrence; whether the conduct constitutes prevention is ordinarily a question of fact.
3. The affidavit and attorney letter were not barred by the parol evidence rule because they were offered to show Coss's post-execution conduct relating to the franchise transfer, not to establish or alter the agreement's terms.
4. Coss's failure to deposit the required \$100,000, even if complete, was only evidence of abandonment and did not establish abandonment as a matter of law because other evidence supported an inference that he continued pursuing the transaction.

KEY QUOTATIONS

"[I]t is a general principle of contract law that failure of a condition precedent ... bars enforcement of the contract." (667 N.W.2d at 705)

"Whether interference by one party to a contract amounts to prevention so as to excuse performance by the other party and constitute a breach by the interfering party is a question of fact to be decided by the jury"

under all of the proved facts and circumstances.” (667 N.W.2d at 707)

“Any alleged abandonment must ultimately be determined by trial.” (667 N.W.2d at 708)

FACTUAL BACKGROUND

Johnson and Coss entered an asset purchase agreement for the sale of Johnson's automobile dealership. The agreement made Ford Motor Company's approval of the transfer of the Ford Lincoln-Mercury franchise a condition precedent to closing and provided that the transaction would be null and void if approval was not obtained. Ford required, among other things, an approved on-site manager, a substantial ownership interest for that manager, a majority owner, and increased capitalization; Coss attempted to restructure the proposed ownership and management arrangement but ultimately concluded that he and Goodrich could not satisfy Ford's requirements. No written denial of the transfer was issued, but Coss's attorney asserted that Ford representatives had indicated the requirements would not be waived.

PROCEDURAL HISTORY

Johnson sued Coss after Coss notified Johnson and Ford that the asset purchase agreement could not be completed because Coss could not satisfy Ford's franchise-transfer requirements. The circuit court granted Johnson partial summary judgment, reasoning that Coss's actions prevented transfer of the franchise, and denied Coss's cross-motion. The Supreme Court of South Dakota held that genuine issues of material fact existed concerning the cause of the failed franchise-transfer condition and reversed and remanded, while affirming the denial of Coss's summary-judgment motion.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings, including trial-level determination of whether Coss's conduct materially contributed to the failure to obtain Ford's franchise-transfer approval and whether any alleged abandonment occurred.

CASES CITED

- Braun v. New Hope Township, 2002 SD 67, ¶ 8, 646 N.W.2d 737, 739 (S.D. 2002)
- South Dakota State Cement Plant Commission v. Wausau Underwriters Insurance Co., 2000 SD 116, ¶ 9, 616 N.W.2d 397, 400-401 (S.D. 2000)
- Farmers Feed & Seed, Inc. v. Magnum Enterprises, Inc., 344 N.W.2d 699, 701 (S.D. 1984)
- Bublitz v. State Bank of Alcester, 369 N.W.2d 137 (S.D. 1985)
- Moore Brothers Co. v. Brown & Root, Inc., 207 F.3d 717, 725 (4th Cir. 2000)
- Rohde v. Massachusetts Mutual Life Insurance Co., 632 F.2d 667 (6th Cir. 1980)
- Hofeldt v. Mehling, 2003 SD 25, ¶ 11, 658 N.W.2d 783, 787 (S.D. 2003)
- Stromberg v. Smith, 423 N.W.2d 107 (Minn. Ct. App. 1988)

