NEBRASKA SUPREME COURT

DMK Biodiesel, LLC, and Lanoha RVBF, LLC v. John McCoy et al.

DMK Biodiesel, LLC v. McCoy, 290 Neb. 286 (2015) · No. No. S-14-150 · Decided March 6, 2015

SUMMARY

The Nebraska Supreme Court reversed summary judgment against DMK Biodiesel, LLC and Lanoha RVBF, LLC in their claims under the Securities Act of Nebraska. The court held that reliance and investor sophistication are not elements of a claim under Neb. Rev. Stat. § 8-1118(1), and that integration clauses do not bar such claims. The case was remanded because genuine issues of material fact remained regarding the alleged misrepresentations, omissions, and the investors' actual knowledge.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Stephan, J.; Heavican, C.J.; Connolly, J.; McCormack, J.; Miller-Lerman, J.; Cassel, J.
JURISDICTION	Nebraska
DECIDED	March 6, 2015
DOCKET	No. S-14-150
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Second appeal from the Buffalo County District Court's grant of summary judgment for the defendants in an action alleging fraudulent sales of securities under Neb. Rev. Stat. § 8-1118(1).
STANDARD OF REVIEW	Summary judgment is reviewed to determine whether the pleadings and admitted evidence show no genuine issue of material fact or ultimate inference and whether the moving party is entitled to judgment as a matter of law; the evidence is viewed in the light most favorable to the party against whom judgment was entered. Statutory interpretation presents a question of law reviewed independently of the lower court's conclusions.
PRECEDENTIAL VALUE	published precedential opinion of the Nebraska Supreme Court
PARTIES	DMK Biodiesel, LLC, Lanoha RVBF, LLC v. John McCoy, John Hanson, Phil High, Jason Anderson, Renewable Fuels Technology, LLC

TOPICS

commercial litigation · statutory interpretation · summary judgment · appellate procedure · civil procedure

PRACTICE AREAS

securities regulation · commercial litigation · civil procedure · appellate procedure

QUESTIONS PRESENTED

1. Whether reliance is an element of an investor's claim against a securities seller under Neb. Rev. Stat. § 8-1118(1).
2. Whether an investor's sophistication or constructive knowledge bars a claim under § 8-1118(1), or imposes a duty to investigate or verify the seller's statements.
3. Whether integration or nonreliance provisions in the subscription agreements bar the plaintiffs' § 8-1118(1) claims.
4. Whether summary judgment was proper when genuine issues remained concerning whether the alleged misrepresentations and omissions occurred and whether the plaintiffs had actual knowledge of the true facts.

HOLDINGS

1. Reliance is not an element of an investor's claim against the seller of a security under § 8-1118(1). The phrase "by means of" requires a causal connection between the misleading statement or omission and the purchase, but it does not require proof that the buyer relied on the statement or omission.
2. A buyer's sophistication is irrelevant to a claim under § 8-1118(1). The statute does not impose a duty on the buyer to investigate or verify statements made by the seller, and constructive knowledge does not bar recovery; the statutory limitation concerns the buyer's actual knowledge of the untruth or omission.
3. Integration clauses and subscription-agreement provisions stating that the investors relied solely on the private placement memorandum do not bar a claim under § 8-1118(1).
4. Summary judgment was improper because genuine issues of material fact remained concerning whether the alleged material misrepresentations and omissions were made, their nature, and whether the plaintiffs had actual knowledge of the true facts.

KEY QUOTATIONS

> *"we hold that reliance is not an element of an investor's claim against the seller of a security under § 8-1118(1)."* (290 Neb. 295)

> *"a buyer's sophistication is irrelevant to a claim under § 8-1118(1)"* (290 Neb. 297)

> *"the integration clauses in the subscription agreements executed by DMK and Lanoha bar their claims under § 8-1118(1)."* (290 Neb. 298)

FACTUAL BACKGROUND

Republican Valley Biofuels, LLC, sought investors in a proposed biodiesel production facility through a private placement memorandum. DMK Biodiesel and Lanoha RVBF became minority investors after signing subscription agreements stating that they had relied solely on the memorandum and had not relied on other representations. They later alleged that Renewable Fuels Technology and the individual defendants made false oral representations and material omissions concerning the investment and facility. The district court assumed the alleged oral representations had been made but granted summary judgment based on the plaintiffs' sophistication and contractual nonreliance provisions.

PROCEDURAL HISTORY

DMK and Lanoha sued Renewable and the individual defendants, alleging that false oral representations and omissions induced their investments in Republican Valley Biofuels, LLC. The district court initially granted motions to dismiss, but the Nebraska Supreme Court reversed because the court had considered matters outside the pleadings without conducting an evidentiary hearing. On remand, after an evidentiary hearing, the district court granted summary judgment for the defendants, reasoning that the plaintiffs' sophistication and contractual nonreliance provisions barred their securities-fraud claim. The Nebraska Supreme Court reversed and remanded.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

Remanded for further proceedings consistent with the opinion, including resolution of the remaining factual issues concerning the alleged misrepresentations and omissions and the plaintiffs' actual knowledge.

CASES CITED

- DMK Biodiesel v. McCoy, 285 Neb. 974, 830 N.W.2d 490 (2013)
- Young v. Govier & Milone, 286 Neb. 224, 835 N.W.2d 684 (2013)
- Selma Development v. Great Western Bank, 285 Neb. 37, 825 N.W.2d 215 (2012)
- Dresser v. Union Pacific RR. Co., 282 Neb. 537, 809 N.W.2d 713 (2011)
- Radiology Servs. v. Hall, 279 Neb. 553, 780 N.W.2d 17 (2010)
- Spady v. Spady, 284 Neb. 885, 824 N.W.2d 366 (2012)
- Village of Hallam v. L.G. Barcus & Sons, 281 Neb. 516, 798 N.W.2d 109 (2011)
- Shepherd v. Chambers, 281 Neb. 57, 794 N.W.2d 678 (2011)
- Hooper v. Freedom Fin. Group, 280 Neb. 111, 784 N.W.2d 437 (2010)
- Labenz v. Labenz, 198 Neb. 548, 253 N.W.2d 855 (1977)
- Loewenstein v. Midwestern Inv. Co., 181 Neb. 547, 149 N.W.2d 512 (1967)
- Fisher v. PayFlex Systems USA, 285 Neb. 808, 829 N.W.2d 703 (2013)
- Mutual of Omaha Bank v. Murante, 285 Neb. 747, 829 N.W.2d 676 (2013)
- Kerford Limestone Co. v. Nebraska Dept. of Rev., 287 Neb. 653, 844 N.W.2d 276 (2014)

- SourceGas Distrib. v. City of Hastings, 287 Neb. 595, 844 N.W.2d 256 (2014)
- Sanders v. John Nuveen & Co., Inc., 619 F.2d 1222 (7th Cir. 1980)
- MidAmerica Fed. S. & L. v. Shearson/American Express, Inc., 886 F.2d 1249 (10th Cir. 1989)
- Gilbert v. Nixon, 429 F.2d 348 (10th Cir. 1970)
- Johns Hopkins University v. Hutton, 422 F.2d 1124 (4th Cir. 1970)
- In re Phar-Mor, Inc. Litigation, 848 F. Supp. 46 (W.D. Pa. 1993)
- Gohler v. Wood, 919 P.2d 561 (Utah 1996)
- Guarino v. Interactive Objects, Inc., 122 Wash. App. 95, 86 P.3d 1175 (2004)
- Keogler v. Krasnoff, 268 Ga. App. 250, 601 S.E.2d 788 (2004)
- Dunn v. Borta, 369 F.3d 421 (4th Cir. 2004)
- Carothers v. Rice, 633 F.2d 7 (6th Cir. 1980)
- Alton Box Bd. Co. v. Goldman, Sachs & Co., 560 F.2d 916 (8th Cir. 1977)
- Forrestal Village, Inc. v. Graham, 551 F.2d 411 (D.C. Cir. 1977)
- Green v. Green, 293 S.W.3d 493 (Tenn. 2009)
- Marram v. Kobrick Offshore Fund, Ltd., 442 Mass. 43, 809 N.E.2d 1017 (2004)
- Acme Propane, Inc. v. Tenexco, Inc., 844 F.2d 1317 (7th Cir. 1988)
- Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc., 552 U.S. 148, 128 S. Ct. 761, 169 L. Ed. 2d 627 (2008)
- Ross v. Bank South, N.A., 885 F.2d 723 (11th Cir. 1989)
- Wright v. National Warranty Co., 953 F.2d 256 (6th Cir. 1992)
- Kelsey v. Nagy, 410 N.E.2d 1333 (Ind. App. 1980)