UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Infinity Capital LLC v. Francis David Corp.

No. No. 19-4004, United States Court of Appeals for the Sixth Circuit (April 14, 2021)

SUMMARY

We

CASE DETAILS

COURT	United States Court of Appeals for the Sixth Circuit
WRITING FOR THE COURT	Murphy; Batchelder; Stranch
JURISDICTION	Federal
DECIDED	April 14, 2021
DOCKET	No. 19-4004
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from the United States District Court for the Northern District of Ohio, consolidated breach-of-contract actions after bench trial.
STANDARD OF REVIEW	De novo for legal issues (contract interpretation, forfeiture clause validity); clear error for factual findings; abuse of discretion for damages award.
PRECEDENTIAL VALUE	unpublished
PARTIES	Francis David Corporation, dba Electronic Merchant Systems v. Infinity Capital LLC; John Paul Golino

TOPICS

contracts · breach of contract · liquidated damages · damages · contract interpretation · noncompete agreements · standard of review · commercial litigation · appellate procedure

PRACTICE AREAS

Contracts · Commercial Litigation

QUESTIONS PRESENTED

1. Whether the forfeiture clause is an unenforceable penalty under Ohio law.

2. Whether the nonsolicitation provision is unambiguous and bars all solicitations of EMS merchants.
3. Whether the district court erred in calculating damages by failing to consider costs and using the wrong monthly residual income figure.

HOLDINGS

1. The forfeiture clause is an unenforceable penalty because EMS treated the clause as a remedy for breach, not as a condition on residual income, and the clause fails the penalty analysis under Ohio law.
2. The nonsolicitation provision is ambiguous, and the district court's interpretation (barring only solicitations that reduce EMS business) is not clearly erroneous.
3. The district court erred by using the wrong monthly residual income figure ($133,000 instead of $127,896.62) and by failing to consider costs when calculating damages.

KEY QUOTATIONS

> *"A penalty provision enforces an absolute noncompetition ban that 'prevent[s] an [agent] from working for a competitor,' whereas a forfeiture clause imposes an optional noncompetition restriction that only 'call[s] for a forfeiture of certain benefits should he do so.'"* (at 12)

> *"The sole purpose of contract damages is to compensate the nonbreaching party for losses suffered as a result of a breach."* (at 21)

> *"It is hard to see how a clause seeks to estimate the amount of loss from a breach if it grants the same lump-sum payment for major and minor breaches alike."* (at 10)

FACTUAL BACKGROUND

Electronic Merchant Services (EMS), an independent sales organization, contracted with Choice Merchant Services (Infinity Capital) as an agent to recruit merchants. The contract included a nonsolicitation provision and a forfeiture clause allowing EMS to stop paying residual income if Choice breached the nonsolicitation provision. Choice solicited EMS merchants for secondary processing, and EMS terminated the agreement and stopped residual payments. EMS then sued for breach of contract, and Choice sued for wrongful termination.

PROCEDURAL HISTORY

EMS brought breach-of-contract suit against Choice and Golino in state court; removed to federal court on diversity jurisdiction. Choice and Golino counterclaimed. District court consolidated cases and held a bench trial, issuing a mixed ruling: found Choice breached nonsolicitation provision but held forfeiture clause unenforceable penalty, awarded damages to both parties. EMS appealed the forfeiture ruling, interpretation of nonsolicitation provision, and damages calculation.

DISPOSITION

other

REMAND INSTRUCTIONS

On remand, the district court should recalculate Choice's damages using the correct monthly residual income figure and considering the costs that Choice would have incurred to maintain its portfolio. The court may take additional evidence.

CASES CITED

- Carl Ralston Ins. Agency, Inc. v. Nationwide Mut. Ins. Co., 2007 WL 397313 (Ohio Ct. App. Feb. 7, 2007)
- Schlumberger Tech. Corp. v. Blaker, 859 F.2d 512 (7th Cir. 1988)
- Boone Coleman Constr., Inc. v. Piketon, 50 N.E.3d 502 (Ohio 2016)
- Lake Ridge Acad. v. Carney, 613 N.E.2d 183 (Ohio 1993)
- XCO Int'l Inc. v. Pac. Sci. Co., 369 F.3d 998 (7th Cir. 2004)
- Samson Sales, Inc. v. Honeywell, Inc., 465 N.E.2d 392 (Ohio 1984)
- Kezdi v. Nationwide Ins. Co., 1977 WL 201250 (Ohio Ct. App. Aug. 11, 1977)
- Tatom v. Ameritech Corp., 305 F.3d 737 (7th Cir. 2002)
- Masco Corp. v. Wojcik, 795 F. App'x 424 (6th Cir. 2019)
- Foster Wheeler Enviresponse, Inc. v. Franklin Cnty. Convention Facs. Auth., 678 N.E.2d 519 (Ohio 1997)
- Cal. Fitness I, Inc. v. Lifestyle Fam. Fitness, Inc., 433 F. App'x 329 (6th Cir. 2011)
- F. Enters., Inc. v. Ky. Fried Chicken Corp., 351 N.E.2d 121 (Ohio 1976)
- MNM & MAK Enters., LLC v. HIIT Fit Club, LLC, 134 N.E.3d 242 (Ohio Ct. App. 2019)
- Hance v. Norfolk S. Ry. Co., 571 F.3d 511 (6th Cir. 2009)