SUPREME COURT OF SOUTH DAKOTA

Equipment Service Professionals v. Denowh

693 N.W.2d 54 (S.D. 2005) · No. No. 23120 · Decided February 9, 2005

SUMMARY

The Supreme Court of South Dakota considered whether an employee's attempted assignment of his interest in a deferred compensation account constituted valid tender of payment on a promissory note. The court held that the assignment was not valid tender because the note required payment in money, the account was held by a separate corporation, and the deferred compensation agreement prohibited assignment and limited withdrawals. The court reversed summary judgment for the defendant and directed entry of judgment for Equipment Service Professionals.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Tiede, Circuit Judge, for Sabers, Justice, disqualified; Gilbertson, Chief Justice; Konenkamp, Justice; Zinter, Justice; Meierhenry, Justice; Sabers, Justice, disqualified; Tiede, Circuit Judge
JURISDICTION	South Dakota
DECIDED	February 9, 2005
DOCKET	No. 23120
DISPOSITION	reversed
PROCEDURAL POSTURE	ESP sued Denowh to collect a promissory note. Both parties moved for summary judgment, and the trial court granted summary judgment to Denowh. ESP appealed.
STANDARD OF REVIEW	The court reviewed the grant of summary judgment to determine whether genuine issues of material fact existed and whether legal issues were correctly decided. Because the parties agreed that no material facts were disputed and the issue was legal, review was de novo, with no deference to the trial court's conclusions of law.
PRECEDENTIAL VALUE	Published South Dakota Supreme Court opinion
PARTIES	Equipment Service Professionals, Inc. v. Keith Denowh

TOPICS

contracts negotiable instruments uniform commercial code corporate law standard of review

PRACTICE AREAS

Contracts Commercial law Negotiable instruments Corporate law Appellate procedure

QUESTIONS PRESENTED

1. Whether Denowh's attempted assignment of his rights in a deferred compensation account with JAS constituted valid tender and payment of his promissory-note obligation to ESP.
2. Whether the trial court could order JAS, a nonparty, to apply Denowh's deferred compensation account to satisfy his debt to ESP.

HOLDINGS

1. Denowh's attempted assignment of his interest in the deferred compensation account was not valid tender or payment of the promissory note. Tender of a debt generally must be made in money unless the parties agree otherwise or the obligee consents to another medium of payment, and ESP did not agree to accept the assignment.
2. The separate corporate identities of ESP and JAS could not be disregarded because Denowh did not assert a corporate-veil-piercing claim. JAS's contractual right to set off debts owed to JAS did not require it to satisfy Denowh's separate debt to ESP.
3. Summary judgment for Denowh was improper because, on the undisputed facts, he had not paid or validly tendered payment of the promissory note.

KEY QUOTATIONS

> *“"The general rule is that both the payment of and tender of payment of a debt must be in money, unless the parties agree otherwise, or the obligee consents to accept some other medium of payment."”* (693 N.W.2d at 57)

> *“It is improper to ignore the separate corporate identity of these entities.”* (693 N.W.2d at 58)

> *“The purported assignment factually and legally was not valid tender or payment.”* (693 N.W.2d at 59)

FACTUAL BACKGROUND

Denowh entered into a deferred compensation agreement with JAS Enterprises, Inc., under which the account remained JAS's property and Denowh's interest was nonassignable. Denowh later borrowed $13,500 from ESP and executed a promissory note requiring payment by May 31, 2003. Before the due date, he attempted to assign his deferred compensation account with JAS to ESP as payment and tendered a check for accrued interest, but ESP rejected both the assignment and the check. ESP and JAS were separate corporations, although both were owned by James Swaby.

PROCEDURAL HISTORY

The trial court concluded that Denowh's assignment of his deferred compensation account, together with a check for accrued interest, constituted payment of the promissory note. It ordered ESP to access the account through JAS in the amount due and to return the note marked paid in full. The Supreme Court of South Dakota reversed and directed entry of judgment for ESP.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The trial court was directed to enter judgment in favor of ESP for the amount of the promissory note plus accrued interest through the date of judgment.

CASES CITED

- Vollmer v. Akerson, 2004 SD 111, ¶ 4, 688 N.W.2d 225, 227
- Prunty Construction, Inc. v. City of Canistota, 2004 SD 78, ¶ 5, 682 N.W.2d 749, 752
- In re Engels, 2004 SD 97, ¶ 7, 687 N.W.2d 30, 32-33
- Martinmaas v. Engelmann, 2000 SD 85, ¶ 49, 612 N.W.2d 600, 611
- Dale v. Pelton, 365 N.W.2d 1, 3 (S.D. 1985)
- Federal Land Bank of Omaha v. Mogck, 66 S.D. 514, 286 N.W. 322, 323 (1939)
- Lang v. WPPO, 2004 SD 107, ¶ 19, 688 N.W.2d 403, 409
- Smith v. Egan, 35 S.D. 10, 150 N.W. 290, 291 (1914)
- Stakke et al. v. Chapman, 13 S.D. 269, 83 N.W. 261, 262 (1900)
- Gilbert v. United National Bank, 436 N.W.2d 23, 25-26 (S.D. 1989)