Supreme Court of Texas
February 28, 2014

In re Mark Fisher and Reece Boudreaux
No. 12-0163
Case Summary written by Matt McKee, Staff Member.

Johnson, J., delivered the opinion of the Court.

In May, 2007, Nighthawk Oilfield Services (Nighthawk) acquired Richie Oilfield Construction, Inc. (Richie Oil) as a wholly owned subsidiary. Pursuant to the agreement, Mike Richie (Richie), Richie Oil's owner, would remain involved in the organization as Richie Oil's President, becoming a limited partner in Nighthawk. The transaction's main components involved a Stock Purchase Agreement, a Goodwill Agreement, and a Promissory note. Each of the three provisions contained a forum selection clause designating Tarrant County, or the United States District Court for the Northern District of Texas as the appropriate venues to adjudicate subsequent disputes.

Following the acquisition, Nighthawk made a "$20 million 'special distribution' to its partners." In the following months, Mark Fisher (Fisher), a limited partner in Nighthawk, sought a $1 million loan from each partner, which Nighthawk would pay back after six months at a 10% interest rate. At the six month period's conclusion, Fisher refused to pay Richie the agreed upon amount, claiming the money was not a loan, but was instead, a "capital contribution." Additionally, Nighthawk provided Richie with a bank account, giving him a line of credit to reimburse Richie Oil's vendors; however, when Richie tried to access the account, the bank informed him the account contained insufficient funds. In response, Fisher informed the vendors that Richie was responsible for the lack of payment. After the vendors threatened legal action to receive payment, Nighthawk and Richie Oil filed for bankruptcy.

Richie brought suit in Wise County, where he resided, against Fisher and Reese Boudreaux—another limited partner—for breach of fiduciary duty, common law fraud, statutory fraud, violations of the Texas Securities Act, defamation, negligent misrepresentation, and negligent interference with respective business relations. Fisher and Boudreaux moved to transfer venue to Tarrant County or dismiss the suit pursuant to the mandatory venue selection clauses, additionally arguing Richie lacked standing on a number of the claims because he either transferred his rights to such a claim with Nighthawk's acquisition, or the claims were only within Nighthawk's authority considering the bankruptcy proceedings. After the trial court denied Fisher and Boudreaux's claims, and the Fort Worth Court of Appeals denied mandamus relief, they appealed to the Supreme Court of Texas arguing Richie lacks standing, the claims must be brought in bankruptcy court, and the trial court abused its discretion.

Turning first to the issue of standing, the Court found that, though a limited partner does not have standing when that partner's interest is diminished, a partner who is "personally aggrieved" has standing for their direct injuries. Because Richie suffered a number of damages including the $1 million loan he paid to Fisher, Realtors did not negate the assertion that Richie was "personally aggrieved;" thus Realtors were not entitled to mandamus relief. Moreover, the Court found Richie, not just Richie Oil, had standing to for his defamation suit because the defamatory statements were about Richie personally.

Next, addressing the Realtor's argument that the claims against Nighthawk should have been brought in bankruptcy court, the Court found the issue is not a question of jurisdiction, but a question of liability. The Court additionally noted the claims were not against Nighthawk, but against individual partners; therefore, the claims were not subject to the automatic stay in bankruptcy.

Addressing whether the trial court abused its discretion when it did not transfer the case pursuant to the forum selection clause, the Court first evaluated the Realtors' claim under Texas Civil Practice and Remedies Code § 15.020. Richie argues § 15.020 does not apply to his claim because: (1) his tort claims do not "arise from" the purchase of Richey Oil; (2) the only agreement that relates to Richey's claims is the Partnership Agreement which has no forum or venue selection clause; (3) the contractual forum selection clause is permissive, not mandatory; and (4) venue is mandatory in Wise County under the statutory provision requiring a suit for libel or slander to be brought in the county where the plaintiff resided at the time of the accrual of the cause of action.

Addressing each argument, the Court first found that Richie's claims did in fact "arise from" the acquisition and actions flowing directly from, or anticipated to flow from, the acquisition because, in order to determine liability, the Court had to reference the agreement. Next, evaluating whether the forum selection clause was Mandatory, the Court sought to strike a balance between the clause's permissive language and other language suggesting a "consent-to-jurisdiction clause." Seeking to determine the parties' intent, the Court found the parties clearly intended to make the forum selection clause mandatory because Richie agreed to the clauses, and that the term "non-exclusive jurisdiction" did not control over the clause's plainly worded language. Finally, the Court found Richie's argument that the clause providing for venue in Chicago, New York, and Illinois made the clause ambiguous to be unpersuasive. Accordingly, the Court found Richie's argument that venue was proper in Wise County unpersuasive, and therefore, held the case should be transferred to Tarrant County.

Finding the trial court abused its discretion relating to its failure to enforce the forum selection clause, the Court granted relief, directing the trial court to transfer the case to Tarrant County.