SUPREME COURT OF ARKANSAS

Marcus G. Carter and Commerce Alliance, Inc. v. Four Seasons Funding Corporation

351 Ark. 637 (2003) (Ark. 2003) · No. No. 01-1315 · Decided February 6, 2003

SUMMARY

The Supreme Court of Arkansas affirmed a judgment arising from agreements under which Four Seasons Funding Corporation purchased accounts receivable from Commerce Alliance, Inc. The court held that the transactions were bona fide factoring sales rather than disguised usurious loans, and upheld the contractual recourse provisions and damages award. The court also upheld the imposition of a constructive trust over accounts receivable and proceeds.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Robert L. Brown, Justice
JURISDICTION	Arkansas
DECIDED	February 6, 2003
DOCKET	No. 01-1315
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appellants appealed from a circuit-court judgment entered after a bench trial awarding Four Seasons $313,836.79, imposing a constructive trust on accounts receivable and proceeds, and rejecting appellants' counterclaims.
STANDARD OF REVIEW	Matters sounding in equity are reviewed de novo on the record for factual and legal questions, but factual findings are not reversed unless clearly erroneous. A finding is clearly erroneous when, despite supporting evidence, the appellate court is left with a definite and firm conviction that a mistake has been made.
PRECEDENTIAL VALUE	binding
PARTIES	Marcus G. Carter, Commerce Alliance, Inc. v. Four Seasons Funding Corporation

TOPICS

contracts commercial commercial litigation contract interpretation constructive trust

PRACTICE AREAS

contracts commercial litigation remedies constitutional law trusts

QUESTIONS PRESENTED

1. Whether the parties' factoring transactions were bona fide sales of accounts receivable or disguised usurious loans.
2. Whether the Addendum prevented Four Seasons from using non-factored proceeds pursuant to its security interest after Commerce Alliance breached its warranty that factored accounts would be collectible within ninety days.
3. Whether the circuit court properly awarded Four Seasons the face value of the outstanding factored accounts as damages.
4. Whether imposition of a constructive trust was proper despite Four Seasons' alleged adequate remedy at law.
5. Whether Commerce Alliance's alleged loss or revocation of its corporate charter deprived it of capacity to pursue the appeal.

HOLDINGS

1. The transactions were bona fide sales of accounts receivable rather than loans, and appellants failed to prove by clear and convincing evidence that the arrangement was a subterfuge for usury.
2. The Addendum's requirement that Four Seasons remit non-factored proceeds without a factor fee did not eliminate or alter Four Seasons' security interest in all of Commerce Alliance's accounts and proceeds after Commerce Alliance breached the ninety-day collectability warranty.
3. The circuit court properly awarded Four Seasons the face value of the unpaid factored accounts, rather than limiting damages to the contract's discount amount.
4. A constructive trust was an appropriate remedy because Carter and his companies wrongfully controlled or disposed of proceeds belonging to Four Seasons and would be unjustly enriched if permitted to retain them.
5. The court declined to decide the capacity issue because it was insufficiently developed factually and legally in the circuit court and on appeal.

KEY QUOTATIONS

> *"To conclude as appellants would have us do under these facts would be to cast legal doubt on the business of factoring accounts receivable as a means of raising capital. This we are not inclined to do."* (at 400)

> *"A constructive trust is imposed where a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it."* (at 403)

FACTUAL BACKGROUND

Commerce Alliance arranged government-supply transactions and assigned related accounts receivable to Four Seasons under a Purchase and Sale Agreement. Four Seasons paid 65 percent of each account's face value initially, with the balance subject to a discount schedule, and received recourse rights and a security interest in Commerce Alliance's accounts and proceeds. An Addendum placed Four Seasons officers in control of a bank account receiving both factored and non-factored proceeds, while requiring remittance of non-factored proceeds without a factor fee. After some factored accounts remained uncollectable for more than ninety days, Four Seasons applied proceeds from non-factored accounts toward the delinquent factored accounts; Carter later removed Four Seasons' signors and transferred business assets among Carter-controlled entities.

PROCEDURAL HISTORY

Pulaski Bank filed an interpleader action concerning funds in an account and named Four Seasons, Carter, Alliance Escrow, and Commerce Alliance as defendants. Four Seasons filed a third-party complaint seeking an accounting, payment of proceeds, and damages; Carter and Commerce Alliance counterclaimed that the factoring transactions were disguised usurious loans and that Four Seasons had breached the agreements and converted non-factored proceeds. After denying cross-motions for summary judgment, the circuit court conducted a bench trial, entered judgment for Four Seasons, awarded damages and prejudgment interest and attorneys' fees, ordered an accounting, and imposed a constructive trust. The Arkansas Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- ConAgra, Inc. v. Tyson Foods, Inc., 342 Ark. 672, 30 S.W.3d 725 (2000)
- Ferguson v. Green, 266 Ark. 556, 587 S.W.2d 18 (1979)
- Lewellyn v. Lewellyn, 351 Ark. 346, 93 S.W.3d 681 (2002)
- State ex rel. Bryant v. R & A Inv. Co., Inc., 336 Ark. 289, 985 S.W.2d 299 (1999)
- McElroy v. Grisham, 306 Ark. 4, 810 S.W.2d 933 (1991)
- Sparks v. Robinson, 66 Ark. 460, 51 S.W. 460 (1899)
- Standard Leasing Corp. v. Schmidt Aviation, 264 Ark. 851, 576 S.W.2d 181 (1979)
- General Electric Credit Corp. v. Robbins, 414 F.2d 208 (8th Cir. 1969)
- Haley v. Greenhaw, 235 Ark. 481, 360 S.W.2d 753 (1962)
- Hare v. General Contract Purchase Corp., 220 Ark. 601, 249 S.W.2d 973 (1952)
- Major's Furniture Mart, Inc. v. Castle Credit Corp., Inc., 602 F.2d 538 (3d Cir. 1979)
- In re Golden Plan of California, 829 F.2d 705 (9th Cir. 1986)
- Yellow Cab of Texarkana v. Texarkana Municipal Airport, 230 Ark. 401, 322 S.W.2d 688 (1959)
- Milana v. Credit Discount Co., 27 Cal. 2d 335, 163 P.2d 869 (1945)
- Betts v. Betts, 326 Ark. 544, 932 S.W.2d 336 (1996)

- Edwards v. Edwards, 311 Ark. 339, 843 S.W.2d 846 (1992)
- Mitchell v. Mitchell, 28 Ark. App. 295, 773 S.W.2d 853 (1989)
- City of Benton v. Arkansas Soil and Water Conservation Commission, 345 Ark. 249, 45 S.W.3d 805 (2001)
- Union National Bank v. Barnhart, 308 Ark. 190, 823 S.W.2d 878 (1992)

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