

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Niemi v. Lasshofer

770 F.3d 1331 (10th Cir. 2014) · No. 13-1256 · Decided November 4, 2014

SUMMARY

The Tenth Circuit reviewed a default judgment arising from an alleged fraudulent financing scheme involving a Colorado real estate development project. The court addressed standing, personal jurisdiction, venue, appellate jurisdiction, fugitive disentitlement, bond requirements, and damages. It affirmed most of the district court’s rulings, reversed as to personal jurisdiction over Innovatis Immobilien GmbH, and remanded with instructions to vacate the contempt order.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Lucero, Circuit Judge; O'Brien, Circuit Judge; Gorsuch, Circuit Judge
JURISDICTION	Federal
DECIDED	November 4, 2014
DOCKET	13-1256
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendants appealed from a Colorado federal district court's default judgment awarding plaintiffs \$61,692,492, trebled under the Colorado Organized Crime Control Act to \$185,077,476, together with rulings rejecting challenges to standing, subject-matter jurisdiction, personal jurisdiction, and venue, and a contempt order imposing sanctions and issuing a bench warrant.
STANDARD OF REVIEW	Subject-matter jurisdiction and standing were reviewed de novo; personal jurisdiction was reviewed de novo; forum-selection-clause enforceability was reviewed de novo; default judgment was reviewed for abuse of discretion; damages methodology was reviewed de novo and the amount of damages for clear error; factual findings based on witness credibility were reviewed for clear error.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Erwin Lasshofer, Innovatis GmbH, Innovatis Immobilien GmbH, Innovatis Asset Management SA v. John Niemi, Robert Naegele, III, Jesper Parnevik

TOPICS

personal jurisdiction venue default judgment appellate jurisdiction damages

PRACTICE AREAS

civil procedure personal jurisdiction appellate procedure contracts commercial litigation remedies

QUESTIONS PRESENTED

1. Whether the appeal was ripe despite the district court's Rule 54(b) certification and initially unresolved claims.
2. Whether the fugitive-disentitlement doctrine required dismissal of the civil appeal.
3. Whether defendants were required to post a bond or obtain a stay before pursuing the appeal.
4. Whether plaintiffs had statutory standing to assert their claims and whether the standing issue deprived the district court of subject-matter jurisdiction.
5. Whether the district court had personal jurisdiction over each Lasshofer defendant.
6. Whether the forum-selection clause required the action to be brought in New York.
7. Whether the district court properly calculated and awarded damages after entering default judgment.
8. Whether the contempt order, sanctions, and bench warrant could remain in effect after the preliminary injunction on which they were based had been vacated.

HOLDINGS

1. An appeal became ripe when the district court dismissed all remaining claims with prejudice; a dismissal of all claims is final for appellate-jurisdiction purposes and makes Rule 54(b) certification unnecessary.
2. The fugitive-disentitlement doctrine does not require dismissal of this civil appeal merely because defendants refused to comply with district-court orders and remained outside the court's immediate control.
3. An appellant is not required to post a supersedeas bond or obtain a stay as a prerequisite to filing and pursuing an appeal.
4. Plaintiffs possessed statutory standing to assert the claims because they provided sufficient evidence that the relevant corporate claims had been assigned to them before suit was filed; the standing issue did not implicate subject-matter jurisdiction.
5. The District of Colorado had specific personal jurisdiction over Lasshofer, Innovatis GmbH, and Innovatis Asset Management SA, but not over Innovatis Immobilien GmbH.
6. The New York forum-selection clause was unenforceable because plaintiffs adequately demonstrated that the clause itself was fraudulently induced.
7. The district court did not abuse its discretion in entering default judgment or awarding \$61,692,492 in actual damages and up to \$185,077,476 after trebling under COCCA.

8. The contempt order, daily sanctions, and bench warrant premised on violation of the preliminary injunction had to be vacated after the preliminary injunction was vacated.

KEY QUOTATIONS

“The terms of of the Loan Agreement—including the non-assignment clause—are therefore void and unenforceable.” (-22-)

“We are persuaded, however, that Innovatis Immobilien GmbH could not have taken action exposing it to personal jurisdiction because it did not exist until a year after the latest events underlying the suit.” (-29-)

“We conclude that the forum selection clause itself was fraudulently induced, and thus reject Appellants’ venue challenge.” (-32-)

“On clear error review, we will not disturb the district court’s factual finding that “more likely than not, [Plaintiffs’ project] would have been successful. A huge success. But for the lack of financing.”” (-40-)

FACTUAL BACKGROUND

Plaintiffs pursued a large-scale Fairmont Breckenridge development in Colorado and sought approximately \$200 to \$220 million in Phase II financing. Defendants represented that they could secure the financing, obtained a \$180,000 commitment fee and a \$2 million collateral deposit, and repeatedly promised that loan proceeds would be funded, but no loan proceeds were ever disbursed. Plaintiffs alleged that defendants' fraudulent financing scheme caused the development project to collapse and later obtained assignments of claims from related entities involved in the loan agreement.

PROCEDURAL HISTORY

Plaintiffs sued defendants in the United States District Court for the District of Colorado alleging a fraudulent financing scheme involving a proposed loan for a Colorado real-estate development. After defendants declined to answer or participate further in the district-court proceedings, the district court entered default judgment, held defendants in contempt, imposed sanctions, and entered a final judgment under Federal Rule of Civil Procedure 54(b). The Tenth Circuit concluded the appeal was ripe, rejected the fugitive-disentitlement and bond arguments, affirmed most of the district court's rulings and damages award, reversed the finding of personal jurisdiction over Innovatis Immobilien GmbH, and remanded to vacate the contempt order and related sanctions and bench warrant.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Affirm the district court's judgments except as to personal jurisdiction over Innovatis Immobilien GmbH; vacate the contempt order, the sanctions, and the bench warrant premised on the vacated preliminary injunction; conduct further proceedings consistent with the opinion.

CASES CITED

- Niemi v. Lasshofer, 728 F.3d 1252 (10th Cir. 2013)
- Colorado v. Idarado Mining Co., 916 F.2d 1486, 1490 (10th Cir. 1990)
- Lexmark International, Inc. v. Static Control Components, Inc., 134 S. Ct. 1377 (2014)
- Bixler v. Foster, 596 F.3d 751, 758-59 (10th Cir. 2010)
- Wilderness Society v. Kane County, 632 F.3d 1162, 1168 n.1 (10th Cir. 2011) (en banc)
- Huffman v. Saul Holdings Ltd. Partnership, 194 F.3d 1072, 1076-77 (10th Cir. 1999)
- United States v. McGehee, 672 F.3d 860, 873 (10th Cir. 2012)
- Cavic v. Pioneer Astro Industries, Inc., 825 F.2d 1421, 1425 (10th Cir. 1987)
- Bennett v. Coors Brewing Co., 189 F.3d 1221, 1229 (10th Cir. 1999)
- Hoiles v. Alioto, 461 F.3d 1224, 1236-37 (10th Cir. 2006)
- Hukill v. Oklahoma Native American Domestic Violence Coalition, 542 F.3d 794, 797 (10th Cir. 2008)
- ClearOne Communications, Inc. v. Bowers, 651 F.3d 1200, 1214 (10th Cir. 2011)
- Dudnikov v. Chalk & Vermilion Fine Arts, Inc., 514 F.3d 1063, 1070-71 (10th Cir. 2008)
- Federal Deposit Insurance Corp. v. Oaklawn Apartments, 959 F.2d 170, 174 (10th Cir. 1992)
- Employers Mutual Casualty Co. v. Bartile Roofs, Inc., 618 F.3d 1153, 1159-60 (10th Cir. 2010)
- Newsome v. Gallacher, 722 F.3d 1257, 1264-65 (10th Cir. 2013)
- Home-Stake Production Co. v. Talon Petroleum, C.A., 907 F.2d 1012, 1020 (10th Cir. 1990)
- Calder v. Jones, 465 U.S. 783, 790 (1984)
- Pro Axess, Inc. v. Orlux Distribution, Inc., 428 F.3d 1270, 1279-80 (10th Cir. 2005)
- Roska ex rel. Roska v. Peterson, 328 F.3d 1230, 1246 n.13 (10th Cir. 2003)
- Melea, Ltd. v. Jawer SA, 511 F.3d 1060, 1070 (10th Cir. 2007)
- K & V Scientific Co. v. Bayerische Motoren Werke Aktiengesellschaft, 314 F.3d 494, 497 (10th Cir. 2002)
- Atlantic Marine Construction Co. v. United States District Court, 134 S. Ct. 568, 575 (2013)
- M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 15 (1972)
- Riley v. Kingsley Underwriting Agencies, Ltd., 969 F.2d 953, 960 (10th Cir. 1992)
- Scherk v. Alberto-Culver Co., 417 U.S. 506, 519 n.14 (1974)
- Venable v. Haislip, 721 F.2d 297, 300 (10th Cir. 1983)
- Olcott v. Delaware Flood Co., 327 F.3d 1115, 1124 (10th Cir. 2003)
- Southwest Stainless, LP v. Sappington, 582 F.3d 1176, 1183 (10th Cir. 2009)
- Motley v. Marathon Oil Co., 71 F.3d 1547, 1553 (10th Cir. 1995)
- Weyerhaeuser Co. v. Brantley, 510 F.3d 1256, 1262 (10th Cir. 2007)
- Trimble v. City & County of Denver, 697 P.2d 716, 724 (Colo. 1985)
- Colorado Department of Transportation v. Brown Group Retail, Inc., 182 P.3d 687 (Colo. 2008)
- James River Insurance Co. v. Rapid Funding, LLC, 658 F.3d 1207, 1214-16 (10th Cir. 2011)
- Water Pik, Inc. v. Med-Systems, Inc., 726 F.3d 1136, 1145 (10th Cir. 2013)
- Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)

- Procter & Gamble Co. v. Haugen, 427 F.3d 727, 744 (10th Cir. 2005)
- Mitchell v. Maynard, 80 F.3d 1443, 1449-50 (10th Cir. 1996)
- Peacock v. Thomas, 516 U.S. 349, 356 (1996)

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