UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SEC v. Sharp Capital, Inc.

Sharp Capital · No. Nos. 01-10314, 01-11108 · Decided January 15, 2003

SUMMARY

The Fifth Circuit affirmed district court orders approving settlements negotiated by a court-appointed Special Master in an SEC receivership involving Sharp Capital and enjoining investors from pursuing related state-court claims. The court held that the district court acted within its discretion by using summary proceedings to determine whether the investors' claims were direct claims or claims belonging to the Sharp estate. The court concluded that the investors failed to show prejudice from the summary procedure or establish direct claims against the settling parties.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	W. Eugene Davis; Edith H. Jones; Jerry E. Smith
JURISDICTION	Federal
DECIDED	January 15, 2003
DOCKET	Nos. 01-10314, 01-11108
DISPOSITION	affirmed
PROCEDURAL POSTURE	Investors appealed consolidated district-court orders approving settlements negotiated by a court-appointed special master and permanently enjoining the investors from pursuing related state-court claims against Grupo Protexa and the Bank.
STANDARD OF REVIEW	Abuse of discretion for the district court's use of summary proceedings in the equity receivership and for its approval of the settlements and injunctions.
PRECEDENTIAL VALUE	published opinion
PARTIES	Robert Fernandez, Fifty-Three Other Similarly Situated Investor Clients, the Fernandez Group v. Ralph S. Janvey, on behalf of Sharp Capital, Inc., Special Master

TOPICS

civil procedure · appellate procedure · standard of review · remedies · commercial litigation

PRACTICE AREAS

civil procedure · appellate procedure · receiverships · commercial litigation · securities enforcement

QUESTIONS PRESENTED

1. Whether the district court could use a summary-judgment-type proceeding, rather than limiting its inquiry to the pleadings, to determine whether the Fernandez Group's claims were direct claims or derivative claims belonging to Sharp's receivership estate.
2. Whether the summary proceedings provided the Fernandez Group a fair and adequate opportunity to establish direct claims against the Bank and Grupo Protexa.
3. Whether the district court abused its discretion by approving the settlements and entering injunctions barring the Fernandez Group from pursuing the claims in state court.

HOLDINGS

1. A district court administering an equity receivership may use a summary-judgment-type proceeding to determine whether asserted causes of action are direct claims of investors or derivative claims belonging to the receivership estate; the court is not limited to a Rule 12(b)(6)-type review of the pleadings.
2. The district court did not abuse its discretion in requiring the Fernandez Group to come forward with evidence sufficient to create a genuine issue regarding direct claims after the special master identified the absence of supporting evidence.
3. The Fernandez Group failed to establish direct claims against the Bank or Grupo Protexa; claims arising from Sharp's handling or loss of investor funds were derivative of Sharp's claims and therefore within the special master's authority.

KEY QUOTATIONS

> *"If a cause of action alleges only indirect harm to a creditor (i.e., an injury that derives from harm to the debtor), and the debtor could have raised a claim for its direct injury under the applicable law, then the cause of action belongs to the estate."* (at 6)

> *"a district court does not generally abuse its discretion if its summary procedures permit parties to present evidence when the facts are in dispute and to make arguments regarding those facts."* (at 7)

> *"Our review of the record satisfies us that the process allowed by the district court was fair and adequate."* (at 11)

FACTUAL BACKGROUND

Sharp Capital collected approximately $82 million from more than 130 investors, including the 54-member Fernandez Group, promising conservative investments but instead making highly leveraged and substandard investments and loans. Sharp lost approximately 94 percent of the investors' money and pooled funds through EMCA. The Fernandez Group sued Grupo Protexa, NationsBank or Bank of America, and others in Texas state court, alleging various state-law theories. The investors did not produce evidence of direct communications, misrepresentations, or an independent duty owed to them by the Bank or Grupo Protexa.

PROCEDURAL HISTORY

The SEC brought an enforcement action against Sharp Capital and related parties, resulting in a preliminary injunction over Sharp and EMCA assets and the appointment of Ralph Janvey as special master. After the Fernandez Group sued Grupo Protexa, the Bank, and others in Texas state court, the special master negotiated settlements involving claims asserted to belong to Sharp and sought releases and injunctions against the investors. The district court conducted summary-judgment-type proceedings, found that the investors had not established direct claims, approved both settlements, and entered permanent injunctions. The Fifth Circuit consolidated the investors' timely appeals and affirmed.

DISPOSITION

affirmed

CASES CITED

- Caplin v. Marine Midland Grace Trust Co., 406 U.S. 416, 432 n.22 (1972)
- Schertz-Cibolo-Universal City v. Wright (In re Educators Group Health Trust), 25 F.3d 1281, 1284 (5th Cir. 1994)
- SEC v. Elliott, 953 F.2d 1560, 1566-68, 1570-71 (11th Cir. 1992)
- SEC v. Basic Energy & Affiliated Resources, 273 F.3d 657, 668 (6th Cir. 2001)
- CFTC v. Topworth International, Ltd., 205 F.3d 1107, 1113 (9th Cir. 1999)
- Kinsey v. Farmland Industries, 39 F.3d 603, 606 (5th Cir. 1994)
- Citizens National Bank v. Hill, 505 S.W.2d 246, 248 (Tex. 1974)
- In re MortgageAmerica Corp., 714 F.2d 1266, 1271 (5th Cir. 1983)