

Burns v. Ferro

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Burns v. Ferro

Case: Burns v. Ferro (1991)

Subject Category: Consumer Protection

Agency Involved: Private Civil Suit

Court: Superior Court of Delaware

Case Synopsis: The Superior Court was asked to reconsider if summary judgment was appropriate to determine if a financing company could be held jointly liable for promoting an airplane pyramid scheme.

Legal Issue: Is summary judgment appropriate to decide if a financing company can be jointly liable for promoting an airplane pyramid scheme?

Court Ruling: The Superior Court held that its previous decision was correct concerning material questions of fact that surrounded the questions presented, and summary judgment was therefore not appropriate. Chrysler First Financial made loans to consumers that were used to purchase portions of an illegal pyramid scheme. The company could be found liable for participating in the scheme if it had knowledge of the purpose of the loans to the plaintiff. However, the record was not complete on the question of knowledge, so summary judgment was denied.

Practical Importance to Business of MLM/Direct Sales/Direct Selling/Network Marketing/Party Plan/Multilevel Marketing: Anyone found to be promoting an illegal pyramid scheme might be found to be jointly liable for the harm to the public, including financing companies and third party promoters.

Burns v. Ferro, 1991 WL 53833 (1991) (Not Reported): The Superior Court held that its previous decision was correct concerning material questions of fact that surrounded the questions presented, and summary judgment was therefore not appropriate. Chrysler First Financial made loans to consumers that were used to purchase portions of an illegal pyramid scheme. The company could be found liable for participating in the scheme if it had knowledge of the purpose of the loans to the plaintiff. However, the record was not complete on the question of knowledge, so summary judgment was denied.

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1991 WL 53833 (Del.Super.)

James M. BURNS, Jr., Carol L. Burns, Larry Larraga, William Jenkins, Jr., and

James L. Larks,

v.

John J. FERRO, Robert Jorge, Mike R. a/k/a Mike Ritchie, Kim E. A/k/a Kim

Ferro, and Chrysler First Financial Services Corporation, a corporation of the

State of New York.

No. C.A. 88C-SE-178.

Superior Court of Delaware.

Submitted: April 4, 1991.

Decided: April 10, 1991.

OPINION AND ORDER

GOLDSTEIN, Judge.

*1 This case is presently before the Court on defendant's, Chrysler First Financial Services Corporation ("Chrysler First"), motion for reargument for a full or partial summary judgment.

The case arises as a result of an illegal "airplane" pyramid scheme. Plaintiffs brought this claim alleging violations of the Delaware Pyramid or Chain Distribution Schemes Act, the Delaware Consumer Fraud Act, the Delaware Uniform Deceptive Trade Practices Act and the Delaware Securities Act. On September 7, 1990, Chrysler First filed a motion for a full or partial summary judgment. On March 28, 1991, this Court issued a decision granting in part and denying in part Chrysler First's motion. Chrysler First now seeks ruling on the issues of plaintiffs' debt payments owed to Chrysler First and on all counts as to plaintiffs Larry Larraga and Carol Burns. Although the parties did not address these issues in their briefs, this Court disposed of both matters in general terms in its March 28, 1991 opinion by deciding that many factual issues, including the underlying facts of these allegations, remained to be decided. See

Burns v. Ferro, Del.Super., C.A. No. 88C-SE-178, slip. op. at 7, 8, 11 Goldstein, J. (March 28, 1991). Ruling now on the specific issues presented, Chrysler First's motion is DENIED.

Chrysler First contends that plaintiffs have defaulted on the debt payments owed to Chrysler First under their Personaline Credit Contracts with Chrysler First. As discussed in the March 28, 1991 decision, factual issues exist as to whether Chrysler First knew that it was involved in an illegal scheme. Id. Chrysler First would not be entitled to judgment in the debt action, if at all, until the factual issues are resolved. If the jury finds that Chrysler First knew that it was participating in an illegal scheme, then Chrysler First will not be entitled to recover the \$5,000 loaned to each plaintiff. See *Morford v. Bellanca Aircraft Corp.*, Del.Super., 67 A.2d 542, 547 (1949); *Schnoor v. Griffin*, N.M.Supr., 439 P.2d 922, 927 (1968) (participant in a fraudulent scheme may not sue and recover for injuries that arise out of the same transaction). Summary judgment on the issue of plaintiffs' debt obligation is DENIED.

Chrysler First next moves for summary judgment on all counts as to plaintiffs, Larry Larraga and Carol Burns, because these plaintiffs did not attend any of the meetings promoting the "airplane." As a result, Chrysler First argues that it could not have represented or promoted the scheme to Larry Larraga and Carol Burns and is, therefore, entitled to summary judgment as a matter of law.

This issue is not susceptible to summary judgment. Factual issues exist as to whether Larry Larraga and Carol Burns knew the scheme was illegal and whether Chrysler First made representations separate and apart from the meetings. These issues must be decided by a jury. Chrysler First's motion for summary judgment as to plaintiffs, Larry Larraga and Carol Burns, is DENIED.

*2 IT IS SO ORDERED.

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