

[Cite as *Countywide Petroleum Co. v. Huntington Capital Invest. Co.*, 2010-Ohio-155.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92778

COUNTYWIDE PETROLEUM CO.

PLAINTIFF-APPELLANT

vs.

**HUNTINGTON CAPITAL
INVESTMENT CO., ET AL.**

DEFENDANTS-APPELLEES

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-591980

BEFORE: Stewart, J., Gallagher, A.J., and Celebrezze, J.

RELEASED: January 21, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

MELODY J. STEWART, J.:

{¶ 1} Plaintiff-appellant, Countywide Petroleum Company (“Countywide” or “CWP”), appeals the grant of summary judgment to defendants-appellees, Huntington National Bank (“HNB”) and Huntington Capital Investment Company (“HCIC”). For the reasons that follow, we affirm the judgment of the trial court.

Background

{¶ 2} The events leading up to this action took place in the years 1997 to 2001. During that time, Countywide sold gasoline to Convenient Food Mart, Inc. and some of its related entities (jointly referred to as “CFM”), and delivered it to CFM’s franchisees in Ohio and other states. A dispute over payment for the gasoline shipments arose and, on November 19, 2001, within minutes of each other, both parties filed suit for breach of contract. In its complaint, Countywide alleged that CFM owed it \$1,500,000 for gasoline deliveries. CFM alleged that Countywide breached their agreement and sought unspecified damages. The trial court consolidated the actions.

{¶ 3} In December 2001, CFM entered into a contract purchase agreement to refinance its existing debt by selling most of its fee producing assets, comprised of franchise agreements, gasoline agreements, and rental agreements, to CF Capital Assets, LLC (“CF Capital”), a special entity formed to hold these assets. CF Capital secured the \$3,000,000 needed to fund the

asset purchase through a commercial loan from HCIC, pursuant to a loan and security agreement dated February 8, 2002. The \$3,000,000 purchase price was paid to the XXV Corporation, CFM's largest secured creditor. HCIC was named a third-party beneficiary in the contract purchase agreement and was given a secured interest in the transferred assets senior to that of XXV Corporation's interest.

{¶ 4} On May 11, 2004, Countywide and CFM verbally settled their breach of contract actions in open court. A dispute later arose over the written settlement agreement, and a formal agreement was never signed. Upon motion by Countywide to enforce the settlement terms, the trial court entered judgment against CFM based upon the verbal agreement. CFM appealed and on April 28, 2005, this court affirmed the judgment of the trial court. See *Convenient Food Mart, Inc. v. Countywide Petroleum*, Cuyahoga App. No. 84722, 2005-Ohio-1994.

{¶ 5} Countywide immediately began efforts to execute on its judgment by garnishing franchise fees from CFM's franchisees. CF Capital objected to the garnishments and, on June 3, 2005, filed for chapter 11 bankruptcy protection before the United States Bankruptcy Court for the District of Delaware in the case captioned *In re: CF Capital Assets LLC*, Case No. 05-1157.

{¶ 6} In the bankruptcy action, Countywide sought to stop CF Capital from spending its cash reserves. Countywide argued that any assets held by CF Capital were the result of a fraudulent conveyance and rightly belonged to CFM and should be used to satisfy its breach of contract judgment. On June 29, 2005, Countywide filed an adversarial proceeding against CFM, CF Capital, XXV Corporation, and John Call (president of CFM and a principal of CF Capital), alleging claims under the Ohio Uniform Fraudulent Transfer Act and seeking declaratory judgment, constructive trust, and injunctive relief. CF Capital filed counterclaims and its own adversarial complaint for injunctive relief.

{¶ 7} After protracted litigation, on February 16, 2006, all of the parties to the adversarial proceedings reached a settlement of their disputes and executed a written agreement. Countywide agreed to sell all of its claims raised in the bankruptcy and various Ohio litigations to XXV Corporation for \$250,000 and, in return, release all of its interests in garnished funds except for the \$108,974 recovered from the Cuyahoga County Common Pleas Court in 2002 and the \$258,000 recovered in May 2005. All parties signed a broadly-worded general release.

{¶ 8} The bankruptcy court determined that HCIC had a valid, perfected, unavoidable lien on CF Capital's assets senior to all other interests. HCIC's bankruptcy claim was allowed in full.

This Appeal

{¶ 9} In May 2006, Countywide filed this action against HNB and its affiliate HCIC, asserting claims of breach of fiduciary duty, fraud, fraudulent transfer, preferential transfer, breach of the duty of good faith, civil conspiracy, and tortious interference with business relationships. As it did in the bankruptcy proceeding, Countywide asserts that the February 2002 asset transfer from CFM to CF Capital was a fraudulent conveyance designed to hide assets and prevent it from collecting the debt owed it by CFM for the 1997 to 2001 gasoline deliveries. Countywide alleges that HCIC and HNB, as Countywide's bankers, were aware of the debt owed it by CFM and conspired with CFM, CF Capital, and XXV Corporation to defraud Countywide by benefitting from the assets that should have been used to pay down CFM's debt owed to Countywide.

{¶ 10} The trial court granted appellees' Civ.R. 12 (B)(6) motion in part, resulting in the dismissal of the breach of fiduciary duty and preferential transfer claims. HNB and HCIC subsequently moved for summary judgment on the remaining claims, arguing that Countywide released all such claims against them in the bankruptcy settlement agreement and that, even if not released, the claims failed as a matter of law. The trial court granted summary judgment finding that HCIC and HNB, by virtue of their role as indemnitees of CF Capital were included in Countywide's general release.

{¶ 11} In this appeal, Countywide raises a single error for review asserting that the trial court erred in granting appellees' motion for summary judgment. Countywide argues that the bankruptcy release does not shield HNB and HCIC from liability for their own unlawful conduct. Countywide further argues that the claims asserted in the instant action are not claims that were contemplated in the bankruptcy release. We disagree.

{¶ 12} We review the granting of summary judgment under a de novo standard. We afford no deference to the trial court's decision and independently review the record to determine whether summary judgment is appropriate. *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105. Under Civ.R. 56(C), summary judgment is appropriate when, after viewing the evidence in a light most favorable to the nonmoving party, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

The Release

{¶ 13} The bankruptcy settlement agreement and general releases provide that it "shall be construed, interpreted and enforced in accordance with the laws of the State of Delaware, without regard to conflict of law principles." Both Delaware and Ohio law favor the voluntary settlement of disputes. *Nottingham Partners v. Dana* (Del. 1989), 564 A.2d 1089, 1102; *Convenient Food Mart, Inc. v. Countywide Petroleum Co.*, Cuyahoga App. No.

84722, 2005-Ohio-1994. “The validity of executing a general release in conjunction with the termination of litigation has long been recognized by the Delaware courts.” *Nottingham Partners*, 564 A.2d at 1105, citing *Chakov v. Outboard Marine Corp.* (Del. 1981), 429 A.2d 984, 985. Under the law of both states, a settlement agreement is a contract and is construed using the principles of contract interpretation. The proper construction of any contract is a question of law. *Rhone-Poulenc Basic Chems. Co. v. Am. Motorists Ins. Co.* (Del. 1992), 616 A.2d 1192; *Long Beach Assn., Inc. v. Jones* (1998), 82 Ohio St.3d 574. The purpose of contract construction is to discover and effectuate the intent of the parties. The intent of the parties is presumed to reside in the language they chose to use in their agreement. *Graham v. Drydock Coal Co.* (1996), 76 Ohio St.3d 311, 313.

{¶ 14} The bankruptcy settlement agreement begins with the declaration: “The parties to this Settlement Agreement have agreed that it would be in their best interests to settle the disputes between them as set forth in the Adversarial Proceedings and Counterclaims and the Ohio Litigation (as defined herein) in the manner and upon the terms hereinafter set forth in order to avoid further expense, inconvenience, and distraction of protracted litigation.”

{¶ 15} To effectuate the settlement, Countywide agreed to “irrevocably and unconditionally release, remise, settle, compromise, and forever

discharge XXV, CF Capital, and its bankruptcy estate, the CFM Entities, Richard Fanslow, John Call, and their respective past and present officers, directors, shareholders, members, servants, employees, leased employees, representatives, heirs, executors, administrators, agents, attorneys, assigns, predecessors, successors, parents, subsidiaries, affiliates, partners, partnerships, insurers, indemnitors and indemnitees (the 'CWP Released Parties'), from any and all manner of action, causes of action, suits, debts, liens, contracts, agreements, liabilities, obligations, claims, demands, damages, losses or expenses of whatever nature, known or unknown, fixed or contingent, direct or indirect, asserted or unasserted, which the CWP releasing parties now have against the CWP Released Parties, whether under Federal or State law, statutory and/or non-statutory law, common law, equity or otherwise. CWP covenants that it will never seek to recover from any person or entity any monies or properties with respect to the CWP Claims, except as a counterclaim, cross claim, or third-party complaint in response to a claim asserted against it by another person or entity."

{¶ 16} We are unpersuaded by Countywide's argument that its claims against appellees are not covered by the indemnification clause in the February 8, 2007 loan and security agreement or are not of the type contemplated in the release. As stated in the loan agreement's indemnification clause, CF Capital agrees "to indemnify, defend and save

harmless” the indemnified parties, defined as HCIC and its affiliates, from “any and all claims (whether well-founded, or baseless, or otherwise),” or loss suffered “directly or indirectly, by reason of any breach or default of Borrower of its representations, warranties * * * arising under this Loan Agreement” whether or not the indemnified parties “actually relied upon” such representations or warranties. In Section 6 of the loan agreement, CF Capital warranted that: 1) there were no material claims pending against CFM; 2) full consideration was given to CFM for purchase of its assets; 3) CFM had title to the assets free of any claim other than that of XXV; and, 4) that the transaction was not a preferential or fraudulent conveyance and would not render CFM insolvent. Since Countywide’s claims against appellees are founded upon these same representations, which Countywide alleges are false, we find that they would be covered under the indemnification agreement.

{¶ 17} It is difficult to imagine a more broadly worded general release than the one signed by Countywide. It is clear from the language of the release that Countywide intended to settle all of its disputes with CFM, CF Capital, and all of the other “released parties” arising out of its claims for nonpayment of gasoline bills and its claims arising out of the allegedly fraudulent transfer of assets funded by the HCIC loan. It is equally clear that appellees, as “indemnitees” of Countywide under the loan and security

agreement, are “released parties” under the general release. Accordingly, as Countywide released appellees from the claims asserted in the instant action, summary judgment was properly granted.

Judgment affirmed.

It is ordered that appellees recover of appellant their costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MELODY J. STEWART, JUDGE _____

SEAN C. GALLAGHER, A.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR