

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 19-40253

United States Court of Appeals
Fifth Circuit

FILED

March 12, 2020

Lyle W. Cayce
Clerk

ISCAVO AVOCADOS USA, L.L.C.,

Plaintiff - Appellee

v.

ADRIAN PRYOR,

Defendant - Appellant

v.

VILLITA AVOCADO, INCORPORATED,

Intervenor - Appellee

Appeal from the United States District Court
for the Southern District of Texas

Before KING, JONES, and COSTA, Circuit Judges.

EDITH H. JONES, Circuit Judge:

Appellees Iscavo Avocados USA, LLC (“Iscavo”) and Villita Avocados, Inc. (“Villita”) sued appellant Adrian Pryor and his now-defunct produce distribution company, Coram Deo Farms, Inc. (“Coram Deo”), for violations of the Perishable Agricultural Commodities Act (“PACA”). The district court granted summary judgment in favor of Iscavo and Villita and awarded them both attorneys’ fees. Pryor appeals. We affirm the summary judgment and

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the award of attorneys' fees to Villita, but we vacate and remand the award of attorneys' fees to Iscavo.

“The short lifespan of produce makes it risky business.” *In re Delta Produce, L.P.*, 845 F.3d 609, 612 (5th Cir. 2016). That risk is perhaps most acute for sellers of produce, who “must entrust their products to a buyer who may be thousands of miles away, and depend for their payment on his business acumen and fair dealing.” *Golman-Hayden Co. v. Fresh Source Produce Inc.*, 217 F.3d 348, 351 (5th Cir. 2000). Congress enacted PACA to protect sellers by “regulat[ing] perishable agricultural commodities industries and promot[ing] fair dealings in transactions with regard to fresh fruit and vegetables.” *Wayne Cusimano, Inc. v. Block*, 692 F.2d 1025, 1026 (5th Cir. 1982). PACA’s “trust provision” achieves this goal by requiring buyers of produce “to hold either the produce or all proceeds or accounts receivable from a subsequent sale of the produce in trust for the benefit of unpaid suppliers until ‘full payment of the sums owing in connection with such transactions has been received by’ the supplier.” *Delta Produce*, 845 F.3d at 612–13 (quoting 7 U.S.C. § 499e(c)(2)).

Iscavo and Villita brought this lawsuit to enforce PACA’s trust provision. The facts are simple and largely undisputed. Iscavo and Villita sell agricultural commodities. Coram Deo was a PACA-licensed distributor and dealer of agricultural commodities, partly owned by Pryor. In 2017, Iscavo and Villita each separately sold and delivered over \$70,000 worth of avocados to Coram Deo. According to Pryor, sometime thereafter, his sole business partner absconded with most of Coram Deo’s liquid assets. Iscavo and Villita were never paid, and, in March 2018, Coram Deo was dissolved.

In 2018, Iscavo sued Coram Deo and Pryor in state court, alleging they had violated PACA’s trust provision by failing to pay for the produce. After Pryor removed the suit to federal court, Villita intervened, asserting its own

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PACA claim based on Coram Deo's failure to pay. The parties cross-moved for summary judgment. The district court denied Pryor's motion and granted Iscavo's and Villita's motions, finding that Pryor was personally liable under PACA for the amounts Coram Deo owed for the avocados plus interest. The district court also awarded Iscavo and Villita attorneys' fees. Pryor appeals the summary judgment and award of attorneys' fees.

We turn first to the summary judgment. We review the granting of a motion for summary judgment *de novo*, applying the same standard as the district court. *Tango Transp. v. Healthcare Fin. Servs. LLC*, 322 F.3d 888, 890 (5th Cir. 2003). Summary judgment is appropriate if no genuine dispute of material fact exists, and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(a).

The district court held that Pryor was individually liable under PACA because he "was in a position to control the PACA trust assets at issue and breached his fiduciary duty to preserve them." Pryor does not dispute the applicability of PACA; nor does Pryor dispute that Iscavo and Villita each sold Coram Deo avocados, and Coram Deo failed to remit payment. Pryor argues only that the district court erred in holding him personally liable.

"PACA liability attaches first to the licensed commission merchant, dealer, or broker of perishable agricultural commodities." *Golman-Hayden*, 217 F.3d at 351. "If, however, the assets of the licensed commission merchant, dealer, or broker are insufficient to satisfy the PACA liability, then others may be held secondarily liable" *Id.* Specifically, "individual shareholders, officers, or directors of a corporation who are in a position to control trust assets, and who breach their fiduciary duty to preserve those assets, may be held personally liable under PACA." *Id.*

Pryor was an officer and 80% owner of Coram Deo, he was listed as its principal on its PACA license, and he had access to Coram Deo's assets,

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including its bank account. It is undisputed that, in this role, Pryor had the ability to control Coram Deo's assets but failed to do so. The district court did not therefore err in holding Pryor personally liable. *See id.* (holding a shareholder personally liable because "he manifestly had absolute control of the corporation" but "refus[ed] or fail[ed] to exercise any appreciable oversight of the corporation's management").

Pryor nevertheless argues he should not be held liable because his partner handled everything; Pryor "was not involved in the day-to-day financial or business operations of the business." But actual involvement is not the standard. Indeed, Pryor is individually liable precisely *because* he refused to be involved in Coram Deo. Pryor had the authority to ensure Coram Deo's trust assets were preserved for the beneficiaries of the PACA trust, but he refused to exercise that authority. *See Ruby Robinson Co. v. Herr*, 453 F. App'x 463, 465 (5th Cir. 2011) ("It is established that a shareholder may not avoid liability under PACA merely by failing to assume responsibilities that he is entitled to." (citing *Golman-Hayden*, 217 F.3d at 351)). Summary judgment was therefore proper.

Now to fees. "[T]he standard of review for an award of attorneys' fees is whether the trial court abused its discretion in making the award." *DP Sols., Inc. v. Rollins, Inc.*, 353 F.3d 421, 433 (5th Cir. 2003). The district court awarded Iscavo and Villita attorneys' fees pursuant to PACA's trust provision. Pryor argues PACA does not authorize an award of attorneys' fees.

PACA does not expressly require an award of attorneys' fees. The PACA trust provision, however, states that PACA trust assets must be held for the benefit of all unpaid sellers "until full payment of the *sums owing in connection with such transactions* has been received" by the sellers. 7 U.S.C. § 499e(c)(2) (emphasis added). We have never addressed whether this provision supports an award of attorneys' fees to a PACA beneficiary. But several of our sister

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circuits have interpreted the phrase “sums owing in connection with” as allowing an award of attorneys’ fees related to collection efforts when such fees are included in the sales contract between the PACA buyer and seller. *See Coosemans Specialties, Inc. v. Garguilo*, 485 F.3d 701, 709 (2d Cir. 2007); *Pac. Int’l Mktg., Inc. v. A & B Produce, Inc.*, 462 F.3d 279, 285–86 (3d Cir. 2006); *Middle Mountain Land & Produce Inc. v. Sound Commodities Inc.*, 307 F.3d 1220, 1222–23 (9th Cir. 2002); *Country Best v. Christopher Ranch, LLC*, 361 F.3d 629, 632–33 (11th Cir. 2004).

We agree with that interpretation. The phrase “sums owing in connection with” is broad. It unambiguously encompasses not just the contract price for the delivered agricultural commodities but also all sums the buyer owes in connection with that transaction. Attorneys’ fees a seller incurs in seeking to collect on an unpaid invoice are necessarily incurred in connection with the transaction memorialized by the invoice. And when the seller agrees to pay those fees in the same invoice, the fees are “owed in connection with” the transaction.

Villita’s sales invoice—which no one disputes is an enforceable agreement between Villita and Coram Deo—states that “Buyer also agrees to pay all costs of collection, including attorneys’ fees.” Under the PACA trust provision, Coram Deo was thus required to maintain trust assets sufficient to cover Villita’s attorneys’ fees incurred in its collection efforts. And because Pryor failed to exercise control over Coram Deo’s PACA assets to preserve them for Villita as a trust beneficiary, Pryor is personally liable for Villita’s attorneys’ fees. The district court did not therefore abuse its discretion in awarding Villita attorneys’ fees.

It is unclear from the record, however, whether Iscavo’s invoice required Coram Deo to pay attorneys’ fees incurred in Iscavo’s collection efforts, and the district court gave no explanation for its award to Iscavo. Thus, we cannot

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determine whether the district court abused its discretion in awarding Iscavo attorneys' fees. *See Falcon Constr. Co. v. Econ. Forms Corp.*, 805 F.2d 1229, 1235 (5th Cir 1986) ("Appellate courts are left with no basis to determine whether the trial court has abused its discretion if that court gives no explanation for the award it makes.").

For the foregoing reasons, the district court's summary judgment is **AFFIRMED**, the award of attorneys' fees to Villita is **AFFIRMED**, and the award of attorneys' fees to Iscavo is **VACATED** and **REMANDED** to the district court with instructions to explain the basis for its award. Any further appeal will be to this panel.