

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 91-6367

PRALHAD S. JHAVER

Plaintiff-Appellant,

VERSUS

ZAPATA OFF-SHORE, CO., ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA H 86 4606)

(November 24, 1992)

Before KING, JOHNSON and DUHÉ, Circuit Judges.

DUHÉ, Circuit Judge:¹

Appellant Pralhad Jhaver appeals the district court's order vacating the trial court's granting of Jhaver's Motion for New Trial, and entering final judgment in favor of Appellee Zapata Off-Shore, Co. in accord with the jury verdict. We affirm.

BACKGROUND

Zapata Off-Shore, Co. (Zapata) is an offshore drilling contractor. In 1982, Zapata wanted to obtain drilling contracts for its rigs off the coast of India. Faced with the bureaucracy of

¹ Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

India's Oil and Natural Gas Commission (ONGC), the government agency responsible for awarding drilling contracts, Zapata contacted Mr. Pralhad Jhaver (Jhaver), who had been recommended as someone experienced in negotiating with the ONGC.

Jhaver agreed to work as Zapata's agent and Zapata agreed to pay Jhaver commission on work he succeeded in getting for it in India. The parties dispute the terms of their contract. Jhaver understood he would be paid as long as the rigs remained at work in India, but Zapata believed his compensation was "bid-specific", in other words, that he would only be paid for the duration of the particular contracts he negotiated.

In 1984, Zapata entered into a joint venture with AFCONS, an Indian company. AFCONS essentially took Jhaver's place negotiating with the ONGC, and Jhaver did not take part in any future bidding. Zapata ceased paying Jhaver commission in 1986, approximately two years after the contracts negotiated by Jhaver had expired.

Jhaver sued Zapata for continued compensation, alleging breach of contract, among other theories. Jhaver then moved for partial summary judgment. The district court, Judge Hoyt, granted the motion. Zapata appealed and we reversed and remanded for jury trial, holding that, as a matter of law, the terms of the contract between Jhaver and Zapata were ambiguous and that questions of material fact regarding the parties' intention required jury determination.²

Judge Hoyt continued to preside over the case. The jury found

² Jhaver v. Zapata Off-Shore Co., 903 F.2d 381 (5th Cir. 1990).

in favor of Zapata, and Jhaver moved for a new trial, which Judge Hoyt granted. Approximately one month later, Judge Hoyt, sua sponte, and without stating his reasons, recused himself. The case was transferred to Judge Hittner. Zapata moved Judge Hittner to reconsider Judge Hoyt's order granting a new trial. Judge Hittner granted Zapata's motion, vacated Judge Hoyt's order granting a new trial, and entered final judgment in favor of Zapata according to the jury verdict.

Jhaver filed this appeal, arguing that Judge Hittner abused his discretion when he vacated Judge Hoyt's order granting a new trial and entered final judgment for Zapata.

ANALYSIS

Whether Judge Hittner abused his discretion turns on whether Judge Hoyt's original order granting a new trial was proper.

Standard of Review

This Court has repeatedly set forth the standard applicable to review of a district court order granting a new trial, but has not maintained consistency in doing so.³ The common thread among our various recitations, however, is our acknowledgment that the trial

³ Our expressions of the standard have run the gamut from affirming the grant of a new trial if the verdict is against the great weight of evidence, Scott v. Monsanto Co., 868 F.2d 786, 789 (5th Cir. 1989), to a flexible standard, granting more deference to the trial court when issues are complex or evidence is hotly contested, Smith v. Transworld Drilling Co., 773 F.2d 610, 613 (5th Cir. 1985). In one case that is unique on its facts and issues presented, we even went so far as to affirm the grant of a new trial unless there is "an 'absolute absence' of evidence contrary to the jury's verdict," United States v. An Art. of Drug Con. of 4,680 Pails, 725 F.2d 976, 990 (5th Cir. 1984) (emphasis in original).

judge's decision should be afforded great deference. Consequently, Judge Hoyt's order granting a new trial should not have been vacated unless, after a thorough review of the record, we are convinced that the jury verdict in favor of Zapata is not against the great weight of the evidence.

Was the Jury Verdict Against the Great Weight of the Evidence?

The issues at trial were breach of contract and fraud. More specifically, (1) whether the contract provided compensation for Jhaver for as long as the rigs stayed in India, regardless whether he negotiated the specific contract, and (2) whether Zapata defrauded Jhaver. The jury verdict favored Zapata, finding that Jhaver was not owed compensation for as long as the rigs remained in India, and that Zapata had not defrauded Jhaver.

The evidence primarily consisted of correspondence between the parties and among officers of Zapata, and the testimony of Jhaver and officers of Zapata. It was highly contradictory. Jhaver's claims against Zapata were primarily supported by his own testimony, by his interpretation of some of the correspondence,⁴ and by the fact that Zapata paid him for two years after the contract he negotiated had expired.

In contrast, Zapata's claim that their payment obligation was limited to the contract duration was supported by the testimony of

⁴ Jhaver relied heavily upon the only two letters of commission from Zapata that are not bid-specific. The origin of these letters, however, is questionable because Zapata's company name is not fully capitalized, a signature line is missing, and grammatical errors exist. Furthermore, Zapata's files did not contain copies of such letters. The fact that the authenticity of Jhaver's strongest evidence is in dispute further weakens his arguments.

five officers of Zapata, and a majority of the correspondence. Furthermore, officers of Zapata explained that Jhaver received payments for two years after the contract he negotiated had expired not because he was entitled to such payments under the contract, but because the officers felt a moral obligation to him and because Jhaver had threatened to undermine Zapata's future negotiations with the ONGC. Correspondence between officers of Zapata supports this testimony.

In conclusion, the evidence presented at trial, although controverted, more than favored Zapata. For the jury to have rendered a verdict in favor of Jhaver, it would have had to disbelieve five officers of Zapata and ignore some of the correspondence. We therefore conclude that the jury verdict is not against the great weight of the evidence.

CONCLUSION

Because the jury verdict is not against the great weight of the evidence, Judge Hoyt abused his discretion in granting a new trial. Therefore, Judge Hittner did not abuse his discretion by vacating Judge Hoyt's grant of a new trial and entering final judgment in favor of Zapata.

For the foregoing reasons, Judge Hittner's order vacating the grant of a new trial and entering final judgment in favor of Zapata is

AFFIRMED.