

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

INTERNATIONAL POULTRY PROCESSORS, : CIVIL ACTION
INC. :
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 v. :
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 WAMPLER FOODS, INC. :
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 v. :
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 INTERNATIONAL POULTRY PROCESSORS, :
 INC. and ERNEST MILOU : No. 98-CV-4612

M E M O R A N D U M

Ludwig, J.

April 8, 1999

Cross-claim defendant Ernest Milou moves for judgment on the pleadings or, alternatively, for summary judgment. Fed. R. Civ. P. 12(c), 56. Because the motion puts in issue a factual allegation,¹ it is properly decided under Rule 56.²

¹The complaint alleges that "Ernest Milou has personally guaranteed payment of the bills of International Poultry Processors, Inc. by virtue of his written agreements" Wampler's Compl. ¶ 3. Under Rule 12(c), a court "must accept as true the allegations in the complaint, and draw all reasonable factual inferences in [plaintiff's] favor." Taj Mahal Travel, Inc. v. Delta Airlines Inc., 164 F.3d 186, 189 (3d Cir. 1998). Judgment on the pleadings must therefore be denied.

²"Summary judgment should be granted if, after drawing all reasonable inferences from the underlying facts in the light most favorable to the nonmoving party, the court concludes that there is no genuine issue of material fact to be resolved at trial and the moving party is entitled to judgment as a matter of law." In re Baby Food Antitrust Litig., 166 F.3d 112, 124 (3d Cir. 1999) (quoting Petruzzi's IGA v. Darling-Delaware, 998 F.2d 1224, 1230 (3d Cir. 1993)). "[D]isputes involving the interpretation of unambiguous contracts are resolvable as a matter of law, and are, therefore, appropriate cases for summary judgment. . . . [A] contract is unambiguous if it is reasonably capable of only one construction." Ramarind Resort Assocs. v. Government of V.I., 138 F.3d 107, 110-11 (3d Cir. 1998) (citations omitted).

This is an action for breach of contract that involves the sale of turkeys and turkey parts under an alleged oral agreement between the parties. According to the complaint, defendant Wampler Foods, Inc., in 1998, agreed to be plaintiff International Poultry Processors, Inc.'s primary turkey supplier. Wampler disputes the existence of the contract and claims \$246,864.73 for shipments made in June, 1998, the month in which it stopped supplying turkeys to plaintiff.

In this motion, Milou, plaintiff's president, contests the claim that he is personally liable for any moneys due defendant. Wampler maintains that Milou, by signing two credit applications, subjected himself to personal liability for International Poultry's debts.

The action that forms the basis for the cross-claim against Milou originated in the United States District Court for the Western District of Virginia. Wampler Foods, Inc. v. International Poultry Processors, Inc., No. 98-CV-59 (W.D. Va.). That Court found Milou's signature as defendant's president on a 1998 credit application did not evidence a personal guarantee:

Also part of this lawsuit is a document that contains the following language, which was executed by Mr. Milou, and I'm going to find, as a matter of fact, it was executed in his official capacity. It's the only reasonable way to look at it. It is this Court's view that this document, absent evidence that's not before the Court, was executed in no other way except his official capacity

Report and Recommendation of Magistrate Judge B. Waugh Crigler, at 4 (Dec. 11, 1998), adopted by Judge James H. Michael, Jr. (W.D. Va.

Jan. 19, 1999). However, without deciding Milou's dismissal motion, the Court transferred the action here.

According to International Poultry, the District of Virginia's ruling constitutes the law of the case and cannot now be reviewed. Our Court of Appeals has explained the doctrine of law of the case:

The law of the case doctrine directs courts to refrain from re-deciding issues that were resolved earlier in the litigation. The doctrine applies "as much to the decisions of a coordinate court in the same case as to a court's own decisions." Christianson v. Colt Industries Operating Corp., 486 U.S. 800, 816, 108 S.Ct. 2166, 2177, 100 L.Ed.2d 811 (1988). Because it prevents courts from entertaining endless appeals on the same issue, the doctrine promotes finality and judicial economy. "Law of the case rules have developed to maintain consistency and avoid reconsideration of matters once decided during the course of a single continuing lawsuit." 18 Charles A. Wright, Arthur R. Miller, Edward Cooper, Federal Practice and Procedure § 4478 at 788 (1981).

Public Interest Research Group of N.J., Inc. v. Magnesium Elektron, Inc., 123 F.3d 111, 116 (3d Cir. 1997); see also Chrysler Credit Corp. v. Country Chrysler, Inc., 928 F.2d 1509, 1516 (10th Cir. 1991) ("[T]raditional principles of law of the case counsel against the transferee court reevaluating the rulings of the transferor court, including its transfer order.").

The doctrine does not "limit the tribunal's power," rather it "directs a court's discretion." Arizona v. California, 460 U.S. 605, 618, 103 S.Ct. 1382, 1391, 75 L.Ed.2d 318 (1983). "A court has the power to revisit prior decisions of its own or of a

coordinate court in any circumstance, although as a rule courts should be loathe to do so in the absence of extraordinary circumstances." Christianson, 486 U.S. at 817, 108 S.Ct. at 2178. This Circuit has recognized three extraordinary circumstances that warrant a court's reconsideration of a prior decision: "(1) new evidence is available; (2) a supervening new law has been announced; or (3) the earlier decision was clearly erroneous and would create manifest injustice." Public Interest Research Group, 123 F.3d at 117.

Where, as here, there are no extraordinary circumstances, a transferee court should not revisit the decision of the transferor court.³ That the 1998 credit application is signed only in Milou's official capacity is, therefore, the law of the case. Because the 1992 and 1998 credit applications are substantially similar, the 1992 application is also held to have been executed in Milou's representative capacity.

Accordingly, cross-claim defendant Ernest Milou's motion for summary judgment will be granted.

³Even if the District of Virginia's decision were reconsidered, it would probably be followed. An agent with authority to contract for a disclosed principal is not liable on a written contract absent express agreement in the contract to be personally bound. House v. Kirby, 233 Va. 197, 199 n.1, 355 S.E.2d 303, 305 n.1 (1987); Terminal Rd. Assocs. v. Hall, 32 Va. Cir. 64 (Cir. Ct. Fairfax County 1993); see also Restatement (Second) of Agency § 320 (1958) ("Unless otherwise agreed, a person making or purporting to make a contract with another as agent for a disclosed principal does not become a party to the contract."). The credit application identified Milou as president of International Poultry, and there is no indication that Milou intended to be personally obligated for International Poultry's debts.

Edmund V. Ludwig, J.

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O R D E R

AND NOW, this 8th day of April, 1999, the motion of cross-claim defendant Ernest Milou for summary judgment is granted. A memorandum accompanies this order.

Edmund V. Ludwig, J.