IN THE COURT OF APPEALS OF IOWA

No. 6-067 / 05-0230
Filed May 10, 2006

**IN THE MATTER OF THE ESTATE OF
RICHARD L. DAVIS,**

GLENN M. COLLIGNON,
Appellant.

Appeal from the Iowa District Court for Polk County, Ruth B. Klotz, Associate Probate Judge.

Glenn M. Collignon appeals the district court's ruling granting summary judgment. **AFFIRMED.**

Peter Cannon, West Des Moines, for appellant.

CeCelia Ibson Wagnor and Joseph Borg of Smith, Schneider, Stiles & Serangeli, P.C., Des Moines, for appellee.

Considered by Sackett, C.J., and Vogel and Mahan, JJ.

MAHAN, J.

Glenn M. Collignon appeals the district court's ruling granting summary judgment. He argues there is a genuine issue of material fact with regard to his alleged ownership in Westwood Investments, L.L.C. We affirm.

I. Background Facts and Proceedings

Davis Realty Company, a company partially owned by Richard L. Davis, employed Collignon to work in the demolition of some of its commercial property. According to Collignon, he and Davis discussed business opportunities for some of the realty company's vacant property. In November 2000 Richard L. Davis formed the corporation Westwood Investments, L.L.C. (Westwood). Collignon alleges that, in exchange for his unique business ideas concerning a potential nightclub known as Vieux Carre, Davis agreed to give him guaranteed employment, a twenty-four-and-one-half-percent ownership of Westwood, and other considerations. Collignon claims Davis's grandson was also to have a twenty-four-and-one-half-percent ownership interest in Westwood.

Westwood operated Vieux Carre, for a short period of time. At some point, however, the business dealings between Davis and Collignon soured. In June 2003 Davis and Westwood sued Collignon alleging contract interference. The petition argued Collignon was never granted ownership in Westwood. Collignon filed cross claims and counterclaims against Davis, Davis Realty, and Westwood. Before trial, Collignon dismissed his claims without prejudice. As a result, Davis and Westwood also dismissed their petition without prejudice.

Davis died on December 2, 2003. On April 26, Collignon filed claims in probate against Richard Davis's estate, Davis Realty Company, and Westwood.

His claims were virtually identical to the cross claims and counterclaims he made in the previous litigation. He alleged four counts: (1) "Breach of Fiduciary Duty," (2) "Failure to Pay Wages," (3) "Complaint for Appointment of Receiver," and (4) "Breach of Lease Agreement, Conspiracy." The co-executors of Davis's estate sent a disallowance of the claim notice. Collignon responded with a request for a hearing. The estate filed a motion for summary judgment. The hearing on the motion was originally set for August 9, 2004, but a continuance was granted until November 9, 2004, to allow Collignon to conduct discovery. Collignon filed his resistance to the motion for summary judgment on the hearing date, November 9, 2004.

Collignon's resistance to the summary judgment motion dealt specifically with the issue of his ownership in Westwood. He presented three exhibits he claimed proved his twenty-four-and-one-half-percent ownership. According to the district court ruling, Exhibit A was a handwritten, unsigned letter appearing to be from Davis.[1] According to the ruling, the letter stated, "Listed below is analysis of *a request* to sell my stock, also this will be a request also to purchase your stock by using your profit % which should also be figured to my sales price." (Emphasis added.) The letter also listed some figures based on a proposed investment in Westwood using the fifty-one-percent, twenty-four-and-one-half-percent, and twenty-four-and-one-half-percent breakdown. Exhibit B was a lease agreement and guaranty between Davis Realty and Westwood d/b/a Vieux Carre signed by Davis, his grandson, and Collignon. Finally, Exhibit C was a credit

[1] The letter was not in the record received by this court.

application for Westwood signed by Davis listing Collignon as owning twenty-four and one-half percent of Westwood.

The district court granted summary judgment to Davis's estate. It concluded Collignon failed to present a material issue as to his ownership of Westwood. It determined no relationship existed between Davis and Collignon, and the only relationship Collignon had to Westwood was as an employee. The court dismissed Collignon's claims against Westwood and Davis Realty for lack of jurisdiction.

Collignon presents one issue on appeal: whether there is a dispute of material fact concerning his ownership interest in Westwood.

II. Standard of Review

We review a summary judgment for errors at law. Iowa R. App. P. 6.4. We will affirm the judgment only if (1) a review of the entire record fails to show any issue of material fact and (2) the moving party is entitled to judgment as a matter of law. *Mason v. Vision Iowa Bd.*, 700 N.W.2d 349, 353 (Iowa 2005); *see* Iowa R. Civ. P. 1.981(3). A factual issue is material when the disputed facts might affect the outcome of the suit. *Peppmeier v. Murphy*, 708 N.W.2d 57, 58 (Iowa 2005). There is no genuine issue of material fact when a reasonable judge or jury could conclude there is no evidence entitling the nonmoving party to relief. *Mason*, 700 N.W.2d at 353. Therefore, summary judgment is appropriate only if the conflict concerns the legal consequences of undisputed facts. *Peppmeier*, 708 N.W.2d at 58.

We review the record in a light most favorable to the nonmoving party. *Mason*, 700 N.W.2d at 353. The nonmoving party must put forth specific facts

showing the existence of a genuine issue for trial. *Hlubek v. Pelecky*, 701 N.W.2d 93, 95 (Iowa 2005). "We also indulge in every legitimate inference that the evidence will bear in an effort to ascertain the existence of a fact question." *Mason*, 700 N.W.2d at 353. However, mere "speculation is not sufficient to generate a genuine issue of fact." *Hlubeck*, 701 N.W.2d at 96.

III. Merits

Collignon argues the three documents he presented to the district court are enough to create a genuine issue as to whether he was a member of Westwood.[2] We disagree.

After the formation of a limited liability company, a person may be admitted as a member. Iowa Code § 490A.306(2) (2003). Under section 490A.306(2)(b), a person can become a member of a limited liability company,

> [i]n the case of an assignee of a membership interest, as provided in section 490A.903 and at the time provided in and upon compliance with the operating agreement, or if the operating agreement does not so provide, when any such person's permitted admission is reflected in the records of the limited liability company.

Section 490A.903(1) governs the right of the assignee to become a member of the company:

> Unless otherwise provided in the articles of organization or an operating agreement, an assignee of an interest in a limited liability company may become a member only if the other members unanimously consent. The consent of a member may be evidenced in any manner specified in the articles of organization or an operating agreement. In the absence of such specification consent shall be evidenced by a written instrument, dated and

[2] Collignon softens his language in his brief to us, arguing the documents create a genuine issue as to his "ownership interest" in Westwood. It is clear, however, from both his petition and his arguments to the district court that he is not arguing he was a mere assignee, but a member of Westwood.

> signed by the requisite number of members, or evidenced by a vote taken at a meeting of members called for that purpose.

The language of Westwood's operating agreement mirrors the Code. Under the agreement, "[a]n assignment does not entitle the assignee to participate in the management and affairs of the Company or to become or to exercise any rights of a Member." Further, "[a]n assignee of an Interest may become a Member only if the Members holding a majority of the outstanding Units consent." Under "Admission of New Members," the agreement states,

> From the date of the formation of the Company, with the consent of the Members who hold a majority of the outstanding Units, any Person or Entity acceptable to the Members may, subject to the terms and conditions of his Agreement become an Additional Member in this Company by the sale of new Company Interests for such consideration as the Members shall determine.

Collignon also cites section 490A.703(3) to support his argument that the evidence he provides is sufficient to create a genuine issue as to his membership interest in Westwood. We read this section to be a clarification of the ways in which an operating agreement might provide for additional members to join a company. We do not take it as a *per se* instruction for determining whether an individual is a member.

According to Westwood's operating agreement, the only way an individual could become a member is "by the consent of the Members who hold a majority of the outstanding Units." Collignon admits Davis was the only member of Westwood when the company was founded. He does not allege, nor does the evidence indicate, there were other established members at the time Collignon claims he gained membership. In order for Collignon to be a member, Davis would have had to have consented to his admission. The trouble, however, is

that after discovery was conducted in both the previous case and this probate matter, there is no evidence indicating Davis consented to Collignon's membership. Collignon's assignment or admission was never recorded in company records. There is no evidence indicating Davis wanted to allow Collignon to have a vote in the company's affairs. We have carefully reviewed Articles IV, X, and XI of Westwood's operating agreement. In short, there is no evidence the two ever conducted themselves as co-members in a limited liability corporation.

The district court concentrated heavily on the letter, purportedly written by Davis, which discusses Collignon's ownership. According to the court, the letter was nothing more than a proposal to sell. It concluded there was never a meeting of the minds as to Collignon's membership in Westwood. The document was not included in the record for our review. Based on the district court's quotations, however, we must agree there is no indication Davis intended Collignon to be a *member*. Iowa Code section 490A.903 makes it clear that ownership is not necessarily membership. The quotation does not indicate that Davis was looking for Collignon's approval of a sale, or proposing a vote of the members, or requesting any other action that might indicate the two were co-members in a corporation.

Collignon also asks us to review the lease guarantee he signed and the credit application Davis signed. The lease agreement, however, contains no language indicating Collignon's membership or ownership. He wants us to infer from his signature that he was a member. In the absence of other evidence, we decline to make such an assumption. The credit application lists Collignon as a

twenty-four-and-one-half-percent owner. Again, ownership is not membership. Full discovery was conducted here and in the previous litigation. Without more corroborating evidence of Collignon's claims, we must conclude Davis never consented to his membership in Westwood.

Collignon raises no other challenges to the district court's ruling. We therefore affirm the district court's summary judgment.

AFFIRMED.