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Tenth Circuit Affirms Judgment in Marijuana Business Dispute But Remands Order Enforcing Judgment Over Public Policy Concerns

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In a case presenting “a question about the nature and extent to which a federal court may act to resolve a dispute related to a marijuana business that operates legally under state law,” a divided panel of the U.S. Court of Appeals for the Tenth Circuit vigorously debated public policy concerns—namely, whether a federal court can enforce a judgment arising from a contract that is illegal under federal law. See *Bartch v. Barch*, 2024 U.S. App. LEXIS 18607, at *2 (10th Cir. July 29, 2024). Ultimately, the court affirmed the $6.4 million breach of contract judgment but—agreeing with the public policy concerns raised by the dissent—reversed and remanded the separate enforcement order for the district court to address in the first instance whether the enforcement order would require violation of federal drug laws and, thus, violate public policy.

The Parties' Marijuana Business and Contract

David Joshua Bartch (Josh) and Mackie Barch (Mackie) owned and operated a marijuana business in Colorado. Josh and Mackie later sought a license to open a similar business in Maryland but, out of concern that Josh's deferred judgment in Colorado for misdemeanor drug possession could hurt the license application, they agreed that Josh would temporarily relinquish his ownership of the Maryland business and that Josh would be reinstated after the license was granted. The Maryland business, Culta, LLC, received the license, but Mackie refused to reinstate Josh's ownership interest. Culta, which cultivates, processes, and dispenses marijuana, opened and operated without Josh.

The Original Judgment and Judgment Enforcement Order

Josh sued Mackie and Mackie's company, Trellis Holdings Maryland, Inc. (Trellis), which holds a minority membership share in Culta, for breach of contract, conversion, constructive trust, unjust enrichment, and civil theft in federal district court in Colorado. Mackie and Trellis did not plead an affirmative defense of contract illegality. After a bench trial, the district

court found for Josh on the breach of contract claim and awarded him $6.4 million in damages (the “original judgment”). Mackie and Trellis did not appeal and failed to pay the judgment.

Because Trellis's equity interest in Culta was the only asset that could fully satisfy the judgment, Josh asked the district court under F.R.C.P. 69 for an order under Colo. R. Civ. P. 69(g) requiring Mackie and Trellis to (1) sell or otherwise monetize their equity in Culta and (2) turn over to the proceeds to Josh. The district court granted the request, ordering Mackie and Trellis to: (1) use their “best efforts” to sell Trellis's equity in Culta, (2) turn over the proceeds from any such sale to Josh until the judgment is satisfied, and (3) avoid devaluing Trellis's equity in the meantime (the “judgment enforcement order”). Mackie and Trellis appealed the judgment enforcement order.

Mackie and Trellis later moved under F.R.C.P. 60(b)(4) for relief from the original judgment, arguing that the district court lacked subject matter jurisdiction because the judgment compels violation of the federal Controlled Substances Act (CSA). The district court denied the motion, and Mackie and Trellis appealed. The Tenth Circuit consolidated the two appeals.

The Tenth Circuit Affirms the Denial of Relief From the Original Judgment

The circuit court began by reviewing the district court's denial of Rule 60(b)(4) relief from the original judgment because the validity of the judgment necessarily affected the availability of post-judgment relief from the enforcement order. Rule 60(b)(4) allows for relief from a judgment that is “void,” which occurs in rare cases when the court lacked jurisdiction to render judgment or when there was a violation of due process, (citing Supreme Court and Tenth Circuit precedent). Mackie and Trellis, however, argued that “the original judgment was void because Josh lacked standing” to seek damages for breach of contract in the original proceeding because the relief requested would violate the CSA.

The Tenth Circuit affirmed the denial of the F.R.C.P. 60(b)(4) motion because: (1) Rule 60(b)(4) does not provide relief from a judgment based on public policy or illegality grounds; (2) illegality goes to whether Josh had a meritorious contract claim, not to whether Josh had standing and, thus, jurisdiction was not at issue; and (3) Josh had standing (he alleged and proved injury-in-fact, which was redressable because Josh asked for and was awarded general compensatory damages).

The dissent harshly criticized the court's analysis under Rule 60(b)(4): “This court's focus on whether [Mackie and Trellis] raised an illegality defense pre-judgment or whether Fed. R. Civ. P. 60(b)(4) provides for post-judgment relief based on a claim of illegality is misplaced because the Supreme Court has told us that '[w]henever the illegality appears, … the disclosure is fatal to the case.' The question of illegality is 'one which the court itself [is] bound to raise in the interest of the due administration of justice.'” (Baldock, J., dissenting) (internal citations and emphasis omitted). In other words, the illegality of the contract “should have sounded the

death knell" of Josh's case and the dissent would "summarily dispose" of the appeal by remanding with instructions to dismiss.

Addressing the dissent, the majority observed that because "Mackie and Trellis never argued before entry of the original judgment that the contract was against public policy," and because "Mackie and Trellis failed to appeal the original judgment," the original judgment was "subject to revision only through F.R.C.P. 60(b)" and, as a result, the Tenth Circuit is bound by the rule's limitations and binding precedent governing the rule's application.

The Tenth Circuit Reverses and Remands the Enforcement Order

Mackie and Trellis separately appealed the F.R.C.P. 69 judgment enforcement order, arguing Josh lacked standing because the relief he sought—an order to sell Trellis's equity in Culta and turn over the proceeds to Josh—would require a violation of the CSA, so the district court lacked the power to redress his injury. They added that the district court lacked authority to issue the judgment enforcement order requiring the sale of Trellis's equity in Culta under Colo. R. Civ. P. 69(g)—a rule authorizing a court to "order any party … to apply any property … towards satisfaction of the judgment" because (1) a statutory "charging order is the exclusive remedy to apply an LLC member's equity interest to a judgment," and (2) even if a charging order is not an exclusive remedy, Mackie and Trellis lacked sufficient control over Trellis's Culta equity for the district court to order them to divest it.

The court swiftly rejected the standing argument for the same reasons it rejected the standing argument made in relation to the Rule 60(b)(4) motion. The court also disagreed that the district court lacked authority to enter the judgment enforcement order. Examining Colorado judgment enforcement procedures, the Colorado statutes governing charging orders, as well as Colorado cases addressing the statutes, the Tenth Circuit concluded the Colorado Supreme Court would reject Mackie and Trellis's argument. In addition, the court held that, even though Tellis may face some limits on how it may sell its equity, it still had sufficient control over it for purposes of directing the sale under Colo. R. Civ. P. 69(g).

Nonetheless, heeding the public policy and "illegality" concerns raised by Mackie, Trellis, and the dissent, the circuit court remanded to the district court for additional fact findings. Id. at *23-27. The court explained that "[a]lthough [Mackie and Trellis's] argument does not show Josh lacked standing, we agree with the dissent that the public policy issue deserves further consideration."

The circuit court determined that the judgment enforcement order "does not specifically instruct Mackie and Trellis to cultivate, process, or sell marijuana—they may only need to sell their equity and compensate Josh for his contract damages"; however, there remained questions (best addressed by the district court in the first instance) as the whether the order "effectively ordered" Mackie and Trellis to violate federal drug law.

The dissent responded that it does. By "ordering [Mackie and Trellis] to

maintain the value of Trellis's equity in Culta pending its sale is effectively the same thing as telling [them] to continue cultivating, processing, and dispensing marijuana. Otherwise, the net worth of Culta and thus the value of Trellis's equity in it would necessarily decrease." Thus, the dissent would have remanded "with instructions to vacate its judgment and dismiss the action as based on a contract that violates the public policy of the United States as it exists today."

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