ALLIE T. MALLAD, et al., Plaintiffs, v. GOLDEN CORRAL FRANCHISING SYSTEMS, INC., et al., Defendants.

No. 5:97-CV-60-BR(1)

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA, WESTERN DIVISION

1997 U.S. Dist. LEXIS 14500

August 12, 1997, Decided
August 12, 1997, Filed

DISPOSITION: [*1] GFSC's motion for summary judgment on claims I, II, III, V, VI, and VII GRANTED. Mallad's motion to amend the complaint DENIED.

OVERVIEW: The parties executed an area development agreement and two franchise agreements for two restaurants plaintiffs operated. A dispute arose between the parties with respect to one of the restaurants. The parties resolved the dispute by executing an asset purchase agreement and two termination agreements abrogating the area development agreement and the franchise agreement for the restaurant in dispute. The termination agreements contained a broad general release of the franchisor's liability. Plaintiffs then brought their action alleging a breach of the franchise agreement that was not terminated. The court granted the franchisor's motion for summary judgment. The court held that the plain language of the broad release in the termination agreements applied to claims that arose under the surviving franchise agreement, as well as the terminated area development and franchise agreements. The court held that there was no mutual mistake of fact as to the scope of the release where the franchisor stated that it intended the release to reach claims under the surviving franchise agreement. Accordingly, the court denied plaintiffs' motion to amend as futile.

OUTCOME: The court granted the franchisor's motion for summary judgment and denied plaintiffs' motion to amend the complaint to include a claim of mutual mistake.

COUNSEL: For ALLIE T. MALLAD, GOLDEN STEAK, INC., plaintiffs: Richard W. Farrell, Farrell & La Mantia, Raleigh, NC.

For GOLDEN CORRAL FRANCHISING SYSTEMS, INC., LARRY I. TATE, COASTAL EQUIPMENT COMPANY, GOLDEN CORRAL CORPORATION, defendants: David Dreifus, John R. Jolly, Jr., Poyner & Spruill, Raleigh, NC.

JUDGES: W. EARL BRITT, United States District Judge.

OPINIONBY: W. EARL BRITT

OPINION:

ORDER

This matter is before the court on defendants' motion for summary judgment and plaintiffs' motion to amend the complaint.

I. Background

On 29 June 1992, plaintiffs Allie T. Mallad, individually and as trustee for the Allie T. Mallad Living Trust, and Golden Steak, Inc. (collectively "Mallad") entered into an Area Development Agreement ("ADA") with defendant Golden Corral Franchising Systems, Inc. ("GCFS"). n1 (Heyward Aff. P 2.) The ADA granted Mallad certain rights to develop eight Golden Corral restaurants in defined areas of California. (Id.) The ADA established Mallad as the sole operator of Golden Corral restaurants in those areas of California. (See ADA [*2] at 2.) Before opening each designated restaurant, Mallad was obligated to execute a separate franchise agreement. (Heyward Aff. P 2.)

n1 For purposes of this motion, all defendants, Golden Corral Franchising, Larry I. Tate, Coastal Equipment Co., and Golden Corral Corp. will be referred to collectively as "GCFS."

Over the course of the next several years, Mallad and GCFS executed two franchise agreements for restaurants in Riverside, California and Moreno Valley, California respectively. Soon after the consummation of the Moreno Valley Franchise Agreement ("Moreno Agreement") on 5 January 1995, disputes arose between the parties regarding both the ADA and the Moreno Valley facility. (McKinney Aff. PP 8-9.) As a result, the parties entered negotiations ultimately culminating in the signing of an Asset Purchase Agreement ("APA") and two Termination Agreements effectively abrogating the ADA and the Moreno Agreement.

As the ADA expressly stated that its default or termination would not similarly constitute a default [*3] or termination of any existing franchise agreement, the parties' relationship with regard to the Riverside establishment continued. Under the auspices of the Riverside Franchise Agreement ("Riverside Agreement"), Mallad then brought suit against GCFS in December 1996 alleging seven causes of action including fraudulent misrepresentation and breach of contract. GFSC has now moved for summary judgment on all claims except the breach of contract claim brought by Golden Steak, Inc. against Coastal Equipment Co. Mallad contests the summary judgment motion and also moves to amend the complaint to add an additional claim for reformation/mutual mistake. Both motions are ripe for disposition.

II. GCFS's Motion for Summary Judgment

A. Standard

[HN1] Pursuant to *Federal Rule of Civil Procedure 56(c)*, summary judgment is appropriate where there are no genuine issues as to any material facts and the moving party is entitled to judgment as a matter of law. *Fed. R. Civ. P. 56(c)*. The Fourth Circuit has articulated the summary judgment standard as follows:

> A genuine issue exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson* [*4] *v. Liberty Lobby, Inc., 477 U.S.*

> *242, 248, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986).* In considering a motion for summary judgment, the court is required to view the facts and draw reasonable inferences in a light most favorable to the nonmoving party. *Id. at 255, 106 S. Ct. at 2514.* The plaintiff is entitled to have the credibility of all his evidence presumed. *Miller v. Leathers, 913 F.2d 1085, 1087 (4th Cir. 1990),* cert. denied, *498 U.S. 1109, 111 S. Ct. 1018, 112 L. Ed. 2d 1100 (1991).* The party seeking summary judgment has the initial burden to show absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2554, 91 L. Ed. 2d 265 (1986).* The opposing party must demonstrate that a triable issue of fact exists; he may not rest on mere allegations or denials. *Anderson, 477 U.S. at 248, 106 S. Ct. at 2510.* A mere scintilla of evidence supporting the case is insufficient. Id.

Patterson v. McLean Credit Union, 39 F.3d 515, 518 (4th Cir. 1994) (quoting *Shaw v. Stroud, 13 F.3d 791, 798 (4th Cir. 1994),* cert. denied, *513 U.S. 813, 115 S. Ct. 67, 130 L. Ed. 2d 24 (1994)).* [*5]

Discussion

GFSC contends that summary judgment is appropriate because of a release provision contained in both termination agreements between Mallad and GFSC. Provision 6 of both agreements reads as follows:

> 6. Franchisor Released.
>
> 6.1 Area Developer [Franchisee] hereby irrevocably remises, releases and forever discharges Franchisor, . . . and all of their respective representatives, employees, [and] officers . . . to the fullest extent allowed by applicable law, of and from any and all claims, debts, liabilities, demands, obligations, costs, expenses, actions and causes of action of every nature, character and description, known and unknown, vested or contingent, which Area Developer [Franchisee] now owns or holds, or at any time theretofore owned or held, or may at any time own or hold against any one or more of such releases, arising out of or related to any and all matters, things or transactions of any kind, including but not limited to those relating to the Development Agreement [Franchise Agreement] and this Termination Agreement, at any time prior to and including the date of this Termination Agreement.

(ADA Termination [*6] Agreement [Moreno Valley Termination Agreement] at 2.)

Pursuant to express provisions in the parties' multiple contracts, North Carolina law governs. [HN2] In North Carolina, a comprehensively phrased release, in the absence of proof of contrary intent, is usually held to discharge all claims between the parties. *McGladrey v. Syntek Finance Corp., 92 N.C. App. 708, 375 S.E.2d 689, 691* (N.C. Ct. App.), review denied by, *324 N.C. 433, 379 S.E.2d 243 (N.C. 1989).* GFSC maintains that this provision functions as a general release and encompasses the claims brought by Mallad in the current action. This court agrees. The release language is clear and unequivocal on its face that it applies to "any and all claims" without limitation. This general release provision is not marred by any ambiguity or impliedly cabined by other language or provisions in the agreements.

Mallad responds that this language was intended to apply exclusively to disputes or controversies surrounding the ADA or Moreno Valley franchise. Mallad argues that the claims for relief in this action do not arise out of the ADA or Moreno Agreement but originate directly from the Riverside Agreement. Mallad apparently relies on the fact [*7] that the termination agreements specifically abrogate the ADA and the Moreno Agreement to mean that only those agreements were encompassed by the release. This argument fundamentally misreads the plain language of the release provisions and disregards the controlling term that precedes the mention of the terminated agreements. To wit, both provisions contain language that GFSC is thereby released as to all matters "including but not limited to those relating to the Development Agreement [Franchise Agreement] and this Termination Agreement." (ADA Termination Agreement [Moreno Valley Termination Agreement], at 2 (emphasis added).) Contrary to Mallad's argument, this language does not confine the scope but, in fact, clarifies its breadth. Moreover, even assuming that the releases were cabined to matters relating to or arising from the ADA, the claims for relief arising from a franchise agreement signed pursuant to the ADA would likely qualify.

The other textual argument proffered by Mallad involves the reference to Mallad as "Area Developer" and "Franchisee" in the respective release provisions. By using these designations, Mallad contends that the parties evinced their intent [*8] to limit the scope of the releases. Yet, this argument is wholly unpersuasive in light of the broad language contained in the provisions. The use of "Area Developer" and "Franchisee" was merely a means of identifying Mallad consistent with the definitions embodied in the initial agreements. The use of these references in no way operates as a meaningful limitation on the obvious breadth of the release.

[HN3] Under North Carolina law, "a release, like any other contract, is subject to avoidance by a showing that its execution resulted from fraud or mutual mistake of fact." *Cunningham v. Brown, 51 N.C. App. 264, 276 S.E.2d 718, 723 (N.C. Ct. App. 1981).* "A mutual mistake of fact is one common to both parties to a contract . . . wherein each labors under the same misconception respecting a material fact, the terms of the agreements, or the provisions of the written instrument designed to embody such agreement." *Metropolitan Property & Casualty Ins., Co. v. Dillard, No. COA96-982, 1997 WL 393119,* *19 (N.C. App. Ct. July 15, 1997). The mistake of one party not induced by fraud does not constitute a mutual mistake of fact. *Mock v. Mock, 77 N.C. App. 230, 334 S.E.2d 409, 409 (N.C. Ct.* [*9] *App. 1985).*

In this case, Mallad and his attorney assert that they believed the release not to extend to claims arising from the Riverside Agreement. (McKinney Decl. P 11; Mallad Decl. P 11.) They further allege that GFSC operated under the same assumption. (Id.) However, they neglect to provide any solid evidence to support this belief. Beyond asserting conclusory allegations about the intent of GFSC, Mallad does not offer any evidence about the underlying reasons giving rise to this notion. (See McKinney Decl.; Mallad Decl.) In fact, Mallad readily concedes that the parties never discussed or even intimated that the broadly-worded release would not apply to Riverside. (McKinney Decl. P 15; Mallad P 12.)

In a similar scenario, [HN4] a North Carolina court refused to reform a contract based on mutual mistake because "plaintiff in the case had failed to present evidence to show that the other party to the release . . . intended the release at issue to have a limited scope." *Sykes v. Keiltex Indus., Inc., 123 N.C. App. 482, 473 S.E.2d 341, 344 (N.C. Ct. App. 1996).* Mere allegations that one party thought the other party had the same intent is not sufficient to create a mutual [*10] mistake. See id.

In this case, GFSC has offered affidavit testimony that it construed the release to operate precisely as worded in the agreement. (Heyward Aff. PP 3-4.) Mallad's bald assertions that GFSC thought otherwise are simply not sufficient to create a genuine issue of material fact. Accordingly, Mallad's mutual mistake defense cannot overcome the plain language of the release provisions. Summary judgment for GFSC is, therefore, appropriate. At the same time, [HN5] Mallad's motion to amend the complaint to add a claim for contract reformation/mutual mistake must be denied for futility. See *Shanks v. Forsyth County Park Auth., 869 F. Supp. 1231, 1238 (M.D.N.C. 1994).*

IV. Conclusion

For the reasons stated above, GFSC's motion for summary judgment on claims I, II, III, V, VI, and VII is GRANTED. Mallad's motion to amend the complaint is DENIED.

This 12 August 1997.

W. EARL BRITT

United States District Judge