In the United States Bankruptcy Court

for the Northern District of Iowa

NATIONAL CATTLE CONGRESS INC.	Bankruptcy No. 97-03581-W
Debtor(s).	Chapter 11

RULING ON MOTION FOR SUMMARY JUDGMENT

This matter came before the undersigned on April 23, 1999 on Debtor's Motion for Summary Judgment. Attorney John Titler represented Debtor National Cattle Congress, Inc. Attorney Brad Schroeder represented Iowa Greyhound Association. After the presentation of argument by counsel, the Court took the matter under advisement. The time for filing briefs has now passed and this matter is ready for resolution. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), (B).

STATEMENT OF THE CASE

Debtor seeks summary judgment on its objection to the claim of the Iowa Greyhound Association (IGA). IGA filed a proof of claim for $386,000 based on its action for breach of contract and unjust enrichment in Iowa District Court in Polk County, which is stayed by Debtor's Chapter 11 case. In that action, IGA asserts rights in Debtor's simulcasting purse supplement money. The Iowa Racing and Gaming Commission ("the Commission") requested Debtor create an account in which to deposit these funds while awaiting approval of a permit for live racing. Debtor opened an account with $386,000. The live racing permit was ultimately denied.

IGA asserts it is the intended recipient of the funds. It has been appointed by the Commission to hold funds dedicated to future purses at Iowa's greyhound tracks under Iowa Code sec. 99D.12(2). IGA controls the funds for the benefit of its members, Iowa owners and breeders running for purses at Iowa's greyhound tracks. Also, IGA directly receives two percent of the purse funds under Iowa Code sec. 99D.12(2)(c) as the annual recipient of the dog racing promotion fund. IGA asserts the Commission fully supports its claim to the funds at issue.

Debtor asserts it has no contractual or other duty to IGA regarding the deposited funds. It states the funds were to have been paid as purse money for live races by Iowa-whelped dogs to be held at Debtor's racetrack in the future. Debtor states it deposited the money at Firstar Bank to demonstrate its financial ability to perform obligations inherent in the live racing permit for which it had applied, as requested by the Commission. Debtor asserts that because the permit was not approved by the Commission, IGA has no claim to purse money for races which have not been and will not be held.

UNDISPUTED FACTS

While considering whether to approve a live racing permit for Debtor, the Commission requested that Debtor fund an account with simulcasting purse money generated since live racing was last conducted

at Debtor's racetrack. The Minutes of the Commission's telephonic meeting on January 30, 1996 state that the Commission decided that "an account should be funded that would require the signature of the general manager of the track and administrator of the [Commission] to withdraw funds." IGA's Memorandum in Support of Resistance to Motion for Summary Judgment, Ex. 1. The minutes indicate that this issue "was the main concern of the IGA."

After that meeting, Debtor's General Manager established an account at Firstar Bank in the name of "National Cattle Congress d/b/a Waterloo Greyhound Park", account number 612009 807, depositing $386,000. On February 26, 1996, Debtor forwarded a signature card to the Commission, stating the account "requires the signatures of the General Manager and the Administrator of the [Commission] to withdraw funds." Id., Ex. 2. Jack Ketterer, the Commission's Administrator, returned the signed signature card to Debtor. The signature card was not, however, submitted to Firstar Bank. On March 7, 1996, the Commission deferred action on Debtor's live racing permit application. Debtor's General Manager resigned on April 2, 1996. The Commission reached a decision on April 18, 1996 to deny Debtor the opportunity to resume live dog racing.

Debtor operated as a simulcast-only facility with no live racing from May 1994 until its license expired in July 1996. Although state law requires a minimum of 60 days of live racing each year in order to conduct simulcasting, the automatic stay prohibited action by the Commission on Debtor's license and Debtor continued simulcasting without conducting live racing. The simulcasting purse money Debtor deposited in the Firstar account was to be distributed under Iowa Code sec. 99D.12(2) to supplement live racing purses for Iowa-whelped dogs after the Commission approved a live racing permit. There is no indication in the record showing the intent of any party as to the distribution of the funds in the account in the event the Commission did not approve a live racing permit. It is now evident Debtor will conduct no future live greyhound races. IGA is unclear concerning the disposition of the funds if its claim is approved. It intimates that perhaps the funds could be distributed through live racing purses for Iowa-whelped dogs at other Iowa greyhound racetracks.

For the purposes of this ruling, the Court will assume IGA has standing to assert rights in the funds. It appears undisputed that IGA is designated by the Commission to administer funds under Iowa Code sec. 99D.12(2). Further, IGA receives two percent of simulcasting purse supplement money under that statute.

CONCLUSIONS OF LAW

Debtor seeks to resolve this matter through a motion for summary judgment. The Eighth Circuit recognizes "that summary judgment is a drastic remedy and must be exercised with extreme care." Wabun-Inini v. Sessions, 900 F.2d 1234, 1238 (8th Cir. 1990); see also Geiger v. Tokheim, 191 B.R. 781, 785 (Bankr. N.D. Iowa 1996). The Eighth Circuit has also recognized that the "[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" Wabun-Inini, 900 F.2d at 1238 (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986)).

In considering a motion for summary judgment, the Court must determine "whether the record, viewed in a light most favorable to the nonmoving party, shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Rabushka v. Crane Co., 122 F.3d 559, 562 (8th Cir. 1997), cert. denied, 118 S. Ct. 1336 (1998).

> After the moving party points out the absence of evidence to support the nonmoving party's case, the nonmoving party "must advance specific facts to create a genuine issue of material fact for trial." A genuine issue of material fact exists if the evidence is sufficient to allow a reasonable [factfinder] to return a verdict for the nonmoving party. However, the mere existence of a scintilla of evidence in favor of the nonmoving party's position is insufficient to create a genuine issue of material fact.

Id. (citations omitted). The existence of some factual disputes does not preclude summary judgment unless the factual disputes are relevant and could affect the outcome of the case. SeeAdams v. Erwin Weller Co., 87 F.3d 269, 271 (8th Cir. 1996).

OBJECTION TO PROOF OF CLAIM

Generally, a creditor's proof of claim constitutes prima facie evidence of the validity and amount of its claim. In re Brown, 82 F.3d 801, 805 (8th Cir. 1996); Fed. R. Bankr. P. 3001(f). This presumption of the validity of the proof of claim places the burden of producing evidence to rebut the presumption on Debtor. Brown, 82 F.3d at 805. However, the ultimate risk of nonpersuasion as to the allowability of the claim resides with the creditor. Id. If the objecting party rebuts the claimant's prima facie case, it is for the claimant to prove the claim, not for the objector to disprove it. In re Interco Inc., 211 B.R. 667, 677 (Bankr. E.D. Mo. 1997). In making a determination under §502 as to the extent of allowance of a claim, the court must go beyond the Code to the substantive state law governing the issues. Lindermuth v. Myers, 84 B.R. 164, 166 (D.S.D. 1988).

The Court could allow IGA's claim to be liquidated by the state district court, but it is not required to do so. In re Lyngholm, 24 F.3d 89, 92 (10th Cir. 1994). Disputed claims "may be resolved by the bankruptcy court under §502(b), and §502(c)(1) contemplates it will resolve claim matters that 'would unduly delay the administration of the case.'" Id. This matter is properly before the Court as an objection to IGA's proof of claim. IGA has not objected to the Court's determination of the merits of its claim in this manner and has not sought relief from the automatic stay to have the matter determined in its state court action.

STATUS OF DEPOSITED FUNDS

The circumstances of this case make it unique. Debtor was simulcasting races during its previous Chapter 11 case, but not running live greyhound races. Under the Iowa Code, simulcasting is not allowed unless the racetrack also conducts at least 60 days of live races. When Debtor applied for renewal of its live racing permit, the Commission required Debtor to deposit the simulcast purse money meant to benefit owners and breeders of Iowa-whelped dogs running in live races under Iowa Code sec. 99D.12(2). However, live races were never again held at Debtor's racetrack.

Nothing in the record pertaining to Debtor's agreement to deposit the funds or in Iowa Code chapter 99D indicates what is to become of the simulcast purse funds collected under sec. 99D.12(2) in the event the Commission did not issue a permit for live racing and live races were not held at Debtor's racetrack. The parties do not dispute the relevant facts in this matter. They disagree as to their relative rights in the simulcast purse money. In the absence of direction from the parties' agreement or Iowa statutes, the Court must look to other principles of law.

In In re Cedar Rapids Meats, Inc., 121 B.R. 562, 564 (Bankr. N.D. Iowa 1990), this Court considered whether a fund the debtor escrowed to guarantee payment of workers compensation claims was property of the estate. The Court concluded the debtor's interest in the fund was a contingent right to

the remainder which could be collected after the contingencies of the parties' agreement were fulfilled. Id.at 568. A similar conclusion was reached in In re Newcomb, 744 F.2d 621, 626 (8th Cir. 1984), considering an escrow agreement under Missouri law. The debtor escrowed money to satisfy a judgment pending appeal. Id.at 623. The court stated that at the creation of the escrow fund, the grantee received a contingent right to the escrowed funds and the debtor retained a contingent right to the finds if the judgment was reversed. Id.at 626.

As a general rule, when a deed is delivered to a third person, title does not vest in the grantee until conditions are performed. Jackson v. Rowley, 55 N.W. 339, 341 (Iowa 1893). While the condition remains unperformed, the donor retains title and control. Bolte v. Schenk, 210 N.W. 797, 799 (Iowa 1926). This rule also applies to deposits of money in an escrow. 28 Am. Jur. 2d Escrow §10 (1966). No legal title passes until the condition has been performed or the event has happened upon which it is to be delivered to the grantee. Id. According to the law of trusts, where a trust fails, legal title will be deemed to have remained in the settlor. 89 C.J.S. Trusts §84 (1955). The same is true where the purposes of a trust fail or it no longer can be executed pursuant to its provisions. Id.§103.

As to rights in a bank account, courts presume that deposits in a bank to the credit of a debtor belong to the entity in whose name the account is established. In re Amdura Corp., 75 F.3d 1447, 1451 (10th Cir. 1996) (considering motion for turnover). In Iowa, when bank deposits are involved, the issue of ownership is determined under contract law, with the deposit creating a contract between the bank and the depositor. Petersen v. Carstensen, 249 N.W.2d 622, 624 (Iowa 1977).

This Court must determine who has rights in the $386,000 fund Debtor deposited under Iowa Code sec.99D.12(2) pursuant to the Commission's request. Under the record presented, only the Debtor has rights in the fund. Under any theory of law, Debtor, as the depositor of the fund, retains all rights and title to the deposit. Only Debtor's name was on the bank account. Even assuming the parties intended the signature of the Commission's Administrator was required for withdrawal, the Commission never became entitled to receipt of the funds because live racing was never again performed at Debtor's racetrack. In the absence of a live race with purses going to Iowa-whelped dogs, the purpose of the deposit and the conditions on the deposit failed.

The record establishing the circumstances surrounding the creation of the deposit by Debtor fails to designate rights in the fund in the event no live racing was held. Iowa Code chapter 99D does not address the disposition of simulcast purse funds in the absence of live racing at the same racetrack. The deposit does not clearly fit within other theories of law. Whether the Court considers the funds to be a deposit, an escrow or a trust, however, it is evident that no other entity became entitled to the funds once live racing was prohibited. Only Debtor retains rights in the fund.

Debtor has pointed out the absence of evidence to support the IGA's claim. IGA has failed to advance specific facts which would create a genuine issue of material fact for trial. Therefore, summary judgment is appropriate. Debtor has rebutted the prima facie validity of IGA's proof of claim by showing that the funds were deposited under Iowa Code sec. 99D.12(2) pursuant to the request of the Commission and that no provision was made for disposition of the funds in the absence of live racing. IGA has failed to prove it is entitled to any claim against the fund in these circumstances either under the parties' agreement, under Iowa Code chapter 99D or under other substantive state law. Therefore, Debtor is entitled to summary judgment and IGA's claim is denied.

WHEREFORE, Debtor's Objection to Claim of Iowa Greyhound Association is SUSTAINED.

FURTHER, Iowa Greyhound Association's claim is DENIED.

SO ORDERED this 13th day of May, 1999.

Paul J. Kilburg
U.S. Bankruptcy Judge