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Contract Law

CONTRACT LAW

Blaser Farms, Inc. v. Anadarko Petroleum Corp., 893 F.2d 259

Author: Judge McKay

Plaintiff, Blaser Farms, Inc. ("Blaser"), argued that by missing a September 1985 "substitute royalty" payment, Anadarko Petroleum Corporation ("Anadarko") and Enicon Corporation ("Enicon") violated a special limitation clause of their lease. Accordingly, Blaser contended that the lease automatically terminated. The district court entered summary judgment in favor of Anadarko and Enicon. Blaser subsequently appealed.

The Tenth Circuit ruled that summary judgment was properly granted to Anadarko and Enicon. Although the correct interpretation of the royalty payment clause required Anadarko to make payments in advance, Oklahoma law allows consideration of equitable circumstances that would avoid forfeitures. Because Anadarko spent \$300,000 successfully connecting a pipeline to the well by December 1985, the court stated that Oklahoma law was properly applied to conclude that the circumstances prevented automatic termination of the lease.

Edo Corp. v. Beech Aircraft Corp., 911 F.2d 1447

Author: Judge Brorby

Plaintiff, Edo Corporation ("Edo"), and defendant, Beech Aircraft Corporation ("Beech"), entered into a series of research and development contracts. The contracts contained "termination for convenience" and "noncompetition" clauses. Beech subsequently terminated the contracts. Edo brought suit against Beech, claiming that it was entitled to recovery of "unabsorbed overhead" and to expectancy damages on a promissory estoppel theory. The district court granted Beech partial summary judgment and a directed verdict. Edo appealed, claiming that the district court erred in: (1) refusing to award unabsorbed overhead damages; (2) finding justification for terminating the contracts; (3) granting summary judgment against Edo on oral modification of the contracts; and (4) applying promissory estoppel elements.

The Tenth Circuit affirmed the district court's rulings against Edo. First, the court held that Edo was not entitled to unabsorbed overhead damages. The court reasoned that Edo failed to show a nexus between the damages and Beech's termination of the contracts. Second, Beech's termination of the Edo contracts did not constitute a breach of the agreements. The court explained that the "termination for convenience" clause was clearly supported by consideration. Third, the statements made did not constitute clear and convincing evidence of an intent to modify an express term of each agreement. The court reasoned that the oral modifications were "too amorphous" to vary any of the written contracts. Finally, the court held that Edo's promissory es-

toppel theory failed. The court explained that Edo did not prove Beech made a promise that Edo could rely on, thereby foregoing other opportunities. Also, the court stated that Edo lacked good faith belief that it would be prohibited from pursuing other opportunities.

Equifax Serv., Inc. v. Hitz, 905 F.2d 1355

Author: Judge Logan

Defendant, Hitz, a California resident, was employed in Southern California by White & White, a Missouri corporation with its principal offices in Kansas. White & White was purchased by plaintiff, Equifax Services, Inc. ("Equifax"). Hitz's employment contract contained a noncompete clause and provided that it would be governed by Kansas law. Hitz resigned from Equifax to become president of a newly formed competing business. Equifax sued to enforce the noncompetition clause. The district court granted Equifax a preliminary injunction. Hitz appealed, claiming that the district court erred in: (1) exercising personal jurisdiction over him; (2) granting the injunction; and (3) denying his change of venue motion.

The Tenth Circuit affirmed the district court's rulings. First, the court ruled that the district court had personal jurisdiction over Hitz because he purposefully affiliated himself with Kansas through his interstate contractual relation with Equifax's predecessor firm. Second, the court upheld the preliminary injunction, noting that Kansas courts probably would enforce the contractual choice-of-law and noncompetition provisions and would refuse to weigh any conflict between Kansas and California's laws and policies. The court also noted that Equifax succeeded to its predecessor's right to enforce the noncompete clause, and that the district court did not clearly err in finding that Hitz's violation of the agreement irreparably harmed Equifax. Finally, the court upheld the denial of Hitz's change of venue motion because the order was interlocutory and not immediately appealable.

Applied Genetics Int'l, Inc. v. First Affiliated Sec., Inc., 912 F.2d 1238

Author: Judge Ebel

Plaintiff, Applied Genetics International, Inc. ("AGI"), appealed a summary judgment awarded to defendant, First Affiliated Securities, Inc. ("FAS"). AGI asserted that the district court erred in holding that a settlement and release agreement entered into by AGI and FAS was valid and barred all of AGI's claims against FAS. On appeal, AGI argued that: (1) the release was procured by economic duress and fraud; (2) the release was materially breached by FAS; (3) the release did not cover post-settlement claims; and (4) evidence of oral agreements to the release should have been allowed.

On *de novo* review and applying Wyoming law, the Tenth Circuit reversed in part, affirmed in part, and remanded for further proceedings. First, the Wyoming test for duress was consistent with the test for economic duress. Specifically, the tests are similar in states which ex-

pressly recognize economic duress as grounds for avoiding a settlement agreement. The court then determined that the district court erred in granting summary judgment on the issue of economic duress. In making its decision, the court applied the recognized elements of an unlawful act, which are absence of a reasonable alternative to enter the agreement and lack of free will. Moreover, because Wyoming law requires a clear and convincing standard of proof in establishing fraud and AGI failed to establish each element, summary judgment on the issue of fraud was proper. Second, the language "present legal interest" included more than mere possession. Therefore, summary judgment for FAS was inappropriate. The court reasoned that the agreement required AGI's "present legal interest" in the properties to be preserved, or the agreement was of no force or effect. Third, the phrase "to and including the date hereof" limited the scope of the release to claims arising prior to or contemporaneously with the execution of the release. Consequently, summary judgment was not proper as to the issue of post-settlement claims. Finally, the district court correctly invoked the parole evidence rule to prevent incorporation of alleged oral agreements into the written release.

Koch v. Koch, 903 F.2d 1333

Author: Judge Tacha

Plaintiffs, Charles and David Koch, and defendant, William Koch, entered into two contracts. The first contract was for the purchase and sale of stock in Koch Industries. The second contract was the sale of William's real estate in exchange for Charles and David's interest in a gold coin collection. When William refused to perform under the real estate and coin contract, Charles and David sought specific performance. William counterclaimed, alleging fraud in the inducement and sought rescission of the real estate and coin contract. The district court granted summary judgment in favor of Charles and David on the counterclaim and ordered specific performance of the real estate and coin contract. As part of the specific performance decree, the district court ordered an appraisal of the coin collection and real estate. When the appraisers differed on the valuation, the court decreed the final appraisal value. On appeal, William contended the district court erred in: (1) granting summary judgment when there was a genuine issue of material fact regarding the alleged fraudulent inducement to enter into the real estate and coin transfer; and (2) establishing the value of the real estate and coins to be transferred under the district court's equitable power rather than under the terms of the contract.

The Tenth Circuit affirmed the judgment of the district court. First, the court stated that the real estate and coin contract was a complete and unambiguous document that did not refer to any other agreement and, therefore, was not dependent on the stock sale agreement. Second, William urged the district court to resolve the appraisal and not follow the contract. Accordingly, the court ruled that it would not hear William's

attack on the district court's exercise of equitable discretion. Alternatively, the court noted that district courts retain substantial discretion in ordering specific performance.

Pacific Enter. Oil Co. v. Hertz, 893 F.2d 280

Author: Judge Tacha

Defendant, Hertz, appealed the district court's decision granting summary judgment for plaintiff, Pacific Enterprise Oil Company ("Terra Resources"), and denying Hertz's claim for damages. Hertz argued that Terra Resources had no justification for refusing to honor its oil and gas lease with Hertz, and that there were genuine issues of fact which precluded summary judgment. Terra Resources countered that: (1) the district court lacked subject matter jurisdiction because Hertz failed to show an injury in fact; and (2) Terra Resources was not required to accept Hertz's assignment because Colorado law requires all sellers to convey marketable title.

The Tenth Circuit affirmed, holding that the district court had jurisdiction since Hertz's judgment in a related court of claims action was insufficient to fully compensate his losses. The court also stated that although the Colorado Supreme Court has not yet ruled on the issue of whether an implied warranty of marketability extends to the assignment of oil and gas leases, sufficient authority exists to find such a warranty. Terra Resources was, therefore, under no duty to accept the assignment because Hertz did not have title to the lease at the time set for performance. Finally, the court held that Hertz presented no genuine issue of material fact. The court explained that in the absence of an express warranty of marketable title in an assignment of an oil and gas lease, Colorado implies the warranty as a matter of law.

Rajala v. Allied Corp., 919 F.2d 610

Author: Judge Ebel

Plaintiff, General Poly Corporation ("General Poly"), entered into several agreements with defendant, Allied Corporation ("Allied"), for the purchase of certain products. Soon thereafter, General Poly filed for protection in bankruptcy, and its trustee brought a variety of claims against Allied. General Poly only prevailed on its claim for breach of fiduciary duty, thereby obtaining a jury verdict for over \$70 million. Allied appealed the jury verdict and the denial of its motion for judgment notwithstanding the verdict ("JNOV"). General Poly, on the other hand, cross-appealed directed verdicts on its fraud, conversion, breach of contract, and oral contract claims.

The Tenth Circuit held that Allied's motion for JNOV was improperly denied because there was insufficient evidence upon which a reasonable jury would properly conclude that General Poly established a fiduciary relationship. The court relied on Kansas law, stating that merely acting for another's benefit will not give rise to fiduciary duties unless the alleged fiduciary consciously assumed fiduciary responsibility.

ties. The court also affirmed all the directed verdicts issued by the district court. First, General Poly's claim for fraud was barred by the statute of limitations. The court explained that an action for fraud must be brought within two years of when it occurs. But, it only accrues when the fraud is discovered. In the case at hand, the alleged fraud should reasonable have been discovered in March 1979. The action was filed, however, in August 1982. Second, the court affirmed the district court's directed verdict in favor of Allied on a separate claim of fraud. The court reasoned that General Poly failed to present any evidence supporting its argument that an Allied employee knew a product was unavailable at the time he made an offer to exchange it. Third, since General Poly did not present sufficient evidence to withstand Allied's motion for a directed verdict on the fraud claim, its assertion of fraudulently induced consent must likewise fail. Fourth, the court ruled that General Poly's claim for breach of its written agreement must fail. The court explained that the written agreement stated that unless General Poly gave Allied thirty days written notice of its needs, no right of purchase shall inure. General Poly's failure to supply such notice precluded its claim for breach of the agreement. Finally, the district court properly directed a verdict in favor of Allied for the breach of oral argument claim. The court reasoned that General Poly failed to produce any evidence that it rejected a product tendered by Allied because it was in violation of the oral contract.

Sandlin v. Texaco Ref. and Mktg., Inc., 900 F.2d 1479

Author: Judge Moore

Plaintiff, Sandlin, operated a Texaco station under a franchise agreement with defendant, Texas Refining and Marketing, Inc. ("TRMI"). As a result of the 1984 Texaco-Getty merger, TRMI acquired a Getty Oil Company station across the street from Sandlin. In 1985, it began operating the station under the Texaco name. In 1986, TRMI notified Sandlin that his franchise would not be renewed because it decided to sell the premises and offered to sell him the property for \$216,000. Sandlin successfully sued TRMI for breach of contract and violation of the federal Petroleum Marketing Practices Act ("PMPA"). TRMI appealed, claiming that the jury verdict was not supported by the evidence.

The Tenth Circuit reversed and remanded. The court held that the evidence did not support Sandlin's allegations that TRMI's nonrenewal decision was not made in good faith and in the normal course of business. Also, there was insufficient evidence to support Sandlin's argument that TRMI failed to make a bona fide offer to sell him the property. Further, the court decided that TRMI "established a sound commercial reason" for the nonrenewal decision. TRMI demonstrated that the former Getty station was more profitable than Sandlin's station. Moreover, TRMI's offer to sell at a price within the range of its outside appraisals, and below the price at which the station was listed at the time of the

trial, was objectively reasonable. Accordingly, it was a bona fide offer. The court also reversed Sandlin's judgment on the state breach of contract claim. The court ruled that testimony claiming TRMI rebranded the Getty station earlier than necessary, and that prices posted at that station were lower than Sandlin's purchase price, was "self-serving speculation." Thus, there was no evidence showing that TRMI breached the good faith covenant inherent in every contract.

Transpower Constructors v. Grand River Dam Auth., 905 F.2d 1413

Author: Judge Moore

Plaintiff, Transpower Constructors ("Transpower"), entered a contract to construct a transmission line for defendant, Grand River Dam Authority ("GRDA"). Co-defendant, Benham Group ("Benham"), was to represent GRDA for payment and granting extensions of time to Transpower. Transpower sustained increased costs to complete the project on time because GRDA caused delays, and Benham refused to grant extensions. Subsequently, GRDA refused to pay the increased costs. Transpower was successful in a suit against GRDA and Benham for breach of contract; the jury also awarded punitive damages for negligence. GRDA and Benham appealed, arguing that the district court erred in: (1) denying their motions for directed verdict, for judgment notwithstanding the verdict, for altering or amending the verdict, and for a new trial; (2) calculating damages; and (3) awarding post-judgment interest and certain attorney's fees. Transpower appealed the court's denial of prejudgment interest.

The Tenth Circuit affirmed all decisions of the district court. First, on *de novo* review, there was no indication that the evidence pointed in favor of GRDA's and Benham's motions. Second, since Transpower established sufficient evidence of the fact of damages, the jury may determine the proper award from the best evidence admitted. Third, in a diversity action, 28 U.S.C. § 1961 allows for interest on any money judgment in a civil case. Oklahoma law permits recovery of attorney's fees in a breach of contract action, but not a negligence action. Here, Transpower required evidence of Benham's negligence in order to prove breach of contract. Finally, Transpower was not entitled to prejudgment interest because its damages were not certain or calculable prior to judgment.

Vanguard Prod., Inc. v. Martin, 894 F.2d 375

Author: Judge Tacha

Plaintiff, Vanguard Production, Inc. ("Vanguard"), appealed the district court order granting summary judgment in favor of defendants, attorneys Martin and Morgan and the law firm of Ames, Ashabrunner, Taylor, Lawrence, Laudick and Morgan. On appeal, Vanguard argued that the district court erred in holding that: (1) an attorney was not liable for malpractice to persons other than their immediate clients; and (2) there were insufficient facts to establish a jury question.

The Tenth Circuit reversed the district court's holding that Morgan and Martin owed no duty to Vanguard. The court held that the common law duty of workmanlike performance is in every contract for service. Accordingly, this duty extends to third party beneficiaries who foreseeably could be harmed by a breach of such duty. Furthermore, the court held that under Oklahoma law, the rule is also applicable to attorneys. Finding that Vanguard pleaded sufficient evidence to raise a question of fact regarding proximate cause, the court remanded the case for trial.

