Grumman Allied Indus. v. Rohr Indus.

United States Court of Appeals for the Second Circuit

October 3, 1984, Argued ; October 31, 1984, Decided

No. 84-7402 -- August Term, 1984

Judges: Kaufman and Winter, Circuit Judges and Wyzanski, Senior District Judge. *

Opinion by: KAUFMAN

Opinion

[*730] KAUFMAN, Circuit Judge:

On January 3, 1978, Grumman Allied Industries (Grumman), a subsidiary of the Grumman Corporation, acquired all the plants, books, records, and other assets of The Flxible Company (Flxible), a subsidiary of the Rohr Corporation. The **[**2]** price paid was $55 million, and among the assets purchased were two hand-built prototypes -- Proto I and Proto II -- of a new bus known as the Model 870, and the right to use the design for these prototypes. After the sale was consummated, and after Flxible had sold more than 2,600 Model 870 buses, structural defects arose, and these buses were removed from operation. The dispute before us concerns the propriety of granting Rohr's motion for summary judgment and the dismissal of Grumman's complaint alleging Rohr's misrepresentation and failure to disclose material facts relating to the testing of the Model 870. We affirm the lower court's holding because Grumman contractually disclaimed reliance upon the representations at issue and enjoyed absolute access to all relevant information necessary to confirm the validity of those representations. In so concluding, we merely give effect to what we perceive to be a clear manifestation of the parties' intentions concerning the allocation of risks in the purchase of Flxible's business. Furthermore, we believe that our result comports with modern precepts regarding freedom of contract and limited judicial intervention into private contractual **[**3]** relationships.

Because the intricate factual setting of this case is critical to its resolution, we set forth the facts in some detail.

I.

The Sale of Flxible

The roots of this dispute can be traced to May of 1976, at which time Rohr experienced serious financial difficulties and considered selling one of its subsidiaries, Flxible. To determine the feasibility of selling a bus manufacturing company, Rohr retained the investment banking firm of White Weld & Co., which prepared and circulated to a number of potential buyers a

* The Honorable Charles E. Wyzanski, Jr., Senior District Judge, District of Massachusetts, sitting by designation.

memorandum describing Flxible. Grumman received a copy of this memorandum, and in mid-1976 expressed an interest in acquiring Flxible.

The following fifteen months (May 1976 to September 1977) saw Grumman affirmatively pursue that interest. Armed with an arsenal of seasoned negotiators, sophisticated engineers, experienced executives and capable attorneys and accountants, Grumman sought to uncover all information relevant to its potential acquisition. To this end, Grumman representatives repeatedly toured the Flxible plants and, while there, were accorded unrestricted access to all personnel and records. During this period, Grumman representatives **[**4]** were shown a promotional film containing representations, some of which related to the testing of the Model 870. [1]

[5]** **[*731]** On September 29, 1977, and for the following three months, Grumman and Rohr engaged in formal negotiations. In these negotiations, both sides were represented by experienced businessmen, engineers and attorneys. Both parties formulated, reviewed and modified the several draft agreements that were exchanged and discussed during this period. Indeed, Grumman appointed an acquisition team and a negotiating team to review engineering and financial matters and negotiate a contract that would protect Grumman's best interests. Grumman's acquisition team was comprised of fourteen persons, including three lawyers and at least four trained engineers. The "acquisition" personnel traveled to Flxible's facilities, interviewed its employees and reviewed its documents and products. Grumman's negotiating team was led by Robert Loar, a former Chairman of the Board of Grumman; Robert Landon, who was to become President of Grumman Flxible; Robert Somerville, an experienced engineer who was President of Grumman; and Thomas Genovese, General Counsel to Grumman.

Grumman's negotiating team and Rohr's negotiating team held four formal meetings between September 29, 1977 and December 1, 1977. **[**6]** On September 29, 1977, the rear A-frame of the Proto II cracked during endurance testing and all testing was suspended. Although Grumman had learned that the testing of the Model 870 design was not complete as of July 1977, and that a 10,000 mile endurance test was scheduled, neither the negotiating team nor the acquisition team requested the results of the testing.

After the negotiating teams had agreed on the general terms of sale, Genovese, Grumman's counsel, prepared the initial draft of what ultimately was to become the Final Agreement. Thereafter, revisions were made in a series of drafts, the drafts were subjected to extensive and

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[1] This film was sent to Grumman's Board of Directors in June 1977. Among the statements made in the sound track of the film were the following:

> Like all Flxible buses, the 870 has been thoroughly tested. It's been hit . . . it's been dropped . . . it's been slammed and subjected to exhaustive endurance and fatigue tests on Rohr's private test track at the Riverside International Raceway in California. . . . During this test, the 870 was driven over a series of torturing obstacles, almost 250 feet of 6-inch deep chockholes, and 75 feet of raised parallel strips spaced 2 inches apart in a signwave pattern.
>
> This rigorous testing of the 870 culminates a 5-year transit vehicle research and development program that involved all of the 870's predecessors, Hi Value, Metro and federally sponsored Transbus.
>
> These vehicles also were tested at Riverside . . . the result -- the tough and ready 870.
>
> Before the 870 was road-tested, it was subjected to a series of suspension tests carrying the equivalent of a full standee load. These tests simulated thousands of miles of street driving.

intensive internal review by Grumman, and their content was discussed by Grumman and Rohr representatives at face-to-face meetings convened in various locations throughout the United States. Genovese acknowledged he had read all seven drafts of the contract, some of them more than once; Somerville, who executed the contract on behalf of Grumman, stated he had read "through all of its iterations" before signing the Agreement.

The Agreement

The fruition of these extensive negotiations and investigations was an 85 page Agreement that was **[**7]** signed on December 15, 1977 . . . and closed on January 3, 1978. . . . The Agreement provided that (i) Grumman has "made a lengthy, detailed, and independent investigation regarding . . . [Rohr's] Model 870 bus design and specifications," [§ 4.3 (b) **[**9]**]; **[*732]** (ii) "neither the Construction in Progress nor the Model 870 manufacturing techniques have yet been tested by [Rohr], and accordingly no representations and warranties concerning such have been or are hereby made, implied or given" [§ 4.3 (b)]; (iii) "except for the warranties and representations set forth in this Agreement . . . no other statement, warranty, representation or information, verbal or written, shall be legally binding upon any party or shall be the basis for reliance by the other party" [§ 4.3 (b)]; (iv) Rohr shall continue to accord Grumman access to all Flxible facilities and records and "do everything reasonably necessary to enable [Grumman] to make a complete examination of the assets and properties of [Rohr] **[**8]** and the condition thereof" [§ 3.4 (b)]; (v) "neither party is relying upon any warranty or representation of the other not fully set forth herein" [§ 6.11 **[**10]**]; (vi) Rohr's "sole representation and warranty regarding the know-how" (defined in § 1.1(i) to include "design") was that Rohr "has the right to use such" [§ 4.1(h)]; and (vii) Rohr disclaims "any warranty, guarantee or liability expressed by law or otherwise, specifically including a disclaimer of the implied warranties of title, merchantability and fitness for intended use" [§ 2.1(b)].

[11]** **[*733]** *Post-Acquisition Activities*

At the time the sale was closed on January 3, 1978, the endurance testing of the Model 870 remained incomplete, and records accurately disclosing the defects that surfaced during testing were turned over to Grumman. The endurance testing of Proto II was completed under the auspices of Grumman in April of 1978.

Upon completion of the testing, the Chief Engineer of Grumman, Edward Kravitz, apprised Somerville of the A-frame's failure during the endurance runs. Somerville did nothing. Indeed, between April 1978 and November 1980, he authorized the manufacture and sale of the Model 870 without any additional testing. After more than 2,600 Model 870 buses were produced and sold to transit agencies throughout the United States, a widely publicized A-frame failure occurred in New York City in December 1980, necessitating the Model 870's removal from service.

The District Court Proceedings

[12]** On April 19, 1983 -- more than two years after the New York A-frame failure, Grumman brought suit against Rohr in the United States District Court for the Eastern District of New York, alleging Rohr had misrepresented and failed to disclose material facts relating to the testing of

the Model 870's design. . . . Grumman's complaint sought $250 million in compensatory damages, and $250 million in punitive damages.

On December 2, 1983, Rohr moved for summary judgment. On April 4, 1984, Judge Mishler granted Rohr's summary judgment motion. . . .

II.

Essential to understanding the propriety of the district court's grant of summary judgment is an appreciation of the limited function of the judiciary in interposing its will into the private contractual realm. . . . By giving effect to explicit contractual terms, a court has a better chance to carry out the intentions of the parties. Particularly where the two sides are sophisticated, their allocation of risk and potential benefit is properly treated as supreme to any conflicting understanding we may have. We believe there exists a point at which clear contractual language must be read to control a dispute. And we deem the language of this Agreement to be suitably unambiguous.

Mindful of these precepts, we turn to Grumman's contention that its misrepresentation claim is not barred despite its specific disclaimers of reliance on Rohr's representations concerning the testing of the Model 870. We believe such an assertion ignores basic contractual principles, as well as the controlling decisional law.

In *Danann Realty Corp. v. Harris, 5 N.Y.2d 317, 184 N.Y.S.2d 599, 157 N.E.2d 597 (1959)*, **[**16]** the New York Court of Appeals **[**19]** held that where a party specifically disclaims reliance upon a representation in a contract, that party cannot, in a subsequent action for fraud, assert it was fraudulently induced to enter into the contract by the very representation it has disclaimed. In *Danann*, a buyer of a lease to a building claimed he had been fraudulently induced to make the purchase by false oral representations as to the "operating expenses of the building and as to the profits to be derived from the investment." *5 N.Y.2d at 319, 184 N.Y.S.2d at 601*. . . .

The seller of the lease moved to dismiss the purchaser's action for fraudulent misrepresentation based on the terms of the Agreement. The Court of Appeals granted the motion and dismissed the buyer's complaint. . . . *5 N.Y.2d at 319, 184 N.Y.S.2d at 601*. By reference to the contractual provisions, the Court concluded that:

> Plaintiff has in the plainest language announced and stipulated that it is not relying on any representations **[**18]** as to the very matter as to which it now claims it was defrauded. Such a specific disclaimer destroys the allegations in plaintiff's complaint that the agreement was executed in reliance upon these contrary oral representations. . . ."

Id. at 320-21, 184 N.Y.S.2d at 602. Pointedly, the Court announced: "If the plaintiff has made a bad bargain he cannot avoid it in this manner." *Id. at 323, 184 N.Y.S.2d at 604*. *Danann* therefore stands for the principle that where the parties to an agreement have expressly allocated risks, the judiciary shall not intrude into their contractual relationship. . . . The instant dispute concerns Grumman's multi-faceted attempt to circumvent the *Danann* doctrine. As we will explain, however, its efforts at semantical legerdemain are unavailing.

A.

Grumman asserts that the relevant disclaimer provisions in the Agreement lack the clarity and specificity necessary to trigger the rule of *Danann*. To support this claim, Grumman cites the following two representations: "the Model 870 had been thoroughly tested for 10,000 miles on an endurance test track at Riverside, California" and "the technological risks associated with the Model 870 were minimal." The latter representation addresses the efficacy of the Model 870's design, and any reliance on the design was explicitly disclaimed in Sections **[**20]** 1.1(i), 2.1(b) and 4.3(b) of the Agreement. Grumman's claim of reliance on the former representation is somewhat more problematic, insofar as reliance on the Model 870's testing was not expressly disclaimed by Grumman in the Agreement. Upon closer examination, however, we believe it is clear that the testing representation could have been material to Grumman only as a means of validating the design of the bus. Indeed, Grumman's President noted that the purpose of "testing is to find out the efficacy of your design in order to have some -- a feeling of security that the design will indeed meet the requirements." . . .

[W]e believe, as a matter of law, that the disclaimer provisions in the Agreement relating to design and testing are sufficiently specific and unambiguous to invoke the *Danann* rule. . . .

III.

The second pillar of Grumman's argument is that the district court erred in holding that Grumman could not claim reliance **[**26]** on Rohr's representations concerning the testing and design of the Model 870. We believe Grumman's claim of justifiable reliance was properly rejected by the district court in light of undisputed evidence demonstrating that Grumman enjoyed unfettered access to Flxible's plants, personnel and documents; and that it possessed the legal, technical and business expertise necessary to make effective use of that access.

The Supreme Court has stated:

> When the means of knowledge are open and at hand, or furnished to the purchaser or his agent, and no effort is made to prevent the party from using them, and especially where the purchaser undertakes examination for himself, he will not be heard to say that he has been deceived to his injury by the misrepresentations of the vendor. *See* *Shappirio v. Goldberg, 192 U.S. 232, 241-42, 48 L. Ed. 419, 24 S. Ct. 259 (1904)*.

Where sophisticated businessmen engaged in major transactions enjoy access to critical information but fail to take advantage of that access, New York courts are particularly **[**28]** disinclined to entertain claims of justifiable reliance. . . .

Grumman -- the allegedly defrauded plaintiff -- is a Fortune 500 company, renowned world-wide for its engineering expertise. The transaction at issue is a $55 million corporate acquisition. At all stages, **[**29]** Grumman was represented by a sophisticated group of counsel, executives and engineers. Grumman enjoyed unrestricted access to all the facilities, personnel and records of Rohr, and despite its knowledge that the Model 870 was undergoing endurance testing in late 1977, Grumman neither inquired into the results of that testing, nor asked to scrutinize testing reports. In light of the unambiguous case law and the undisputed facts, we agree with Judge

Mishler that Grumman did not rely solely upon Rohr's representations as to the design and testing of the Model 870. If it did, such reliance was plainly unjustifiable given its extensive inquiries and investigations. . . .

[31]** Accordingly, Grumman's right to unrestricted access and its failure to inquire preclude, as a matter of law, its claim of reliance on Rohr's alleged misrepresentations.

IV.

The final prong of Grumman's argument is that the district court erred in holding that Rohr had no duty to disclose to Grumman material facts regarding the testing of the Model 870. We find this argument to be unavailing for all the reasons proffered in Section II . . . of our opinion, because the alleged material omissions are nothing more than affirmative misrepresentations about the testing and design of the Model 870. As such, they are subject to the Agreement's plain disclaimers as well as Grumman's unrestricted access and concomitant duty to investigate.

Moreover, this Court has expressly held that, under New York law, a duty to disclose material facts is triggered: "first, **[*739]** where the parties enjoy a fiduciary relationship . . . and second, where one party possesses superior knowledge, not readily available to the other, and knows that the other is acting on the basis of mistaken knowledge." . . . **[**32]** We hold that neither condition is present in this action. Grumman's attempt to transmute its ordinary arms-length business relationship with Rohr into a fiduciary relationship is unpersuasive. The fact that Rohr has sold aircraft components to a subsidiary of Grumman in no way alters our conclusion. Grumman has completely failed to offer any evidence indicating that the parties placed sufficient trust and confidence in each other to trigger a duty of disclosure. . . . Indeed, throughout the course of this transaction, Grumman's representatives confirmed that they were relying upon the advice and counsel of their own engineers, lawyers, and executives to protect Grumman's best interests -- not upon a special relationship with Rohr.

As this Court concluded in *Aaron Ferer & Sons, Ltd., supra, 731 F.2d at 123*, a party's knowledge is not superior where the relevant information "was either a matter of public record, was not pursued by plaintiffs, or was disclosed at least **[**33]** in part. . . ." In light of the undisputed evidence establishing Grumman's unrestricted access to Flxible's facilities, personnel and records, as well as Grumman's arsenal of legal and technical talent, we find the claim that Rohr possessed superior knowledge (that was not readily available to Grumman) to be without merit.

V.

It is against this legal backdrop that we turn to the precise issue presented on appeal -- the propriety of the district court's grant of summary judgment. On a motion for summary judgment, we are mindful of the maxim "the court cannot try issues of fact; it can only determine whether there are issues to be tried." Moreover, the court must resolve all ambiguities and draw all reasonable inferences in favor of the party against whom summary judgment is sought, *see id. at 1320*, with the burden on the moving party to demonstrate the absence of any material issue genuinely in dispute. Summary judgment is appropriate where the factual predicates **[**34]** of each legal question are undisputed.

The issue whether, under the rule of *Danann*, the specific disclaimers in the Agreement precluded Grumman from asserting it had been defrauded by Rohr is a legal question that can be resolved by reference to settled principles of contract interpretation. *See* *Tokio Marine & Fire Ins. Co. v. McDonnel Douglas Corp., 617 F.2d 936, 940 (2d Cir. 1980)*. Once Rohr set forth facts sufficient, pursuant to *Fed. R. Civ. P. 56(c)*, [15] **[**35]** to make a *prima facie* showing that the rule of *Danann* was applicable, *Fed. R. Civ. P. 56(e)* [16] required Grumman **[*740]** to offer specific facts demonstrating the disclaimers were procured by fraud. We agree with the district court that "no evidence of fraud in the inducement was offered by Grumman."

By proffering evidence demonstrating that Grumman enjoyed access to Flxible's facilities, personnel and documents and proof that Grumman possessed the legal, technical and business expertise necessary to make effective use of that access, Rohr met its *Rule 56(c)* burden of establishing no genuine issues of material fact. The burden then shifted to Grumman to set forth specific facts raising triable issues. We agree with Judge Mishler that Grumman's conclusory statement that "Rohr controlled the flow of information between [itself] and Grumman," absent any factual support, was insufficient to satisfy this burden.

Our conclusion that **[**36]** the district court properly granted summary judgment is bolstered by Grumman's extensive and intensive discovery, spanning a number of years and yielding tens of thousands of pages of corporate documents. As such, the factual development necessary to the principled resolution of this complex dispute was not terminated prematurely. We are confident that summary judgment was appropriately granted in this case.

Accordingly, the judgment of the district court is affirmed.

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[15] *Rule 56(c)* states, in pertinent part:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

[16] *Rule 56(e)* states, in pertinent part:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.