United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
September 16, 2021
Lyle W. Cayce
Clerk

No. 20-30372

IN THE MATTER OF: S-3 PUMP SERVICE, INCORPORATED

Debtor,

FIRST NATIONAL CAPITAL, L.L.C.,

Appellant,

versus

S-3 PUMP SERVICE INCORPORATED,

Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 5:18-CV-450

Before DENNIS and ENGELHARDT, *Circuit Judges*, and HICKS, *Chief District Judge*.*

PER CURIAM:**

* Chief Judge of the United States District Court for the Western District of Louisiana, sitting by designation.

** Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

First National Capital ("FNC") appeals the district court's judgment affirming the bankruptcy court's judgment denying FNC's motion for summary judgment and granting partial summary judgment in favor of S-3 Pump Service ("S-3"). We AFFIRM.

I.

Between early 2012 and 2014, S-3, an oilfield service company, obtained trailer-mounted "frac pumps" (each costing approximately $1 million) by means of secured financing provided by FNC in the form of equipment leases, which included an option to purchase the equipment for $1 at the end of the lease term. For many of the pump acquisitions, however, FNC assigned its interests in the equipment, as well as the lease agreements with S-3, to various third-party assignees shortly after funding the transactions. On August 31, 2016, having filing for Chapter 11 bankruptcy protection on March 4, 2016, S-3 commenced an adversary proceeding against FNC. Therein, S-3 sought to recover funds (totaling $545,413.48, plus interest) designated as "deposits" that S-3 had paid to FNC prior to FNC's funding of the equipment acquisitions and subsequent assignment of the lease agreements to third parties.

In support of its claim, S-3 alleged that FNC had retained deposit funds to which it was not legally entitled. Denying any wrongdoing and contesting S-3's alleged entitlement to the funds, FNC maintained that various contractual documents executed by the parties yielded a lease term of 50 months and authorized its retention (and ownership) of the funds in satisfaction of two monthly lease payments. Ultimately, S-3 and FNC filed cross-motions for summary judgment regarding entitlement to the funds in question. S-3 prevailed in the bankruptcy court and, on appeal, in the district court. This appeal followed.

II.

Summary judgment is appropriate where there is "no genuine dispute as to any material fact" and "the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56. Material facts are those that "might affect the outcome of the suit under the governing law." *Leasehold Expense Recovery, Inc. v. Mothers Work, Inc.*, 331 F.3d 452, 456 (5th Cir. 2003) (internal quotation marks and citation omitted). "A genuine [dispute] of material fact exists when the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Austin v. Kroger Tex., L.P.*, 864 F.3d 326, 328 (5th Cir. 2017). All facts and reasonable inferences are construed in favor of the non-movant, and the court should not weigh evidence or make credibility findings. *Deville v. Marcantel*, 567 F.3d 156, 163–64 (5th Cir. 2009). The resolution of a genuine dispute of material fact "is the exclusive province of the trier of fact and may not be decided at the summary judgment stage." *Ramirez v. Landry's Seafood Inn & Oyster Bar*, 280 F.3d 576, 578 n.3 (5th Cir. 2002).

"We may affirm the district court's grant of summary judgment on any ground supported by the record and presented to the district court." *Amerisure Mut. Ins. Co. v. Arch Specialty Ins. Co.*, 784 F.3d 270, 273 (5th Cir. 2015). When this court reviews the decision of a district court acting as an appellate court, it reviews the district court's judgment "by applying the same standard of review to the bankruptcy court's conclusions of law and findings of fact that the district court applied." *In re JFK Capital Holdings, L.L.C.*, 880 F.3d 747, 751 (5th Cir. 2018) (quoting *Barron & Newburger, P.C. v. Tex. Skyline, Ltd.* (*In re Woerner*), 783 F.3d 266, 270 (5th Cir. 2015) (en banc)). Accordingly, questions of fact are reviewed for clear error and conclusions of law *de novo*. *Matter of Cowin*, 864 F.3d 344, 349 (5th Cir. 2017). Mixed questions of law and fact also are reviewed *de novo*. *Id.*

III.

Not surprisingly, careful review of the various contractual documents executed by FNC, S-3, and the various third-party assignees reveals language providing some support for both parties' competing positions. Even so, considering these documents in the context of pertinent legal principles governing contract interpretation and construction—as the district court and bankruptcy court have done in detailed, lengthy written rulings—reveals no error in the lower courts' judgments.

Importantly, the key inquiry is not what FNC may have subjectively intended when it restructured its lease transactions/documents with S-3. Rather, the ultimate inquiry is whether the parties' objective intent was unambiguously reflected in the parties' related contractual documents and, if so, whether those terms were breached. On this subject, the applicable Approval Letters provide for a lease term of 50 months and a deposit of two monthly payments. They also expressly state: "Assuming no events of default have occurred, or are continuing, the deposit will be applied to the last two payments." Notably, the foregoing quoted language states that the deposits will be applied to the last two payments, *not* the first two payments. FNC has not alleged a default by S-3 occurred during the course of the lease agreement. Additionally, some of the frac pumps have an Equipment Schedule but lack a corresponding Approval Letter.

The Master Lease's provisions address and allow for amendment and modification of the various contractual provisions. And the lease documents state that the Equipment Schedules govern in the event of an inconsistency in any of the documents' terms. Significantly, the related Equipment Schedules, executed after the Approval Letters, and after the deposit was paid, reflect a lease term of 48 months and $0 deposit. Lastly, we factor in FNC's important role as drafter of all of these documents. On this record,

the lower courts' determination—that FNC is obligated to return the deposit funds to S-3—is AFFIRMED.