United States Court of Appeals for the Fifth Circuit

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Fifth Circuit
FILED
November 9, 2020
Lyle W. Cayce
Clerk

No. 20-30036

RUSTON LOUISIANA HOSPITAL COMPANY, L.L.C.,

Plaintiff—Appellant,

versus

LINCOLN HEALTH FOUNDATION, INCORPORATED,

Defendant—Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 3:18-CV-881

Before JONES, HAYNES, and HO, *Circuit Judges*.

PER CURIAM:*

This case arises from a contract dispute regarding a 2007 asset purchase agreement (the "Agreement") between Lincoln Health System, Inc. ("System") and Ruston Louisiana Hospital Company, L.L.C. ("Ruston"). After System dissolved, Ruston sued Lincoln Health Foundation Inc. ("Foundation"), a majority shareholder of System, for a

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

debt incurred prior to the Agreement.[1] We AFFIRM the district court's grant of summary judgment in favor of Foundation.

The district court granted Foundation's motion for summary judgment, rejecting Ruston's two theories of successor liability—assumption and mere continuation. *Ruston La. Hosp. Co., LLC v. Lincoln Health Found., Inc.*, No. CV 3:18-00881, 2019 WL 7407432, at *6–8 (W.D. La. Dec. 30, 2019). Ruston's appeal addresses the same two theories:[2] neither support Ruston's claim of successor liability.

Assumption. In Louisiana, "[a]n obligor and a third person may agree to an assumption by the latter of an obligation of the former. To be enforceable by the obligee against the third person, the agreement must be made in writing." LA. CIV. CODE ANN. art. 1821. We agree with the district court's conclusion that Foundation's articles of incorporation—articulating its "support" of System—are not equivalent to a written assumption. *See Ruston*, 2019 WL 7407432 at *4. Likewise, we agree with the district court that there is a difference between determining the appropriate beneficiary to a charitable bequest and the assumption of

[1] Several years after the Agreement, Ruston received notification that it owed the U.S. Centers for Medicare & Medicaid Services for costs incurred by System prior to the sale of the Hospital (the "CMS Charge"). Ruston paid the CMS Charge, then sought reimbursement from Foundation, as System had dissolved. This lawsuit ensued after Foundation's refusal.

[2] The standard of review, of course, is de novo. *See Lyles v. Medtronic Sofamor Danek, USA, Inc.*, 871 F.3d 305, 310 (5th Cir. 2017). The district court had diversity jurisdiction over this case, *see* 28 U.S.C. § 1332, and we review its final judgment, *see* 28 U.S.C. § 1291. Accordingly, we apply Louisiana substantive law.

another's obligations.[3] *Id.* at *6. Because assumption cannot be shown, Ruston cannot prevail on this theory of successor liability.

Mere Continuation. Alternatively, Ruston argues that Foundation is a mere continuation of System. Various cases provide factors to determine this issue.[4] However, under any of these tests, Ruston fails to prevail.

Ruston relies on the *Russell* factors, arguing four of the eight factors apply. *See Russell v. SunAmerica Secs., Inc.*, 962 F.2d 1169, 1176 n.2 (5th Cir. 1992). This argument lacks support in the record; three of the four cited factors clearly do not apply. Foundation never purchased assets from System (a bequest is not a purchase) under or after the Agreement; Foundation did not operate the Hospital after the Agreement; and Foundation never presented itself as System's general successor. Thus, only one of the eight *Russell* factors—that Foundation shared supervisory personnel with System[5]—weighs in favor of Ruston's conclusion that Foundation was a mere continuation of System. That balance is insufficient to find in Ruston's favor regarding this theory of successor liability. Accordingly, we AFFIRM.[6]

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[3] Ruston argues that Foundation assumed System's legal obligations through its actions to secure a charitable bequest from a third party. We reject this contention.

[4] Ruston relies on one of those cases. *See Russell v. SunAmerica Secs., Inc.*, 962 F.2d 1169, 1176 n.2 (5th Cir. 1992). We have identified older Louisiana Supreme Court cases that have articulated slightly different considerations for a mere continuation analysis, *see Roddy v. Norco Local 4-750, Oil, Chem. & Atomic Workers Int'l Union*, 359 So. 2d 957, 960 (La. 1978), as well as recent Louisiana appellate court decisions, *see Monroe v. McDaniel*, 207 So. 3d 1172, 1180–81 (La. Ct. App. 2016). Ruston cannot meet any of the potential tests, so we need not decide which applies.

[5] A majority of System's board members served on Foundation's board.

[6] Because we conclude that Ruston has not established a genuine dispute as to any material fact regarding Foundation's successor liability, we need not address whether Foundation's shareholder status protects it from liability.