

SUPREME COURT OF NEBRASKA

Polk County Recreational Ass'n v. Susquehanna Patriot Commercial Leasing Co.

734 N.W.2d 750, 273 Neb. 1026 (2007) · No. S-06-442 · Decided July 20, 2007

SUMMARY

The Supreme Court of Nebraska affirmed dismissal of a Nebraska declaratory judgment action brought by golf courses against a leasing company and an equipment marketer. It held that the forum-selection clause in one lease was mandatory and enforceable under Nebraska law, while clauses in the other seven leases were permissive. The court also affirmed dismissal as to the remaining leases because related enforcement litigation was already pending in Pennsylvania.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Miller-Lerman, J.; Wright, J.; Connolly, J.; Gerrard, J.; Stephan, J.; McCormack, J.
JURISDICTION	Nebraska
DECIDED	July 20, 2007
DOCKET	S-06-442
DISPOSITION	affirmed
PROCEDURAL POSTURE	Golf courses appealed the Polk County District Court's order granting Patriot's motion for summary judgment and dismissing the declaratory judgment action against Patriot. The Nebraska Supreme Court treated the motion and order as a motion to dismiss under Nebraska's Model Uniform Choice of Forum Act and affirmed.
STANDARD OF REVIEW	Questions of law in a declaratory judgment action are reviewed independently. A ruling on a motion to dismiss under Neb. Rev. Stat. § 25-415 is reviewed de novo apart from factual findings; factual findings based on the complaint and the court's determination of disputed factual issues are reviewed for clear error. Whether to entertain a declaratory judgment action is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published opinion; precedential

PARTIES

Polk County Recreational Association, doing business as Ryan Hill Country Club, Calamus Area Golf & Recreation Club, Inc., Crofton Lakeview Golf Association, Inc., Henderson Golf Association, Inc., O'Neill Country Club, Summerland Golf Club, Inc., Thornridge Golf Course, Atkinson-Stuart Country Club v. Susquehanna Patriot Commercial Leasing Company, Inc., Royal Links USA, Inc.

TOPICS

venue

motions to dismiss

declaratory judgment

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contracts

PRACTICE AREAS

civil procedure

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QUESTIONS PRESENTED

1. Whether Patriot's motion styled as a motion for summary judgment should be treated as a motion to dismiss under Neb. Rev. Stat. § 25-415 to enforce forum-selection clauses designating another state.
2. Whether the forum-selection clause in the Thornridge lease was mandatory and enforceable under § 25-415.
3. Whether the forum-selection clauses in the other seven leases were mandatory or merely permissive.
4. Whether the Nebraska declaratory judgment action concerning the seven leases with permissive clauses should be dismissed because a Pennsylvania action involving the same parties and issues was pending when the Nebraska action commenced.

HOLDINGS

1. In Nebraska, a party seeking to enforce a written forum-selection clause requiring litigation in another state should proceed by motion to dismiss under Neb. Rev. Stat. § 25-415. A motion for summary judgment raising that issue may be treated as such a motion, and the resulting order may be treated as an order granting dismissal under § 25-415.
2. A ruling on a motion to dismiss under § 25-415 is reviewed de novo apart from factual findings; factual findings are reviewed for clear error.
3. The Thornridge lease's provision that any legal action concerning the lease shall be brought in federal or state court in Montgomery County, Pennsylvania, was mandatory and required dismissal of the Nebraska action concerning that lease unless a statutory exception applied.
4. The mandatory forum-selection clause in the Thornridge lease was enforceable under both Nebraska and Pennsylvania law because the golf courses failed to establish any statutory or recognized exception.
5. A Nebraska court may dismiss a declaratory judgment action when, at its commencement, another action involving the same parties and the same issues is pending in another forum and can adjudicate the controversy. The district court therefore did not abuse its discretion by dismissing the claims concerning the seven leases with permissive forum-selection clauses.

KEY QUOTATIONS

“Aside from factual findings, a ruling on a motion to dismiss pursuant to § 25-415 is subject to de novo review. Where the trial court's decision is based upon the complaint and its own determination of disputed factual issues, we review the factual findings under the "clearly erroneous" standard.” (at 758)

“In the absence of one of the five listed exceptions, § 25-415 requires dismissal of an action only when the forum selection clause is mandatory.” (at 758-759)

“We have noted that Neb.Rev. Stat. § 25-21,154 (Reissue 1995) provides that a court "may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding,"” (at 762)

FACTUAL BACKGROUND

Royal Links marketed beverage carts to Nebraska golf courses through a financing-and-advertising arrangement. The golf courses executed leases with Patriot and separate program agreements with Royal Links, but the leases did not make payment obligations contingent on advertising revenue; the leases contained Pennsylvania forum and choice-of-law provisions. After Royal Links stopped funding the monthly payments, the golf courses stopped paying Patriot, and Patriot commenced lease-enforcement proceedings in Pennsylvania. The golf courses then filed a Nebraska declaratory judgment action challenging the agreements and forum-selection clauses.

PROCEDURAL HISTORY

The golf courses filed a Nebraska declaratory judgment action against Patriot and Royal Links seeking declarations that their equipment leases and related agreements were void and seeking to prevent enforcement of the leases. Royal Links' bankruptcy stayed the action as to it. Patriot had previously filed enforcement actions in Pennsylvania, obtained confessions of judgment against five golf courses, and filed complaints against three others; those cases were later consolidated and stayed. The Nebraska district court granted Patriot summary judgment and dismissed the claims against it based on the lease forum-selection clauses and the prior-pending Pennsylvania litigation.

DISPOSITION

affirmed

CASES CITED

- Peterson v. Ohio Casualty Group, 272 Neb. 700, 724 N.W.2d 765 (2006)
- Ameritas Invest. Corp. v. McKinney, 269 Neb. 564, 694 N.W.2d 191 (2005)
- Haakinson & Beaty Co. v. Inland Ins. Co., 216 Neb. 426, 344 N.W.2d 454 (1984)
- Bohaboj v. Rausch, 272 Neb. 394, 721 N.W.2d 655 (2006)
- Converting/Biophile v. Ludlow Composites, 296 Wis. 2d 273, 722 N.W.2d 633 (Wis. App. 2006)
- Turcheck v. Amerifund Financial, Inc., 272 Mich. App. 341, 725 N.W.2d 684 (2006)

- Patriot Leasing Co. v. Kremer Restaurant, 915 A.2d 647 (Pa. Super. 2006)
- R.C.A. v. Rotman, 411 Pa. 630, 192 A.2d 655 (1963)
- Interfund Corp. v. O'Byrne, 462 N.W.2d 86 (Minn. App. 1990)
- The Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 92 S. Ct. 1907, 32 L. Ed. 2d 513 (1972)
- State Farm Mut. Auto. Ins. Co. v. Allstate Ins. Co., 268 Neb. 439, 684 N.W.2d 14 (2004)
- Sim v. Comiskey, 216 Neb. 83, 341 N.W.2d 611 (1983)
- Woodmen of the World Life Ins. Soc. v. Yelich, 250 Neb. 345, 549 N.W.2d 172 (1996)
- Strawn v. County of Sarpy, 146 Neb. 783, 21 N.W.2d 597 (1946)

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