Marathon Enterprises

2004 | Cited 0 times | Second Circuit | January 23, 2004

SUMMARY ORDER

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 23rd day of January Two thousand four.

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court is hereby AFFIRMED.

BACKGROUND

Marathon Enterprises, Inc. ("Marathon") entered into a contract with defendants Briltech, Inc., Bril-Tech, Ltd., and Briltech, LLC (collectively, "Bril-Tech") whereby Bril-Tech agreed to sell to Marathon a "Continuously Conveyorized Wiener Processing System"("the System")--a system for processing and cooking hot dogs. Bril-Tech failed to deliver the system, and Marathon never completed its payments. Both sides contend that the other side breached the contract.

Marathon sought damages from Bril-Tech for the alleged breach. Marathon also sued defendants Schroter GmbH&Co. KG, Schroter GmbH&Co. KGAnlangenbau, Erich Schroter GmbH, Schroter Verwaltungs-GmbH, and Schroter USA, Ltd. (collectively, "Schroter") for breach of contract, on the grounds that Bril-Tech had actual or apparent authority to act for Schroter and that, therefore, Schroter is liable for the non-delivery of the System. Other relevant facts are laid out in the District Court's decision on the parties' cross-motions for summary judgment. See Marathon Enterprises, Inc. v. Schroter GMBH & Co., No. 01 Civ. 0595, 2003 WL355238, at *1-3 (S.D.N.Y., Feb. 18, 2003).

The District Court denied the motions for summary judgment of both Marathon and Bril-Tech, and denied in part and granted in part Schroter's motion for summary judgment. The Court granted Schroter's motion for summary judgment dismissing Marathon's actual authority claim, but refused to dismiss Marathon's apparent authority claim. The Court stated:

Questions of fact exist as to whether Marathon reasonably relied on Schroter's actions and changed its position as a result. For example, a jury could find that it was reasonable for Marathon to believe Bril-Tech had authority to contract on behalf of Schroter because (1) Schroter had previously sold one of its ovens to Marathon through Bril-Tech, (2) Schroter allowed Bril-Tech to tell customers, including Marathon, that Bril-Tech was Schroter's exclusive agent in the United States, (3) Schroter allowed Bril-Tech to advertise Bril-Tech/ Schroter smokehouses, and (4) Schroter authorized Bril-Tech to use the Schroter name and logo on invoices and stationery.

2003 WL355238, at *8.

On May 14, 2003, a jury rendered a verdict against Schroter. At trial, the Court gave the following instruction to the jury regarding apparent authority:

Apparent authority is the authority that the lawrecognizes when a principal, by reason of its acts and conduct, leads a third person reasonably to believe that the principal's agent has authority to act on behalf of the principal. The lawprovides that where a principal acts in such a way as to create the appearance that it has granted authority to an agent, and another party is justified in relyingon the appearance of authority to its detriment, then the principal is bound by the actions of the agent. Therefore, if you find that Schroter has, by reason of its words or conduct, led Marathon to reasonably rely on the appearance that Briltech had authority to act on Schroter's behalf, then Schroter is responsible for such acts of Briltech as if Schroter itself committed the acts.

In decidingthis issue, you may consider whether Schroter placed Briltech in such a situation that a reasonable person would be justified in assuming that Briltech had authority to perform a particular act and deals with the apparent agent upon that assumption. If you find that Marathon was reasonably justified in assuming that Bril-Tech had the authority to act as it did, based on Schroter's words or conduct, then you are to find that Schroter is bound by Briltech's acts.

On May 29, 2003, Schroter filed a "Renewed Motion for Judgment and Motion for Conditional Grant of NewTrial and/ or Motion for a NewTrial." In its motion, Schroter contended that (i)there was insufficient evidence of apparent authority to permit a reasonable jury to find in Marathon's favor; and (ii) the court's jury instruction on the issue of apparent authority was inadequate.

The District Court denied Schroter's motion in its entirety. With respect to Schroter's claim that there was insufficient evidence of apparent authority, the Court stated:

[I]t is a close call, and if I had to decide it I could very well come out the other way, but I do not believe that a reasonable jury could onlyfind in favor of Schroter. I think there was sufficient evidence, albeit not a lot of evidence, to support a jury's conclusion that Schroter had engaged in action that bestowed apparent authority on the part of Bril-Tech for this transaction.

With respect to Schroter's claim that the jury instruction was inadequate, the Court stated:

The whole gist of Schroter's argument was that Marathon did not act reasonably. The whole gist of the argument was that any reasonable company in Marathon's position would not have gone into this believingthat Bril-Tech was an agent for Schroter for purposes of this transaction, and the jury rejected it. The argument as to whether Marathon should have done more, should have inquired was made. It was made. Whether it should have gotten Schroter to sign the contract, that issue was raised, and the jury rejected the argument, and, accordingly, I do not believe that a duty In sum, the Court concluded that, havingallowed Schroter to argue to the jury that Marathon did not make reasonable inquiries about the scope of the relationship between Schroter and Bril-Tech, no specific charge on the issue of apparent authority was necessary.

DISCUSSION

A. Sufficiency of the Evidence

We reviewde novo a district court's resolution of a motion for judgment as a matter of law, s ee Patrolm en's Benevolent As s oc. v. City of New York, 310 F.3d 43, 50 (2d Cir. 2002), and may onlyreverse the denial of such a motion "if the evidence, drawingall inferences in favor of the non-moving party and giving deference to all credibility determinations of the jury, is insufficient to permit a reasonable juror to find in [the non-movant's] favor,"La vin McEleney v. Ma ris t Colle ge, 239 F.3d 476, 479 (2d Cir. 2001).

In order to demonstrate apparent authority under NewYork law, Marathon was required to prove that (1)Schroter was responsible for the appearance of authority in Bril-Tech; and (2)Marathon's reliance on the appearance of authority was reasonable. F.D.I.C. v. Providence College, 115 F.3d 136, 140 (2d Cir. 1997)(applying NewYork law); Herbert Constr. Co. v. Continental Ins. Co., 931 F.2d 989, 993-96 (2d Cir. 1991)(same).

At trial, Marathon presented evidence that before execution of the contract, (1)Schroter authorized Bril-Tech to tell customers that Bril-Tech was Schroter's exclusive sales agent in the United States a n d Bril-Tech passed on this information to Marathon; (2) Schroter sold one of its batch ovens to Marathon through Bril-Tech and sent one of its engineers from Germany to assist in commissioning the equipment; (3) Schroter authorized Bril-Tech to place advertisements in trade magazines for "Bril-Tech/ Schroter"smokehouses, Schroter paid for these ads, and Marathon sawand responded to these ads(4) Schroter authorized Bril-Tech to give Marathon business cards and other paraphanelia with the Schroter name and logo, and to send correspondence with the Schroter name and logo; and (5) Schroter authorized and directed Bril-Tech to send invoices with Schroter's name on them.

Like the District Court, we have doubts that a sophisticated buyer such as Marathon could reasonably infer from these facts that Bril-Tech was acting on behalf of Schroter when it executed

the specific agreement at issue in the instant case. Nevertheless, we do not think the District Court erred when it submitted this question to a jury.

B. The "Apparent Authority" Instruction

We reviewa claim of error in the district court's jury instructions de novo and may reverse only "if the appellant can showthat the error was prejudicial in light of the charge as a whole." Perry v. Ethan Allen, Inc., 115 F.3d 143, 153 (2d Cir. 1997).

Schroter argues on appeal that the District Court should have charged the jury that Marathon had a "duty to inquire"as to the scope of Bril-Tech's authority. In rejecting Schroter's proposed instruction, the District Court reasoned as follows:

[T]he significant addition from Schroter's last proposal was a duty to investigate, a duty of inquiry. I think everything else is in there, if not exactly the same words, phrased slightly differently. I think the significant issue is whether to charge the jury that Marathon had a duty of inquiry.

[T]he duty of inquiry into an agent's apparent authority amounts to an alternative way of asking whether the third party reasonably relied on the representations of the agent that he expressed authority. I am not goingto charge the duty of inquiry under this case, under the Second Circuit case [of FDIC v. Prov id ence Coll., 115 F.3d 136 (2d Cir. 1997)]. I think the circumstances don't exist in this case.

In FDIC, we explained that, "in the apparent authority context, the duty of inquiry arises onlywhen (1)the facts and circumstances are such as to put the third party on inquiry, (2)the transaction is extraordinary, or (3)the novelty of the transaction alerts the third party to a danger of fraud." FDIC, 115 F.3d at 141. Schroter argues that the transaction at issue in this case was extraordinary or novel, because the smokehouse at issue was custom-made and had not previouslybeen manufactured. [2]

This argument is not persuasive. The transaction at issue in this case-- i.e., the sale of a custom-made smokehouse--was entirely within Schroter's ordinary line of business. Atransaction is not "novel"or "extraordinary"simply because it involves a newproduct. Rather, "the question is whether the particular transaction falls within the range of transactions in which [the principal] or similarly situated institutions normally engage." FDIC, 115 F.3d at 142 (emphasis added). Unlike in FDIC, in which the plaintiff would have had to believe that a college guaranteed the loans of companies doing work on its campus, the plaintiff in this case was merely asked to believe that a smokehouse manufacturer would manufacturer a newtype of smokehouse.

C. The "Actual Agency" Instruction

Finally, Schroter argues that it was prejudicial error for the District Court to fail to instruct the jury

that actual agency did not exist in this case as a matter of law. This argument is meritless. At trial, the District Court specificallyinstructed the jury that "there is onlyone claim in the case and that is the claim of apparent authority. There is no claim before you of express authority." Thus, contrary to Schroter's view, the District Court took adequate steps to remove any potential confusion as to whether a claim of actual authority existed.

CONCLUSION

We have considered all of plaintiff's claims on appeal and found them to be without merit. Accordingly, we hereby AFFIRM the judgment of the District Court.

1. The Honorable Carol B. Amon, of the United States District Court for the Eastern District of New York, sitting by designation.

2. Schroter argues further, mainly in its Reply Brief, that its proposed jury charge was required because the facts and circumstances are such as to put Marathon on inquiry. This argument is indistinguishable from Schroter's argument to the jury that Marathon could not have reasonablybelieved in Bril-Tech's "authority" in thesecircumstances. See FDIC, 115 F.3dat 141 ("The duty of inquiry into an agent's apparent authority 'amounts to an alternative way of asking whether the third party reasonably relied on the representations of the agent that he possessed authority to bind the principal.'") (citation omitted). By instructing the jury that Marathon's apparent authority claim depended on Marathon's reasonable belief in Bril-Tech's authority to act on Schroter's behalf, Judge Chin made clear that, if a reasonable person would have inquired more than Marathon did into Schroter's status, Marathon's apparent authority claim could not succeed.