SUPREME COURT OF IDAHO

Howard v. Perry, 141 Idaho 139

106 P.3d 465 (2005) · No. No. 29973 · Decided February 7, 2005

SUMMARY

The Idaho Supreme Court reviewed litigation arising from the dissolution of a professional limited liability law firm. It held that the operating agreement's merger clause made the agreement integrated, rendering parol evidence inadmissible to vary its terms, but affirmed the agreement's interpretation concerning asset distribution and the denial of treating one member's personal attorney fees as a firm debt. The court vacated the judgment and remanded for further proceedings, awarding no costs or attorney fees on appeal.

CASE DETAILS

COURT	Supreme Court of Idaho
WRITING FOR THE COURT	Eismann, Justice; Schroeder, Chief Justice; Trout, Justice; Burdick, Justice; Jones, Justice
JURISDICTION	Idaho
DECIDED	February 7, 2005
DOCKET	No. 29973
DISPOSITION	vacated
PROCEDURAL POSTURE	Appeal and cross-appeal from a final judgment entered after a bench trial concerning dissolution and winding up of a professional limited liability company.
STANDARD OF REVIEW	The court reviewed contract ambiguity and interpretation issues de novo or with free review. It reviewed the district court's factual determinations following the bench trial under the applicable standard, but the principal contract issue was resolved as a matter of law.
PRECEDENTIAL VALUE	Published Idaho Supreme Court opinion; precedential
PARTIES	Mark Perry v. John P. Howard, Thomas H. Lopez, Michael E. Kelly

TOPICS

parol evidence rule · contract interpretation · limited liability companies · dissolution · appellate procedure

PRACTICE AREAS

contracts · limited liability companies · corporate law · commercial litigation · appellate procedure

QUESTIONS PRESENTED

1. Whether the district court erred by finding that the written operating agreement was not integrated and admitting parol evidence to vary its terms.
2. Whether the district court correctly interpreted the operating agreement's asset-distribution provisions.
3. Whether Perry's attorney fees incurred in defending the litigation were a debt of the limited liability company under Idaho Code § 53-644(2).
4. Whether Perry was entitled to attorney fees under Idaho Code §§ 12-120(3) and 12-121 in the trial court or on appeal.

HOLDINGS

1. A written contract that is complete on its face, unambiguous, and contains a merger clause is integrated; absent allegations of fraud or mistake, extrinsic evidence of prior or contemporaneous agreements may not be admitted to contradict, vary, alter, add to, or detract from its terms. The district court therefore erred in admitting parol evidence to establish that the firm orally assumed the Wells Fargo loan.
2. The operating agreement unambiguously provided that liabilities for distributions under Article 5 were determined as of the date of dissolution and concerned money actually collected, not earned but uncollected accounts receivable. Accordingly, receivables generated by the plaintiffs were to be distributed among all members under the agreement rather than solely to the members who generated them.
3. Perry's attorney fees were not a debt of the limited liability company because Idaho Code § 53-644(2) applies only to defense of suits undertaken in the name of and for and on behalf of the company, and no attorney appeared or defended the action on behalf of the firm.
4. The court did not decide whether attorney fees were awardable under Idaho Code §§ 12-120(3) or 12-121 because vacatur of the judgment meant that there was presently no prevailing party. Perry was likewise not entitled to fees on appeal because he prevailed in part and did not prevail in part.

KEY QUOTATIONS

> *"A written contract that contains a merger clause is complete upon its face."* (468)

> *"The merger clause is not merely a factor to consider in deciding whether the agreement is integrated; it proves the agreement is integrated."* (468)

> *"Although that may be unfair under the circumstances, courts do not possess the roving power to rewrite contracts in order to make them more equitable"* (469)

FACTUAL BACKGROUND

The parties formed a professional limited liability company law firm and executed written operating agreements, including an agreement dated August 1, 1998, and a second amended agreement dated January 1, 2001. The agreements contained merger clauses but did not expressly address certain office assets, leases, or a preformation Wells Fargo loan associated with some members. After the firm dissolved in September 2001, the plaintiffs sought winding up and distribution of the firm's assets, while disputes arose over whether the firm had assumed the Wells Fargo loan, how receivables should be distributed, and whether Perry's defense fees were firm debts.

PROCEDURAL HISTORY

The plaintiffs sued Mark Perry and others seeking judicially supervised winding up of the law firm and distribution of its assets, later asserting conversion and breach-of-fiduciary-duty claims against Perry individually. After a bench trial, the district court admitted parol evidence, found that the firm had orally assumed a preformation Wells Fargo loan, rejected the plaintiffs' conversion and fiduciary-duty claims, approved a distribution methodology, and refused or denied attorney-fee requests. Perry appealed and the plaintiffs cross-appealed. The Idaho Supreme Court reversed the ruling that the operating agreement was not integrated, affirmed the asset-distribution interpretation and denial of treatment of Perry's fees as firm debt, vacated the judgment, and remanded.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Remanded for further proceedings consistent with the opinion. No costs or attorney fees were awarded on appeal.

CASES CITED

- Kimbrough v. Reed, 130 Idaho 512, 943 P.2d 1232 (1997)
- Chambers v. Thomas, 123 Idaho 69, 844 P.2d 698 (1992)
- Valley Bank v. Christensen, 119 Idaho 496, 808 P.2d 415 (1991)
- Lovey v. Regence BlueShield of Idaho, 139 Idaho 37, 72 P.3d 877 (2003)
- Kelly v. Silverwood Estates, 127 Idaho 624, 903 P.2d 1321 (1995)