2-2-2010

Climax v. Snake River Oncology Appellant's Reply Brief Dckt. 36613

IN THE SUPREME COURT OF THE STATE OF IDAHO

* * * * *

CLIMAX, LLC, an Idaho limited liability company, Plaintiff-Appellant,

v.

SNAKE RIVER ONCOLOGY OF EASTERN IDAHO, PLLC, and CHRISTIAN SHULL, M.D., Defendants-Respondents,

* * * * *

Supreme Court Docket No. 36613

* * * * *

APPELLANT'S REPLY BRIEF ON APPEAL

* * * * *

Appeal from the District Court of the Seventh Judicial District for Bonneville County.
Honorable Jon J. Shindurling, District Judge, presiding.

* * * * *

B. J. Driscoll, Esq., residing at Idaho Falls, Idaho, for Appellant Climax, LLC.

Don Carey, Esq., and Jeremy Brown, Esq., residing at Idaho Falls, Idaho, for Respondents, Snake River Oncology of Eastern Idaho, PLLC, and Christian Shull, M.D.

TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES

CASES: ***Pages***

STATUTES AND RULES:

OTHER AUTHORITIES:

ARGUMENT

Appellant, Climax, LLC ("Climax"), submits this reply brief in support of its appeal challenging the district court's decision granting summary judgment to defendants-respondents, Snake River Oncology of Eastern Idaho, PLLC ("SRO") and Christian Shull, M.D. ("Shull"). This Court should reverse the decision because the district court applied the wrong legal standard to Climax' petition under Section 535(g) of the Servicemembers Civil Relief Act ("SCRA"). Section 535(g) grants courts discretion to modify a servicemember's lease termination "as justice and equity require." However, the district court never discussed the "justice and equity" of refusing to modify Shull's lease termination. The district court never explained the justice or equity of having Climax—who already mitigated over 77% of the $323,964.36 total potential loss—bear the entire $75,057.97 unmitigated loss to allow Shull to expand his business. The district court failed to explain the justice or equity of allowing Shull to cancel his lease ***after*** he has already returned from his deployment. The district court did not discuss the justice or equity of the undisputed evidence of Shull's financial ability to fulfill his obligations. Instead, the court denied relief because Climax failed to show Shull committed fraud. This Court should correct the district court's error.

I.

"FREE REVIEW" IS THE CORRECT STANDARD OF REVIEW FOR THIS APPEAL, NOT "ABUSE OF DISCRETION."

SRO and Shull suggest the standard of review in this appeal should be "abuse of discretion."[1] This would be the correct standard of review if the district court had applied the

[1] See pp. 5-6 of Respondents' Brief on Appeal.

correct legal standard at summary judgment. However, Climax challenges the correctness of the standard applied by the district court (i.e., fraud), not the propriety of the district court's exercise of discretion under the proper legal standard (i.e., justice and equity under 50 U.S.C. App. § 535(g)). Because Climax challenges the correctness of the legal standard the district court applied at summary judgment as a question of law and not the court's exercise of discretion under the proper SCRA standard, the correct standard of review in this appeal is "free review over all remaining questions of law." *Adams v. Anderson*, 142 Idaho 208, 210 (2005).

II.

CLIMAX PROPERLY APPEALS FROM THE DISTRICT COURT'S APPLICATION OF THE WRONG LEGAL STANDARD IN THIS CASE.

SRO and Shull argue Climax has failed to present an issue for appeal.[2] SRO and Shull state that "the trial court did not impose any single standard for equitable relief."[3] However, a fair reading of the district court's decision plainly illustrates that the district court required Climax prove fraud before the court would grant Climax any relief. The district court began its curt analysis by first requiring "'sufficient grounds to invoke equity, such as mutual mistake, fraud, or impossibility.'"[4] This statement shows the district court's error from the outset. Section 535(g) itself provides "sufficient grounds" for the district court to invoke equity. By its express terms, Section 535(g) directs courts to grant relief to lessors "as justice and equity require." 50 U.S.C. App. 535(g). Instead of discussing the "justice and equity" of modifying the lease termination, the

[2] See pp. 6-7 of Respondents' Brief on Appeal.
[3] See p. 6 of Respondents' Brief on Appeal.
[4] R Vol. I, p. 118 (quoting *Holscher v. James*, 124 Idaho 443, 447 (1993).

district court impermissibly "looked beyond the mark" by seeking out additional grounds beyond the plain language of Section 535(g).

After creating additional prerequisites before it would do equity, the district court again erred by applying these prerequisites. The court stated, "There are no allegations before the court of fraud, or that Shull entered the military in order to shirk his obligations."[5] The court only discusses fraud. The court does not discuss mutual mistake or impossibility. More importantly, the district court never analyzes Climax' petition under the correct standard of "justice and equity" set forth in Section 535(g). The SCRA does not require a fraud, mutual mistake, impossibility, or a "wrongful act"[6] in order to grant relief to lessors. Thus, the district court applied the wrong legal standard by requiring Climax prove fraud before granting relief to Climax. This Court should correct this error.

III.

RELIEF TO SERVICEMEMBERS IS NOT THE ONLY CONSIDERATION UNDER THE SCRA, BUT MUST BE BALANCED AGAINST THE RIGHTS OF CREDITORS.

SRO and Shull state that the purpose of the SCRA is "to relieve service members so that their 'energies may be devoted to [their] military duties, unhampered by mental distress.'"[7] Climax agrees this is a purpose of the SCRA, but not the exclusive purpose. SRO and Shull err when they argue that any limitation of the protections afforded by the SCRA "would be contrary to the plain and unambiguous language of the Act."[8] In truth, the "plain and unambiguous language of the Act" expressly provides that a servicemember's right to lease termination can be modified "as justice and

[5] R Vol. I, p. 118.
[6] See p. 10 of Respondents' Brief on Appeal.
[7] See p. 8 of Respondents' Brief on Appeal.

equity require." 50 U.S.C. App. § 535(g). The abundant legislative and case history shows the SCRA is not a one-sided statute providing protection to servicemembers at all costs. Rather, it is a flexible statute designed to balance its privileges to servicemembers against the legitimate rights of creditors affected by the servicemembers' deployment. It is disingenuous and misleading for SRO and Shull to suggest that any limitation to the privileges afforded by the SCRA "would be contrary to the plain and unambiguous language of the Act" because the "plain and unambiguous language of the Act" expressly provides for just such limitations. *See* 50 U.S.C. App. § 535(g).

Similarly, SRO and Shull argue, "There is no language within § 535 limiting the right to termination upon a showing that the service member's *ability* to fulfill the lease had been materially effected by his military service."[9] While technically correct (Section 535 does not use the exact phrase "materially effect"), SRO and Shull's statement is misleading because it implies Section 535 contains no restriction at all on the servicemember's right to termination. Actually, Section 535 does limit a servicemember's right to terminate his lease, expressly permitting a court to modify the termination "as justice and equity require."

Further, SRO and Shull invite this Court to ignore the abundant and clear history of the SCRA as illustrated in *Boone v. Lightner*, 319 U.S. 561 (1943), and related cases[10] that demonstrate a concerted legislative effort to balance the protections to servicemembers against the rights of creditors. SRO and Shull attempt to dismiss these relevant authorities because some of them discuss the "material effect" provision not found in Section 535(g). But the general discussion of

---

[8] See p. 8 of Respondents' Brief on Appeal.
[9] See pp. 17-18 of Respondents' Brief on Appeal.

the SCRA's history remains and the legislative purpose is clear that while the protections afforded by the Act "are remedial in character, they may not be invoked for any 'needless or unwarranted purpose', but must be administered to accomplish substantial justice." *Patrikes v. v. J.C.H. Service Stations,* 180 Misc. 917, 41 N.Y.S.2d 158, 165 (N.Y.City Ct.1943).[11] In fact, Section 535(g) is an exemplary embodiment of this purpose, permitting courts to temper the adverse effects of a servicemember's lease termination "as justice and equity require."

SRO and Shull's continued reliance on dicta from *Conroy v. Aniskoff*, 507 U.S. 511 (1993) is misplaced.[12] The facts, law, and reasoning from *Conroy* are easily distinguished from this case. *Conroy* involved the redemption provisions of Section 525 of the SCRA, not the lease termination provisions of Section 535. Section 525 did not include any provision limiting the rights granted to servicemembers therein. Here, Section 535 does contain an express provision limiting a servicemember's lease termination right "as justice and equity require." 50 U.S.C.App. 535(g). The party in *Conroy* asked the court to apply a condition that was not expressly written in Section 525. Here, Climax asks this Court to require the trial court apply the express language of Section 535(g). The party's argument in *Conroy* would have resulted in a complete denial of the very rights created in Section 525. Climax' argument does not result in a complete denial of a servicemember's lease termination rights, but promotes the intended balance between servicemembers' privileges and creditors' rights. If "Congress meant what it said in the individual sections" [13] of the SCRA, then

---

[10] See pp. 13-14 of Respondents' Brief on Appeal.
[11] The Court may recall that the *Patrikes* case involves the predecessor section to the current lease termination section 535.
[12] See pp. 16-17 of Respondents' Brief on Appeal.
[13] See p. 17 of Respondents' Brief on Appeal.

Congress clearly intended to limit servicemembers' lease termination "as justice and equity require."

In reality, by disputing the applicability of the SCRA's legislative history to this action, SRO and Shull implicitly but necessarily suggest that a servicemember may invoke the SCRA for an "unwarranted purpose,"[14] to achieve an "unjust or unreasonable result,"[15] to "flout" his civilian obligations and "cancel his just liabilities,"[16] and to put the "immunities of the Act" to "unworthy use."[17] By definition, "equity" is "[j]ustice administered according to fairness as contrasted with the strictly formulated rules of common law. . . The term 'equity' denotes the spirit and habit of fairness, justness, and right dealing which would regulate the intercourse of men with men." BLACK'S LAW DICTIONARY 540 (6th ed. 1990). If this Court ignores the legislative history of the SCRA as SRO and Shull request, the Court will be undermining the very "equity" that Section 535(g) expressly requires.

IV.

REQUIRING THE TRIAL COURT TO CONSIDER THE JUSTICE AND EQUITY OF A SERVICEMEMBER'S LEASE TERMINATION DOES NOT DEPRIVE COURTS OF DISCRETION TO DO EQUITY.

SRO and Shull raise the "Pandora's Box" argument that application of Climax' "theory" (i.e., justice and equity) would effectively deny courts discretion to do equity, which would in turn deprive servicemembers any benefit of the SCRA. Specifically, SRO and Shull claim that Climax'

---

[14] See *Patrikes v. v. J.C.H. Service Stations,* 180 Misc. 917, 41 N.Y.S.2d 158, 165 (N.Y.City Ct.1943).
[15] See *Patrikes v. v. J.C.H. Service Stations,* 180 Misc. 917, 41 N.Y.S.2d 158, 164 (N.Y.City Ct.1943).
[16] See *Franklin Soc. for Home-Building and Savings v. Flavin,* 265 A.D. 720, 721 (NY 1943).
[17] See *Boone v. Lightner,* 319 U.S. 561, 574 (1943).

approach would "deny reviewing courts discretion to invoke or withhold equity, and require that a lease be modified whenever a service member benefits from the lease termination."[18] This suggestion is not accurate or logical.

Section 535(g) expressly grants trial courts the discretion to modify a servicemember's lease termination "as justice and equity require." Climax asks for fair treatment under this plain standard. Climax fails to understand how requiring the trial court to do "justice and equity" could deprive servicemembers of that equity. On the other hand, permitting the trial court to require a lessor to prove fraud unfairly tilts the scales of "justice and equity" against the lessor in a manner not intended by the SCRA. Justice and equity will not require a lease termination be modified any time a servicemember benefits from the termination and will not automatically deprive servicemembers of the benefits of the SCRA. Trial courts will still review each petition on a case by case basis.

V.

THIS COURT SHOULD AWARD CLIMAX ITS ATTORNEY'S FEES AND COSTS ON APPEAL.

Climax reiterates its claim for an award of attorney's fees and costs incurred in pursuing this appeal.[19] Even if on remand the trial court ultimately denies Climax any relief from Shull's lease termination, Climax should nonetheless be awarded its attorney's fees and costs incurred in this appeal.

---

[18] See p. 10 of Respondents' Brief on Appeal.

CONCLUSION

The law is clear that a trial court has broad discretion to determine cases brought under the SCRA. However, in this case the trial court committed reversible error by applying the wrong legal standard to Climax' petition for modification of the lease termination. The trial court analyzed the case under a fraud standard, contrary to the plain language of Section 535(g) requiring application of "justice and equity." For the reasons set forth in this brief and in Climax' opening brief, this Court should reverse the district court's order granting summary judgment to Shull and SRO and remand this case for further proceedings. This Court should also award Climax its costs and attorney's fees.

RESPECTIVELY SUBMITTED this 1 day of February, 2010.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By: _____
B. J. Driscoll
Attorneys for Appellant, Climax, LLC

[19] See pp. 21-22 of Appellant's Brief on Appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of February, 2010, I caused a true and correct copy of the foregoing **APPELLANT'S REPLY BRIEF ON APPEAL** to be served, by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

[✓] U.S. Mail
[ ] Facsimile Transmission
[ ] Overnight Delivery
[ ] Hand Delivery
[ ] Courthouse Mail Box

Donald F. Carey, Esq.
Jeremy D. Brown, Esq.
Carey Perkins, LLP
2325 West Broadway, Suite B
Idaho Falls, Idaho 83405

B. J. Driscoll