SUPREME COURT OF MISSOURI

Weinstein v. KLT Telecom, Inc.

225 S.W.3d 413 (Mo. banc 2007) · No. SC 87816 · Decided May 29, 2007

SUMMARY

The Supreme Court of Missouri held that consideration for a put option agreement is measured when the option agreement is formed, rather than when the option is exercised. Because KLT Telecom assumed the risk that the shares could lose value, the subsequent bankruptcy-related loss of value did not constitute a failure of consideration, and the court reversed the summary judgment entered for KLT Telecom and remanded the case.

CASE DETAILS

COURT	Supreme Court of Missouri
WRITING FOR THE COURT	Stephen N. Limbaugh, Jr.; William Ray Price, Jr.; Richard B. Teitelman; Michael A. Wolff; Laura Denvir Stith; Ronnie L. White; Russell
JURISDICTION	Missouri
DECIDED	May 29, 2007
DOCKET	SC 87816
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a summary judgment entered for KLT Telecom, Inc. in a breach-of-contract action concerning enforcement of a put option; the Supreme Court of Missouri granted transfer after an opinion by the court of appeals.
STANDARD OF REVIEW	Summary judgment is reviewed de novo as a matter of law.
PRECEDENTIAL VALUE	binding
PARTIES	Richard D. Weinstein v. KLT Telecom, Inc.

TOPICS

breach of contract · consideration · contracts · standard of review · appellate procedure

PRACTICE AREAS

contract law · commercial litigation · corporate law · appellate procedure

QUESTIONS PRESENTED

1. Whether consideration for a put option must be measured when the option agreement is executed or when the option is exercised.
2. Whether the loss or elimination of the stock's value after execution of the put option constituted a failure of consideration or failure of performance relieving KLT Telecom of its obligation to purchase the shares.
3. Whether the trial court's denial of Weinstein's motion for summary judgment was reviewable on appeal.

HOLDINGS

1. The adequacy of consideration for a put option is measured at the time the option agreement is executed, not when the option is exercised.
2. Exercise of the option ripened the unilateral option contract into a bilateral contract governed by the terms of the underlying option agreement, and no new remeasurement of consideration was required.
3. Weinstein did not fail to perform because the shares, although worthless, existed as the shares represented by the certificate and were tendered through the escrow agent.
4. The denial of Weinstein's motion for summary judgment was not reviewable on appeal.

KEY QUOTATIONS

> *"Given the nature of the Put Option Agreement—that it was simply a gamble, a lawful wager made between sophisticated parties as part of an arms-length transaction—consideration must be measured at the time the agreement was executed."* (415)

> *"And it is for that reason that the presence or absence of adequate consideration must be determined at the time the option contract was entered, not at time of performance."* (417)

> *"In short, KLTT, having lost its lawful wager on the value of the shares, cannot now complain."* (417)

FACTUAL BACKGROUND

In December 2000, Weinstein and KLT Telecom entered into agreements under which Weinstein sold approximately 20 million shares of DTI stock and received a put option to sell approximately 9.9 million remaining shares to KLT for their appraised value or a minimum of $15 million. Weinstein deposited a certificate for the remaining shares with an escrow agent. DTI later filed bankruptcy, and the bankruptcy court canceled and extinguished all DTI equity interests, reducing the shares' value to zero. Weinstein exercised the option in September 2003 and tendered the shares, but KLT refused to pay the $15 million floor price.

PROCEDURAL HISTORY

Weinstein sued KLT Telecom for $15 million after KLT refused to purchase shares under a put option following the bankruptcy cancellation of the underlying stock. The trial court granted KLT's motion for summary judgment and overruled Weinstein's cross-motion. Weinstein appealed, and the Supreme Court of Missouri granted transfer, reversed the judgment for KLT, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The judgment entered in favor of KLT Telecom was reversed, and the case was remanded. The opinion gives no more specific remand instructions.

CASES CITED

- ITT Commercial Fin. Corp. v. Mid-America Marine Supply, 854 S.W.2d 371, 376 (Mo. banc 1993)
- Union Pac. R. Co. v. KC Transit Co., 401 S.W.2d 528, 536 (Mo. App. 1966)
- Vorchetto v. Sappenfield, 223 Mo. App. 460, 14 S.W.2d 685, 686 (1929)
- In re Air Vermont, Inc., 44 B.R. 440, 445 (Bankr. D. Vt. 1984)
- Polinsky v. Vaughan, 268 Cal. App. 2d 183, 194, 73 Cal. Rptr. 764 (Cal. Ct. App. 1968)
- Suhre v. Busch, 343 Mo. 170, 120 S.W.2d 47 (1938)
- Ragan v. Schreffler, 306 S.W.2d 494 (Mo. 1957)
- Lindsay v. Sonora Gold Mining & Mill. Co., 196 S.W. 764 (Mo. 1917)