SUPREME COURT OF SOUTH DAKOTA

Rodney Foster v. Thomas Foster

Foster v. Foster, 673 N.W.2d 667 (S.D. 2003) · No. No. 22784 · Decided December 23, 2003

SUMMARY

The Supreme Court of South Dakota considered whether a debtor who failed to disclose a claim concerning real property in bankruptcy was estopped from later pursuing it in circuit court. The court held that claims arising from the unsigned agreement belonged to the bankruptcy estate and had been assigned to the defendants, but that rights potentially arising from a later handwritten note were not part of the bankruptcy estate and could proceed for further factual and legal determination. The judgment was affirmed in part, reversed in part, and remanded.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Konenkamp, Justice; Gilbertson, Chief Justice; Sabers, Justice; Zinter, Justice; Meierhenry, Justice
JURISDICTION	South Dakota
DECIDED	December 23, 2003
DOCKET	No. 22784
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Rodney Foster appealed from an order granting Thomas Foster's motion for summary judgment in an action seeking to enforce an agreement concerning estate real property. The South Dakota Supreme Court affirmed in part, reversed in part, and remanded.
STANDARD OF REVIEW	Summary judgment is reviewed to determine whether genuine issues of material fact existed and whether the law was correctly applied. Statutory and contract interpretation are reviewed de novo. The judgment will be affirmed if any legal basis supports it.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Rodney Foster v. Thomas Foster

TOPICS

bankruptcy · chapter 7 · contracts · summary judgment · appellate procedure

PRACTICE AREAS

Bankruptcy Contracts Real estate Civil procedure Appellate procedure

QUESTIONS PRESENTED

1. Whether summary judgment was proper despite alleged factual disputes.
2. Whether Rodney's claims arising from the original unsigned agreement were property of the bankruptcy estate and were barred after he failed to disclose them and the bankruptcy trustee sold the estate's nonexempt assets.
3. Whether rights arising from the handwritten note executed after conversion of the bankruptcy case to Chapter 7 were included in the bankruptcy estate and therefore barred.
4. Whether the handwritten note could constitute a new and separate agreement rather than a ratification of the original agreement.

HOLDINGS

1. Any legal or equitable interest Rodney had under the original unsigned agreement was property of the bankruptcy estate even though he failed to disclose it, and he could not later assert that claim in circuit court.
2. Rights conferred by the handwritten note executed after conversion from Chapter 12 to Chapter 7 were not, on the record presented, property of the bankruptcy estate merely because they arose after the conversion date.
3. The existence and legal effect of the handwritten note presented unresolved factual and legal questions, requiring remand for the trial court to determine whether it formed a contract and what rights it conferred.
4. Cross-motions for summary judgment do not establish that no genuine issues of material fact exist; both motions must be denied when genuine factual disputes or disputes concerning reasonable inferences remain.

KEY QUOTATIONS

> *"As to the bankruptcy estate property, Rodney has no claim."* (672)

> *"On the other hand, with respect to the handwritten note significant questions of fact and law remain unresolved."* (673)

> *"Affirmed in part, reversed in part, and remanded."* (673)

FACTUAL BACKGROUND

Rodney and Thomas Foster, co-executors of their father's estate, arranged for Thomas to acquire estate real property while Rodney was to receive an option to acquire a one-half interest after contributing money toward estate debts. Rodney filed for Chapter 12 bankruptcy in February 1996, later converted to Chapter 7, but did not disclose the option or related claims in his bankruptcy schedules. In September 1997, after conversion to Chapter

7, Thomas signed a handwritten note concerning Rodney's receipt of one-half of the estate land upon payment of specified debts. The bankruptcy trustee later sold and assigned all of Rodney's nonexempt estate property to Thomas and Jody Foster for $30,000.

PROCEDURAL HISTORY

Rodney sued Thomas in circuit court, alleging breach of an original agreement concerning an option to acquire an interest in estate property and relying additionally on a later handwritten note. The parties filed cross-motions for summary judgment. The circuit court held that Rodney was estopped from pursuing the property claims because he had failed to disclose them in bankruptcy. The Supreme Court affirmed the ruling as to claims arising from the original unsigned agreement but reversed and remanded as to potential claims arising from the later handwritten note.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must determine whether the handwritten note established a contract and, if so, what rights that contract conferred upon Rodney. Rodney may rely only on consideration or performance connected to the handwritten note and may not rely on the prior unsigned agreement or conduct occurring before conversion of the bankruptcy case.

CASES CITED

- Harms v. Northland Ford Dealers, 1999 SD 143, ¶ 8, 602 N.W.2d 58, 61
- Kobbeman v. Oleson, 1998 SD 20, ¶ 4, 574 N.W.2d 633, 635
- Harn v. Continental Lumber Co., 506 N.W.2d 91, 94 (S.D. 1993)
- De Smet Ins. Co. of South Dakota v. Gibson, 1996 SD 102, ¶ 5, 552 N.W.2d 98, 99
- St. Paul Fire and Marine Insurance Co. v. Engelmann, 2002 SD 8, ¶ 15, 639 N.W.2d 192, 199
- State Farm Mut. Auto. Ins. Co. v. Vostad, 520 N.W.2d 273, 275 (S.D. 1994)
- Oneida Motor Freight, Inc. v. United Jersey Bank, 848 F.2d 414, 417, 419 (3d Cir. 1988)
