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Summary of Schettler v. RalRon Capital Corp., 128 Nev. Adv. Op. No. 20

Jason L. DeForest
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Schettler v. RalRon Capital Corp., 128 Nev. Adv. Op. No. 20 (May 3, 2012)[1]

Contract Law – Jurisdiction under the Financial Institutions Reform, Recovery and Enforcement Act of 1989

Summary

The Court considered whether the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) divests a court of jurisdiction to consider any defenses or affirmative defenses not first adjudicated through FIRREA's claims process. The Court also considered, as a matter of first impression, whether FIRREA's jurisdictional bar extends to successors in interest to the Federal Deposit Insurance Corporation (FDIC).

Disposition/Outcome

The Court concluded that FIRREA's jurisdictional bar divests a court of jurisdiction to consider claims and counterclaims asserted against a successor in interest to the FDIC not first adjudicated through FIRREA's claims process, but does not apply to defenses or affirmative defenses raised by a debtor in response to the successor in interest's complaint for collection.

Factual and Procedural History

On September 15, 2006, appellant Vincent T. Schettler and Silver State Bank executed a Business Loan Agreement (the Loan) and Promissory Note (the Note), under which Silver State provided Schettler with a $2,000,000 revolving line of credit. Schettler agreed to pay interest on the loan monthly until the loan's maturity date, at which time he would be required to pay all outstanding principal and any remaining unpaid accrued interest. The original maturity date of the Loan and the Note was September 15, 2007. On that date, Schettler and Silver State entered into a Change in Terms Agreement that modified the maturity date to September 15, 2008. On August 14, 2008, Silver State notified Schettler that it had frozen the remaining funds available on the line of credit because of a material change in Schettler's financial condition.

On September 5, 2008, Silver State was placed into receivership, and the FDIC was appointed as receiver. The FDIC informed Schettler that it was the receiver for Silver State and that it expected Schettler to continue to abide by the terms and conditions of the Loan and the Note. The FDIC then published notices in Las Vegas newspapers which stated that all creditors having claims against Silver State must submit their claims to the FDIC by December 10, 2008, after which the creditor's claims would be barred. Schettler did not pay the outstanding principal and interest by the September 15 maturity date or file any administrative claims against Silver State with the FDIC by December 10.

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[1] By Jason L. DeForest

In March 2009, respondent RalRon Capital Corporation acquired ownership of Schettler's loan agreement. Shortly thereafter, Ralron notified Schettler that it owned the loan and demanded that Schettler pay the full amount of principal, interest, and late fees within 10 days. After nonpayment from Schettler, RalRon filed a complaint in the district court, asserting claims for breach of contract, contractual breach of the implied covenant of good faith and fair dealing, unjust enrichment and breach of personal guaranty. Schettler filed an answer to RalRon's complaint, denying liability, and asserting several affirmative defenses and counterclaims against RalRon for breach of contract, breach of the implied covenant of good faith and fair dealing and estoppel.

The district court granted summary judgment in favor of RalRon on its breach of contract and breach of personal guaranty claims, barred Schettler's affirmative defenses and dismissed his counterclaims. The district court reasoned that Schettler's affirmative defenses and counterclaims were claims against the FDIC and Schettler had failed to follow the claims administration process, so they were barred by FIRREA. The district court subsequently entered judgment against Schettler for the outstanding principal and interest on the loan and for RalRon's attorney fees and costs.

Discussion

Justice Hardesty wrote for the unanimous three-justice panel. First, the Court explained the extent of the FDIC's power under FIRREA. According to the Court, Congress enacted FIRREA "to enable the federal government to respond swiftly and effectively to the declining financial condition of the nation's banks and savings institutions."[2] Under the statute, the FDIC has broad powers to determine claims asserted against federal banks. To enable the FDIC's powers, Congress created a claims process for the filing, consideration, and determination of claims against insolvent banks. A claimant must complete the claims process before seeking judicial review. Otherwise, the FIRREA bars judicial jurisdiction.

Next, the Court considered the extent of FIRREA's jurisdictional bar. The Court found that the bar applies to "any claim or action for payment from . . . or . . . seeking a determination of rights with respect to, the assets of any depository institution for which the [FDIC] has been appointed receiver" and to "any claim relating to any act or omission of such institution or the [FDIC] as receiver."[6] Schettler argued that the FIRREA bar should be inapplicable because a third party, instead of the FDIC, filed the underlying action. Conversely, RalRon maintained that its successor status entitles it to benefit from FIRREA's jurisdictional bar.

The majority of federal courts have concluded that a successor in interest can benefit from FIRREA's jurisdictional bar against claims falling within the statute's terms that have not

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[2] Henderson v. Bank of New England, 968 F.2d 319, 320 (9th Cir. 1993) (citing 12 U.S.C. § 1821(d)(3)(A) (2011)).
[6] 12 U.S.C. § 1821(d)(13)(D).

been administratively pursued.[7] The Court agreed with the reasoning of these federal courts and concluded that, with respect to claims relating to acts or omissions of the failed bank, a successor in interest is entitled to benefit from FIRREA's jurisdictional bar. Thus, RalRon as successor in interest to the FDIC receives the benefits of the bar.

Schettler also argued that because the FDIC did not mail him notice of the bar date, applying FIRREA's jurisdictional bar to this case would violate due process. In Elmco Properties v. Second National Federal Savings Ass'n, the Fourth Circuit Court of Appeals held that a claimant "may not complain of its lack of formal notice if it actually knew enough about the situation to place it on 'inquiry notice' as to the details of the administrative process."[8] According to Elmco, "if a claimant had timely, actual knowledge that [the bank] had entered receivership, its due process argument might be defeated by its own failure to act on that knowledge to protect its rights."[9]

Here, the Court found the Fourth Circuit's reasoning persuasive and applied it to the facts of this case. On the day that the FDIC became receiver for Silver State, it notified Schettler that it was the receiver and that the FDIC now held his loan. Subsequently, the FDIC published notice of the claims process and the FIRREA bar date in the local Las Vegas newspapers. According to the Court, this was constitutionally sufficient notice regardless of Schettler's creditor status. Additionally, the Court found that the FDIC's failure to mail Schettler notice of the administrative claims bar did not excuse Schettler from having to exhaust his administrative remedies to pursue claims pursuant to FIRREA's claims process.[10]

Finally, a majority of courts have held that FIRREA's jurisdictional bar applies to claims and counterclaims, but does not apply to defenses and affirmative defenses.[11] Specifically, "if parties were barred from presenting defenses and affirmative defenses to claims which have been filed against them, they would not only be unconstitutionally deprived of their opportunity to be heard, but they would invariably lose on the merits of the claims brought against them."[12] Based on this reasoning, the Court determined that FIRREA's jurisdictional bar does not apply to Schettler's defenses or affirmative defenses.

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[7] *See, e.g.*, Benson v. JPMorgan Chase Bank, 673 F.3d 1207, 1212 (9th Cir. 2012) (explaining that FIRREA's jurisdictional bar, with respect to claims relating to acts or omissions of the failed bank or receiver, "distinguishes claims on their factual bases rather than on the identity of the defendant," and "does not make any distinction based on the identity of the party from whom relief is sought.").

[8] 94 F.3d 914, 920 (4th Cir. 1996).

[9] *Id.* at 922.

[10] *See* Intercontinental Travel Mktg. v. F.D.I.C., 45 F.3d 1278, 1284-85 (9th Cir. 1994) (stating that as long as the FDIC does not engage in affirmative misconduct, its failure to notify a creditor or claimant by mail does not excuse that creditor or claimant from having to exhaust the FIRREA administrative remedies and noting that while FIRREA "seems to make the mailing requirement imperative for the FDIC, the statute imposes no consequence on the FDIC for failure to do so").

[11] *See, e.g.*, Am. First Fed. v. Lake Forest Park, 198 F.3d 1259, 1264 (11th Cir. 1999) (noting that the "circuit courts that have addressed the question have held that affirmative defenses are not subject to the requirements of exhaustion under [FIRREA's jurisdictional bar]").

[12] Nat'l Union Fire Ins. v. City Sav., F.S.B., 28 F.3d 376 , 393 (3d Cir. 1994).

Schettler argued an affirmative defense based on breach of contract, claiming that RalRon failed to fulfill and perform its obligations and duties to Schettler and therefore cannot enforce the same against Schettler. Specifically, Schettler based these claims on allegations that Silver State wrongfully defaulted him. The Court declared that Schettler may be able to demonstrate that Silver State's prior breach of the contract had rendered the contract unenforceable. According to the Court, this constitutes a true affirmative defense and inherently raises recoupment.

Recoupment is "[a] right of the defendant to have a deduction from the amount of the plaintiff's damages, for the reason that the plaintiff has not complied with the cross-obligations or independent covenants arising under the same contract."[13] Further, recoupment "does not allow the defendant to pursue damages in excess of the plaintiff's judgment award."[14] Therefore, the Court determined that regardless of whether the same facts could constitute a separate claim for damages, recoupment seeks to challenge the foundation of the plaintiff's claim and, consequently, is an affirmative defense not barred by FIRREA. Thus, Schettler may be able to demonstrate that he is entitled to recoup against any amount awarded RalRon on its claims, up to the amount awarded.

Conclusion

The Court concluded that Schettler's affirmative defenses raised unresolved questions of material fact, and because FIRREA does not bar affirmative defenses, the district court erred in granting summary judgment in favor of RalRon on its breach of contract and breach of personal guaranty claims. Accordingly, the court reversed the district court's summary judgment and remanded for further proceedings.

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[13] BLACK'S LAW DICTIONARY 1275 (6th ed. 1990).
[14] Nev. State Bank v. Jamison P'ship, 106 Nev. 792, 797 n.2, 801 P.2d 1377, 1381 n.2 (1990).