Louisiana Litigation in Review Q1 2022

03.31.2022

ATTORNEYS

Brittany A. Carnes

Andrew D. Mendez

CAPABILITIES

Business Litigation

This quarterly review is an opportunity to update you on recent developments in Louisiana litigation. In this edition, Andy Mendez and Brittany Carnes summarize five Louisiana cases. These articles feature recent court decisions that may be of interest to business people and legal professionals alike.

BUSINESS JUDGMENT OF CORPORATE DIRECTORS IS ENTITLED TO DEFERENCE, ABSENT EVIDENCE OF WRONGDOING

Moulton v. Stewart Enterprises, Inc., 2020-0090 (La. App. 4 Cir. 5/5/21), 2021 WL 1806598.

Under the "business judgment" rule, courts generally will not second-guess decisions made by corporate officers and directors, as long as the decisions are not based on dishonesty or bad faith, or impaired by a conflict of interest. Louisiana Revised Statutes 12:1-831 and 12:1-832. In *Moulton v. Stewart Enterprises, Inc.*, the Louisiana Fourth Circuit Court of Appeal reaffirmed Louisiana courts' longstanding position that, absent evidence of wrongdoing, directors will not be liable to shareholders who seek to hold the directors personally liable for a disputed decision.

In *Moulton*, shareholders unsuccessfully opposed a proposed merger between a corporation and its competitor. After the merger was accomplished, the shareholders sued the corporation and members of the board of directors who had approved it, on the grounds that the directors had not gotten the best deal possible for the shareholders, and had instead benefited from the transaction to the shareholders' detriment. Shareholders specifically accused Mr. Stewart, one of the directors and the corporation's largest individual shareholder, of exerting undue influence over the other directors and reaping a substantial financial benefit as a result of the merger.

The trial court dismissed the shareholders' action on a motion for summary judgment filed by the corporation and its directors, finding that the directors were protected from liability by the business judgment rule, and that the shareholders had failed to prove that either the directors or Mr. Stewart had acted improperly in approving the merger.

On appeal, the Fourth Circuit affirmed the ruling of the trial court. The appellate court recognized that, although court oversight of corporate decisions is sometimes necessary to protect the interests of shareholders, courts lack the requisite business expertise to accurately judge the correctness of business decisions. Accordingly, unless there is actual evidence that directors have violated their fiduciary duties – including acting in the best interest of the corporation and its shareholders and avoiding conflicts of interest – then the business judgment rule will protect directors from personal liability, regardless of the success or failure of the disputed decision.

FORMER EMPLOYEES' USE OF CLIENT LISTS AND INVENTORY SYSTEMS VIOLATED THE LOUISIANA UNFAIR TRADE PRACTICES ACT AND UNFAIR TRADE SECRETS ACT

Johnston v. Vincent, 2020-357 (La. App. 3 Cir. 5/5/21), 2021 WL 1782967.

The Louisiana Unfair Trade Practices Act (LUTPA) and the Louisiana Unfair Trade Secrets Act (LUTSA) regulate and protect the rights of competitors by encouraging free enterprise, while prohibiting unfair or deceptive trade practices. Louisiana Revised Statutes 15:1401 *et seq.*; 15:1431 *et seq*. In *Johnston v. Vincent*, the Louisiana Third Circuit Court of Appeal recognized that a company's confidential client list and inventory system may be protected trade secrets under certain circumstances.

The competing companies in *Johnston* were engaged in the distribution of industrial supplies. The first business, Lake Charles Rubber & Gasket Co., L.L.C. (LCRG) started as a family business. Other members of the family later broke off and formed Gulf Coast Rubber & Gasket Co., L.L.C. (GCRG) – and took with them a list of LCRG's clients and revenues generated from its clients, which they distributed to GCRG's employees. GCRG also used an inventory system maintained by LCRG to take over a contract with one of LCRG's largest customers. LCRG sued, alleging, *inter alia*, violations of LUTPA and LUTSA, and seeking awards for lost profits, unjust enrichment, future damages, treble damages, attorney fees, and costs.

The trial court ruled in favor of GCRG, finding that neither the client list nor the inventory system were protected trade secrets. However, the trial court found that GCRG had violated some provisions of LUTPA and LUTSA, and awarded LCRG a nominal (relative to the damages claimed by LCRG) $700,000 in lost profits.

On appeal, the Third Circuit overturned the trial court's determination that the client list and inventory system were not protected trade secrets, and substantially increased LCRG's damage award. The appellate court began by noting that, while former employees generally cannot be penalized for using their memories and knowledge acquired from their former employer (as long as the information is available to the general public), the same principles do not apply where the former employee took reasonable steps to protect the confidentiality of that information. The appellate court found that LCRG had taken such reasonable steps to protect its client list, particularly because the list also included revenue generated by each customer, which was not information that LCRG shared with the general public or its own employees. When former employees of LCRG walked out with the client list, formed GCRG, and distributed the list to its new employees, that constituted an unfair and deceptive practice sufficient to give rise to liability under LUTPA and LUTSA. The court also found that GCRG's use of LCRG's inventory system – which enabled GCRG to take a lucrative contract from LCRG – was a protected trade secret, the misappropriation of which constituted an unfair trade practice.

PURPORTED AGENT OF LLC WAS NOT PROTECTED FROM PERSONAL LIABILITY WHERE THERE WAS NO EVIDENCE HE WAS AUTHORIZED TO ACT AS THE LLC'S AGENT

Abadie v. Arguelles, 2019-0749 (La. App. 4 Cir. 2/19/20), 292 So. 3d 961.

Louisiana limited liability company (LLC) law generally protects an LLC's members, managers, employees, and agents from personal liability for the LLC's obligations. Louisiana Revised Statute 12:1320. However, in *Abadie v. Arguelles*, the Louisiana Fourth Circuit Court of Appeal refused to extend such protection to the purported agent of an LLC where there was no evidence in the record that he had authority to act on the business's behalf.

The transaction in dispute in *Abadie* involved an agreement to purchase immovable (real) property in New Orleans owned by the plaintiff, Mr. Abadie. The purchase agreement briefly identified the property's buyer as Austin Venture Properties, LLC (Austin Venture) on its final page, but Austin Venture's name appeared nowhere else. The defendant, Mr. Arguelles, signed and initialed the purchase agreement – purportedly on behalf of the LLC. When Arguelles and/or the LLC failed to complete the purchase, Abadie filed suit against both. Abadie argued that, although the purchase agreement identified Austin Venture as the buyer, the parties never intended that the LLC would be the actual purchaser of the property. In response, and as to his own alleged personal liability, Arguelles filed an exception of no right of action, arguing that he was insulated from personal liability with respect to the purchase agreement under Louisiana Revised Statute 12:1320 because he was acting as Austin Venture's agent.

Relying on the purchase agreement's identification of Austin Venture as the buyer, the trial court sustained the exception, finding that Arguelles could not be held personally liable for the LLC's breach of the agreement.

On appeal, the Fourth Circuit reversed on a technicality, finding that there was insufficient evidence in the record that Arguelles had authority to act on behalf of the LLC. The function of an exception of no right of action is to challenge whether the plaintiff belongs to the class of persons to whom the law grants the cause of action asserted in a lawsuit. The defendant has the burden of proving the exception. Here, when Arguelles filed the exception, he relied solely on the purchase agreement, which did technically identify Austin Venture as the purchaser. Based on this, Arguelles contended that he was not personally liable for breach of the purchase agreement. However, the appellate court found that there was no evidence in the record to establish that Arguelles did, in fact, have authority to act on behalf of the LLC when he signed the purchase agreement, such as an affidavit or other document. Therefore, Louisiana Revised Statute 12:1320, which shields agents of LLCs, did not insulate Arguelles from personal liability – at least not on the limited evidence before the court. In a footnote, the Fourth Circuit left open the possibility of Arguelles filing an amended exception of no right of action, to which he could attach evidence of his authority to act on behalf of the LLC.

LLC CAN BE A PARTY TO A LOAN AGREEMENT EVEN WHERE AGREEMENT LACKS SIGNATURE LINE FOR LLC OR ITS DESIGNATED REPRESENTATIVE

Lagraize v. Basler, 20-39 (La. App. 5 Cir. 9/9/20), 304 So. 3d 102, *writ denied*, 2020-01257 (La. 12/22/20), 307 So. 3d 1038.

Contracts which are not carefully drafted and signed may be ambiguous as to who is actually agreeing to be bound. In *Lagraize v. Basler*, the Louisiana Fifth Circuit Court of Appeal found that a limited liability company (LLC) was a party to, and therefore liable under, two loan agreements, in spite of the fact that one loan agreement omitted the LLC from the signature page.

In *Lagraize*, the only two members of People Speak, LLC (People Speak), Mrs. Basler and Mr. Riley, sought loans from Dr. Lagraize to assist in the purchase of two short-term rental properties in New Orleans. After some negotiations, Lagraize agreed to loan them $365,000 and $556,500, respectively, to use as down payments on the properties. In return, Lagraize would receive a 37.5% ownership interest in the properties. In the event of their default, Lagraize's ownership interest would increase by 40%. The first loan agreement, which was handwritten by Lagraize, had signature blocks for Lagraize, Basler, Riley, and People Speak. The second loan agreement, which was typed by Basler, largely adopted the format of the first agreement, except that it changed Basler and Riley's signature block to refer to them as "purchaser" and omitted a signature block for People Speak. In connection with the purchase of the properties, Basler and Riley also granted a mortgage on behalf of People Speak to Loan Partners, LLC (Loan Partners).

Basler and Riley failed to make their first loan repayments to Lagraize on both properties. Lagraize filed suit against them and People Speak, seeking a declaration that he was entitled to a total 77.5% interest in both properties per the terms of the loan agreements. In their answer and reconventional demand (counterclaim), Basler and Riley sought a declaration that People Speak was the sole owner of the properties, among other relief. The trial court ruled that Basler and Riley were both liable to Lagraize for repayment of his loans. However, the trial court also found that People Speak was the sole owner of the properties, reasoning that the LLC was not bound by the loan agreements – the documents on which Lagraize based his claim of ownership – because Basler and Riley did not have authority to bind the LLC to those agreements, and also because there was no clear "meeting of the minds" between the parties as to the two agreements' terms.

On appeal, the Fifth Circuit reversed, finding that People Speak was a party to both loan agreements. The appellate court recognized that the loan agreements were ambiguous (for example, the second agreement identified Basler, Riley, and People Speak as "borrowers" in the preamble, but only had signature blocks for Basler and Riley that designated them as "purchasers." Under contract interpretation rules, the appellate court construed the agreement against the party who furnished its text, *i.e.*, Basler and Riley. Because People Speak was the actual purchaser listed on the properties' acts of sale, and because the second loan agreement also designated Basler and Riley as "purchasers," the court interpreted the loan agreements against them as demonstrating their intent to include People Speak as a party to the loan agreements. That did not end things, however, because the court determined a mortgagee of the two properties was a necessary party, and sent the case back to the trial court so it could be added to the case and assert its interests.

MISSING CONTRACT WAS NEVERTHELESS FOUND TO BE VALID AND ENFORCEABLE IN LIGHT OF TESTIMONY THAT ALL PARTIES HAD SIGNED IT

Miss Bee's Snoworld, LLC v. Guidry, 2020-0946 (La. App. 1 Cir. 6/18/21), 2021 WL 2493348.

Where parties are engaged in litigation related to a contract, they generally must submit the original signed contract into evidence. La. Code Evid. art. 1002. However, if the signed contract is missing, courts may accept evidence of the contract's terms as a substitute for the actual contract. La. Code Evid. art. 1004. In *Miss Bee's Snoworld, LLC v. Guidry*, the Louisiana First Circuit Court of Appeal found that an unsigned copy of a contract qualified as a valid, enforceable agreement between the parties, although the signed original has been lost, stolen, or else destroyed.

In *Miss Bee's Snoworld*, the Hydes (plaintiffs/franchisors) owned and operated a snowball stand. The Hydes were interested in franchising the snowball stand, and they began working with the Guidrys (defendants/franchisees) on a plan to open a franchise in a nearby city, which the Guidrys would operate. According to testimony presented at trial, the parties engaged in extensive preparation in anticipation of opening the new snowball stand, including purchasing land, obtaining building plans and estimates from contractors, meeting with suppliers, and extensive training. The franchise agreement was eventually drafted, but testimony varies as to whether it was actually signed by the parties. Problems later arose when the Guidrys informed the Hydes they were no longer interested in opening the franchise, and instead opened up their own competing snowball stand.

The Hydes filed suit against the Guidrys based on breach of the franchise agreement, among other claims. At trial, neither party was able to produce the signed franchise agreement. The Guidrys argued this was because they had never signed the agreement at all. The Hydes introduced an unsigned copy of the franchise agreement, alleging it was executed by all parties. In support of this, the Hydes testified they had received an executed copy of the franchise agreement, but no longer had it after a spiteful employee (who was related to the Guidrys) stole it out of their office. Another employee testified she had seen the contract and that it had been executed by all parties. Based on the testimony presented, the trial court found that the parties had signed the franchise agreement, and that a valid and enforceable contract therefore existed.

On appeal, the First Circuit affirmed this holding. The court recognized that a party seeking to enforce the terms of a contract must generally submit the executed contract into evidence. However, where the contract been lost, destroyed, or stolen, its terms may instead be proved with other evidence. In this case, the Hydes showed the trial court an unsigned copy of the franchise agreement, and there was credible testimony that the Guidrys – despite their protests otherwise – had signed it. The Guidrys were therefore found liable for breach of the franchise agreement.