

Third District Court of Appeal

State of Florida, January Term, A.D. 2010

Opinion filed February 17, 2010.

Not final until disposition of timely filed motion for rehearing.

No. 3D08-3238

Lower Tribunal No. 06-2544

6-F Corporation, etc., et al.,
Appellants,

vs.

BDP International Finance Corporation, Ltd., etc., et al.,
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Mary Barzee Flores, Judge.

Alvarez, Armas & Borron, J. Alfredo De Armas, and Arturo Alvarez, for appellants.

Patton Boggs, Read McCaffrey, and Christopher W. Hellmich (Washington, D.C.); and Holland & Knight, Rodolfo Sorondo, Jr., and Ilene L. Pabian, for appellees.

Before COPE, GERSTEN, and SUAREZ, JJ.

PER CURIAM.

6-F Corporation, First Affiliated Securities, Intertrade Development Corp., Top of the Bridge Corp., and Pedro Castillo (collectively “the defendants”) appeal

an adverse final judgment in favor of Banco Dominicano Del Progreso, S.A., BDP International Finance Corporation, Caribbean Card Systems, Inc., and Crediprogreso, S.A. (collectively “the plaintiffs”). We affirm.

Pedro Castillo, individually and through his companies, stole millions of dollars from the plaintiffs. The plaintiffs sued the defendants for conversion, civil theft, fraud, breach of fiduciary duty, indemnification, and constructive trust and equitable lien. After a ten-day bench trial, the trial judge found in favor of the plaintiffs on all counts and awarded treble damages jointly and severally against the defendants on the civil theft count, amounting to approximately \$80 million. The defendants appealed.

On appeal, the defendants contend that the trial court erred in awarding treble damages jointly and severally against all defendants on the civil theft claim. The plaintiffs assert that the award was proper. We agree with the plaintiffs.

The plaintiffs filed a civil theft claim that stated:

COUNT XII

CIVIL THEFT AGAINST DEFENDANT CASTILLO

180. Incorporated by reference, as if repeated, herein are all allegations of fact set forth in paragraphs 1 through 179.

181. Defendant Castillo wrongfully and without the knowledge, consent, or authorization of Plaintiffs, misappropriated funds belonging to Plaintiffs for his own use and/or benefit and/or for the use and/or benefit of

Defendants 6-F Corporation, FAS, TOB, Intertrade Development and other of his sham companies.

182. Defendant Castillo obtained and retained these funds for his own use and/or benefit and/or for the use and/or benefit of Defendants 6-F Corporation, FAS, TOB, Intertrade Development and other of his sham companies with the felonious intent to commit a theft and to permanently deprive Plaintiffs of their lawful rights to those funds.

183. On June 1, 2006, Plaintiffs sent Defendant Castillo, through his counsel, a demand for the stolen funds. The Plaintiffs received no response nor have any of the funds been returned.

WHEREFORE Plaintiffs demand treble the amount of damages proven at trial.

Although the title of the civil theft count appeared to refer to Castillo individually, we find that it is clear from the body of the count that the plaintiffs intended 6-F Corporation, FAS, TOB, Intertrade Development, and other of his sham companies to be responsible for the civil theft. See Beseau v. Bhalani, 904 So. 2d 641, 642 (Fla. 5th DCA 2005). Further, the civil theft count incorporates by reference all other allegations in the complaint that Castillo and the defendants should be held jointly and severally liable. See Acadia Partners, L.P. v. Tompkins, 759 So. 2d 732, 736-37 (Fla. 5th DCA 2000).

Therefore, the trial court properly awarded treble damages jointly and severally against Castillo individually and against the other corporate defendants. Accordingly, we affirm the final judgment in favor of the plaintiffs.

Affirmed.

GERSTEN and SUAREZ, JJ., concur.

COPE, J. (concurring in part, dissenting in part).

Plaintiffs-appellees sued defendants-appellants for, in substance, financial fraud. After a bench trial, the trial court found for the plaintiffs on their claims for conversion, breach of fiduciary duty, fraud, and civil theft. The trial court entered a multi-million dollar judgment on each count. On the civil theft count, the court entered a treble damage award of approximately eighty million dollars jointly and severally against all defendants.

The defendants are correct that the trial court erred in entering the treble damage award against the corporate defendants. There was only one civil theft count in the third amended complaint. That count was only filed against the individual defendant, Pedro Castillo, not against the corporate defendants. That count stated:

COUNT XII

CIVIL THEFT AGAINST DEFENDANT CASTILLO

180. Incorporated by reference, as if repeated, herein are all allegations of fact set forth in paragraphs 1 through 179.

181. Defendant Castillo wrongfully and without the knowledge, consent, or authorization of Plaintiffs, misappropriated funds belonging to Plaintiffs for his own use and/or benefit and/or for the use and/or benefit of Defendants 6-F Corporation, FAS, TOB, Intertrade Development and other of his sham companies.

182. Defendant Castillo obtained and retained these funds for his own use and/or benefit and/or for the use and/or benefit of Defendants 6-F Corporation, FAS, TOB, Intertrade Development and other of his sham companies with the felonious intent to commit a theft and to permanently deprive Plaintiffs of their lawful rights to those funds.

183. On June 1, 2006, Plaintiffs sent Defendant Castillo, through his counsel, a demand for the stolen funds. The Plaintiffs received no response nor have any of the funds been returned.

WHEREFORE Plaintiffs demand treble the amount of damages proven at trial.

Since by its express terms count twelve was asserted against defendant Castillo only, it follows that treble damages should have been entered against him alone, and not the corporate defendants.

The plaintiffs argue that there was a factual basis for imposition of joint and several liability against all defendants. That may be true, but no treble damage claim was pled against the corporate defendants. Therefore we should reverse the treble damage award against the corporate defendants.

I concur in affirming with regard to the defendants' remaining points on appeal.