NEBRASKA SUPREME COURT

Lindsay International Sales & Service, LLC v. Wegener

301 Neb. 1 (2018) · No. No. S-16-1051 · Decided September 7, 2018

SUMMARY

The Nebraska Supreme Court affirmed a judgment for Lindsay International Sales & Service, LLC, against personal guarantors of an irrigation-equipment debt. The court held that the impairment-of-collateral defense was unavailable because the debt was unsecured, and that any error in directing a verdict on failure of consideration was harmless because the jury rejected the underlying factual argument. The court also upheld rulings concerning the Nebraska Uniform Deceptive Trade Practices Act, admission of financial evidence, and denial of a new trial.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Papik, J.; Heavican, C.J.; Cassel, J.; Stacy, J.; Funke, J.; Schreiner, District Judge
JURISDICTION	Nebraska
DECIDED	September 7, 2018
DOCKET	No. S-16-1051
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a jury verdict and judgment in favor of Lindsay on claims seeking payment under personal guaranties. The appellants challenged directed verdicts on affirmative defenses, jury instructions, admission of financial statements, and denial of a motion for new trial.
STANDARD OF REVIEW	A directed verdict is reviewed by treating the motion as an admission of the truth of all competent evidence supporting the opposing party, resolving controverted facts and reasonable inferences in that party's favor; it is proper only when reasonable minds cannot differ and the issue must be decided as a matter of law. Jury-instruction issues are questions of law reviewed independently. Evidentiary relevance and admissibility are reviewed for abuse of discretion. Denial of a motion for new trial is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.

PARTIES	Michael J. Wegener, Jerome Pribil v. Lindsay International Sales & Service, LLC

TOPICS

contracts · commercial litigation · deceptive trade practices · relevance · appellate procedure

PRACTICE AREAS

contracts · commercial litigation · evidence · appellate procedure · consumer protection

QUESTIONS PRESENTED

1. Whether the district court properly directed a verdict against the defendants on the impairment-of-collateral and subrogation-related defenses.
2. Whether the district court properly directed a verdict on the defendants' failure-of-consideration defense.
3. Whether the defendants, as guarantors, could assert Nebraska Revised Statutes § 87-303.07 as a defense based on alleged deceptive trade practices.
4. Whether the district court erred by refusing the defendants' proposed Uniform Deceptive Trade Practices Act jury instruction.
5. Whether the district court abused its discretion by admitting the defendants' personal financial statements over relevance objections.
6. Whether the district court abused its discretion by denying the defendants' motion for new trial.

HOLDINGS

1. A guarantor cannot assert an impairment-of-collateral defense when the underlying debt is not secured by collateral, because there is no collateral to impair and no related subrogation right to protect.
2. Any error in directing a verdict on the failure-of-consideration defense was harmless when the jury necessarily rejected the factual theory underlying that defense by finding that IJS owed the full amount claimed.
3. When it follows logically from a jury's findings that a theory on which a directed verdict was granted could not have succeeded, the directed verdict did not affect the outcome and is, at most, harmless error.
4. Nebraska Revised Statutes § 87-303.07 does not provide a defense to guarantors who claim that they were induced to sign guaranties by deceptive trade practices, because the statute protects a buyer or lessee induced to enter a sale or lease.
5. The district court did not abuse its discretion by admitting the defendants' financial statements because the evidence had some probative value on whether the defendants were susceptible to alleged misrepresentations, even though it may have had limited probative value and potential prejudice.

KEY QUOTATIONS

> *"If the debt is not secured, there is no collateral to impair and no subrogation right to protect."* (301 Neb. at 9)

> *"We hold that when it follows logically from a jury's findings that a theory on which a directed verdict was granted could not have been successful, the directed verdict cannot be said to have affected the outcome and is, at most, harmless error."* (301 Neb. at 13)

> *"For reasons set forth above, we have determined that § 87-303.07 offers no protection to guarantors who claim to have been deceived."* (301 Neb. at 15)

FACTUAL BACKGROUND

Wegener, Pribil, and another individual formed Ko'ol Agricola in Mexico to operate an agricultural venture. After discussions with Lindsay concerning the purchase of irrigation pivots, Wegener and Pribil executed personal guaranties identifying IJS Irrigation, LLC as the principal debtor and guaranteeing debts associated with invoices referencing Ko'ol Agricola. Lindsay later shipped 16 pivots and alleged that IJS defaulted on invoices totaling $1,019,795.38. Wegener and Pribil asserted, among other defenses, that some pivots were not delivered to IJS, that they had been misled about IJS and its owner, and that Lindsay's conduct impaired their rights or violated the Uniform Deceptive Trade Practices Act.

PROCEDURAL HISTORY

Lindsay sued Wegener and Pribil in the Platte County District Court to collect approximately $1,019,795.38 allegedly owed under personal guaranties of IJS Irrigation, LLC's debt. After the defendants presented their evidence, the district court directed a verdict for Lindsay on several affirmative defenses, including impairment of collateral, failure of consideration, and violation of Nebraska's Uniform Deceptive Trade Practices Act, while submitting a material-misrepresentation theory to the jury. The jury returned a verdict for Lindsay for the full amount claimed, and the district court denied the defendants' motion for new trial. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Lindsay Internat. Sales & Serv. v. Wegener, 297 Neb. 788, 901 N.W.2d 278 (2017)
- Armstrong v. Clarkson College, 297 Neb. 595, 901 N.W.2d 1 (2017)
- Rodriguez v. Surgical Assocs., 298 Neb. 573, 905 N.W.2d 247 (2018)
- Facilities Cost Mgmt. Group v. Otoe Cty. Sch. Dist., 298 Neb. 777, 906 N.W.2d 1 (2018)
- Custom Leasing, Inc. v. Carlson Stapler & Shippers Supply, Inc., 195 Neb. 292, 237 N.W.2d 645 (1976)
- Builders Supply Co. v. Czerwinski, 275 Neb. 622, 748 N.W.2d 645 (2008)
- Century 21 Prods. v. Glacier Sales, 129 Wash. 2d 406, 918 P.2d 168 (1996)
- Myers v. Bank of Niobrara, 215 Neb. 29, 336 N.W.2d 608 (1983)

- Estate of Muscato v. Northwest Nat'l Bk., 181 Ill. App. 3d 44, 536 N.E.2d 872 (1989)
- National Bank of Commerce Trust & Sav. Assn. v. Katleman, 201 Neb. 165, 266 N.W.2d 736 (1978)
- Federal Land Bank of Omaha v. Woods, 480 N.W.2d 61 (Iowa 1992)
- Walcutt v. Clevite Corporation, 13 N.Y.2d 48, 191 N.E.2d 894, 241 N.Y.S.2d 834 (1963)
- Smith v. Colorado Organ Recovery Sys., 269 Neb. 578, 694 N.W.2d 610 (2005)
- Goulet v. New Penn Motor Exp., Inc., 512 F.3d 34 (1st Cir. 2008)
- Earle v. Benoit, 850 F.2d 836 (1st Cir. 1988)
- Janich Bros., Inc. v. American Distilling Co., 570 F.2d 848 (9th Cir. 1977)
- St. Germain v. Husqvarna Corp., 544 A.2d 1283 (Me. 1988)
- Steffensen v. Smith's Management Corp., 820 P.2d 482 (Utah App. 1991)
- Russell v. May, 306 Kan. 1058, 400 P.3d 647 (2017)
- Jacobson v. Shresta, 288 Neb. 615, 849 N.W.2d 515 (2014)
- Mutual of Omaha Bank v. Murante, 285 Neb. 747, 829 N.W.2d 676 (2013)
- West v. Wegner, 172 Neb. 692, 111 N.W.2d 449 (1961)
- Vacek v. Ames, 221 Neb. 333, 377 N.W.2d 86 (1985)
- Richardson v. Children's Hosp., 280 Neb. 396, 787 N.W.2d 235 (2010)
- State v. Lavalleur, 289 Neb. 102, 853 N.W.2d 203 (2014)