No. 23-CV-720

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

Casa Ruby, Inc.,
Appellant,

-v-

Hassan Naveed, *et al.*,
Appellees.

ON APPEAL FROM THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA – CIVIL DIVISION
2022 CA 003343 B
(Hon. Danya A. Dayson)

BRIEF FOR APPELLEE JOHN C. HARRISON a/k/a JACK HARRISON-QUINTANA

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April 8, 2024

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STATEMENT OF THE ISSUE

Whether D.C. Code § 29-406.31(d) bars a tort-based claim for money damages against an individual director of a nonprofit corporation where (i) the claimant alleges in the underlying pleading that the director failed to adequately supervise the organization's Executive Director and thereby enabled the Executive Director's covert misappropriation and conversion of corporate assets; (iii) the claimant contends in the pleading that the director's alleged failure to supervise amounted to an "intentional infliction of harm" upon the organization, thereby triggering an exception to the statutory immunity that the director would otherwise enjoy under D.C. Code § 29-406.31(d); (iv) the "intentional infliction of harm" argument is based not on the director's actual knowledge or reasonable suspicion of the Executive Director's intent to misappropriate funds, but instead on the director's alleged "willfully blindness" to the likelihood that such misappropriation would occur in the absence of adequate oversight; and (v) the allegation of willful blindness is unsupported by factual allegations supporting the inference that the director's alleged failure to supervise was a purposeful effort to avoid knowledge of misappropriation.

STATEMENT OF THE CASE

This case arises from the operation and management of Defendant Casa Ruby, Inc. ("Casa Ruby"), a District of Columbia nonprofit corporation of which Defendant Ruby Corado ("Ms. Corado") once served as Executive Director. The District of Columbia Office of Attorney General (the "District") has alleged, *inter alia*, that various defendants improperly allowed Ms. Corado to maintain full control of the corporation's bank and PayPal accounts without oversight and thereby enabled her misappropriation and unlawful conversion of corporate funds.

Casa Ruby, acting through its court-appointed receiver, The Wanda Alston Foundation, Inc., filed a Cross-Complaint and Third-Party Complaint. In the Third-Party Complaint, Casa Ruby sought monetary damages against some of its individual directors, including appellee John C. Harrison ("Mr. Harrison"). The corporation alleged therein that, *inter alia*, (i) those individuals breached fiduciary duties by failing to exercise oversight or control over it, and (ii) such breaches enabled Ms. Corado's unlawful misappropriation and conversion of Casa Ruby's assets to go unchecked.

Appellees Meredith Zoltick and Hassan Naveed moved to dismiss the Third-Party Complaint pursuant to D.C. Super. Ct. R. 12(b)(6), and Mr. Harrison, appellee Miguel Rivera, and appellee Consuela Lopez thereafter joined in Ms. Zoltick's motion. The appellees argued that even assuming *arguendo* the directors had been

negligent in overseeing corporate affairs, Casa Ruby had failed to allege facts indicating that they had acted in such a way that would overcome D.C. Code § 29-406.31(d)'s statutory bar of individual liability for money damages. Casa Ruby, in turn, argued that the appellees' alleged omissions had amounted to "intentional infliction of harm" upon it, thereby triggering an exception to that bar. The trial court, rejecting Casa Ruby's attempt to conflate alleged "willful blindness" with the "intentional infliction of harm," granted the dispositive motions of all movants except Consuela Lopez.

Casa Ruby successfully moved for the issuance of an appealable Order of Partial Final Judgment and then filed the instant appeal.

STATEMENT OF FACTS

Casa Ruby is a District of Columbia nonprofit organization that provided transitional housing and related support to LGBTQ+ youth. App. 002. Executive Director Ruby Corado was a "recognized leader in the District's trans community, having bult safe spaces for some of the District's residents who needed them most. She secured millions in grants, gifts, and loans from federal and District sources, as well as from private donors." App. 006–07. According to the Amended Complaint in this case, Ms. Corado took actions to unlawfully enrich herself from the organization without the approval or authorization of the Board of Directors. *See* App. 005–12. As a result of Ms. Corado's actions, the District alleges, Casa Ruby failed to pay employees, vendors, and rent at its properties. *See* App. 003; App. 017.

ARGUMENT

I. Summary of Argument

Casa Ruby has failed to state a cognizable claim for breach of fiduciary duty. The corporation seeks monetary damages, which D.C. Code § 29-406.31(d) generally bars against individual directors such as Mr. Harrison. Casa Ruby's attempt to invoke the "intentional infliction of harm" exception set forth in Section 29-406.31(d)(2) is inapposite, as no facts supporting such an intent have been pled and the "willful blindness" standard applied in some cases to establish "actual knowledge" does not apply to the instant case.

II. Standard of Review

A trial court's dismissal of a complaint for failure to state a claim pursuant to D.C. Super. Ct. Civ. R. 12(b)(6) is reviewed *de novo*. *Johnson-El v. District of Columbia*, 579 A.2d 163, 166 (D.C. 1990).

III. Casa Ruby's Inability to Overcome the Statutory Bar to Liability

Mr. Harrison agrees with the reasoning set forth in Ms. Zoltick's appellate brief. With the exception of arguments that are factually specific to Ms. Zoltick, he adopts and incorporates by reference the entire "Argument" section of that document.

As stated by Ms. Zoltick, the instant case's situation is distinguishable from those addressed in *Unicolors, Inc. v. H&M Hennes & Mauritz, L. P.*, 595 U.S. 178 (2022), *Intel Corporation Investment Policy Committee v. Sulyma*, 140 S.Ct. 768 (2020), and *Marion v. Bryn Mawr Trust Company*, 288 A.3d 76 (Pa. 2023). First, those cases apply the "willful blindness" doctrine to various "actual knowledge" scenarios but not to the more specific "intentional infliction of harm" scienter required by D.C. Code § 29-406.31(d). In *Unicolors*, for instance, the United States Supreme Court addressed a Copyright Act provision stating that a certificate of registration containing inaccuracies remains invalid unless, *inter alia*, "the inaccurate information was included on the application for copyright registration with knowledge that it was inaccurate[.]" 17 U.S.C. § 411(b)(1)(A), *quoted in*

Unicolors, 595 U.S. at 181. In *Intel Corp.,* the Court addressed an Employee Retirement Income Security Act of 1974 (ERISA) requirement that plaintiffs who obtained "actual knowledge" of an alleged fiduciary breach file suit within three (3) years thereof instead waiting the customary six (6) years. *See Intel Corp.,* 140 S.Ct. at 773 (citing 29 U.S.C. § 1113). Similarly, *Marion* established that one asserting a claim for aiding and abetting fraud under Pennsylvania common law must show "actual knowledge of the underlying fraud[.]" *See Marion*, 288 A.3d at 89. If the District of Columbia Council had wanted to apply the same mere "actual knowledge" exception to Section 29-406.31(d), it would have done so – but it instead decided to require "intentional infliction of harm." *See* D.C. Code § 29-406.31(d); *Unicolors*, 595 U.S. at 185 ("[I]f Congress had intended to impose a scienter standard other than actual knowledge, it would have said so explicitly.").

Second, none of those cases suggest that "willful blindness" – even in the more lenient "actual knowledge" context – can be established in the type of general, conclusory manner advanced by Casa Ruby. Rather, they simply hold that willful blindness *may* suffice to show actual knowledge in *certain fact-specific circumstances*. *See Unicolors*, 595 U.S. at 187-88 ("Circumstantial evidence, including the significance of the legal error, the complexity of the relevant rule, the applicant's experience with copyright law, and other such matters, may also lead a court to find that an applicant was actually aware of, or willfully blind to, legally

inaccurate information."); *Intel Corp.,* 140 S.Ct. at 779 (stating only that the Court's opinion in that case did not preclude defendants in *other* cases "from contending that 'willful blindness' supports a finding of 'actual knowledge.'"; *Marion*, 288 A.3d at 92 (stating only that "evidence of intentional ignorance or willful blindness may support an inference of actual knowledge in particular cases.").

In fact, two of those three cases expressly *rejected* the type of general, conclusory argument advanced herein by Casa Ruby. In *Marion*, for example, the Supreme Court of Pennsylvania disagreed that

> a showing of "intentional ignorance" is necessarily sufficient to satisfy the knowledge requirement of aiding and abetting fraud. Intentional ignorance is not knowledge; it is the purposeful avoidance of knowledge.

Marion, 288 A.3d at 92. That is, "[k]now does not mean 'should have known' or [even] intentional ignorance.'" *Id.* Rather, willful blindness can be used to prove actual knowledge where, for example, an accuse aider and abettor "'avoids further confirming *what he already believes with good reason to be true*.'" *Id.* at 92 (quoting *Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 774 (2011) (Kennedy, J., dissenting)). (Emphasis added.)

Both the United States Supreme Court in *Intel Corp.* and the Supreme Court of Pennsylvania in *Marion* similarly rejected the notion – implicitly advanced by the Casa Ruby – that constructive knowledge is a substitute for actual knowledge. *See Intel Corp.,* 140 S.Ct. at 773 ("The question here is whether a plaintiff necessarily

has 'actual knowledge' of the information contained in disclosures that he receives but does not read or cannot recall reading. We hold that he does not."); *Marion*, 288 A.3d at 90 (quoting, with approval, the Illinois Court of Appeals' holding in *Johnson v. Filler*, 109 N.E.3d 370, 376 (Ill. App. Ct. 2018), that constructive knowledge is no substitute for actual knowledge).

Those cases are easily synthesized with *Global-Tech*, in which the United States Supreme Court agreed that "willful blindness" requires (i) the defendant's *subjective belief* that there is a *high probability* that a fact exists, and (ii) the defendant's taking of "deliberate actions to avoid learning of that fact." *See Global-Tech*, 563 U.S. at 769. Such requirements, the Court opined in Global-Tech, "give willful blindness an appropriately limited scope that surpasses recklessness and negligence." *Id.* Indeed,

> a willfully blind defendant is one who takes deliberate actions to avoid confirming a high probability of wrongdoing and who can almost be said to have actually known the critical facts[,] . . . a reckless defendant is one who merely knows of a substantial and unjustified risk of such wrongdoing, . . . and a negligent defendant is one who should have known of a similar risk but, in fact, did not.

Id. at 769–770 (emphasis added).

Nothing in the Third-Party Complaint suggests that Mr. Harrison "took deliberate actions" to avoid learning the truth or that he subjectively believed there was a "high probability" that Ms. Corado intended to misappropriate and convert

corporate assets. *See id.* (stating the heightened requirements for demonstrating "willful blindness"); App. 037-43. Thus, even if "willful blindness" *was* the correct standard to apply to the "intentional infliction of harm" exception to D.C. Code § 29-406.31(d)'s general bar of individual liability – and it is not – that standard was not adequately pled in the Third-Party Complaint.

CONCLUSION

For the foregoing reasons, Mr. Harrison respectfully requests that the court affirm the trial judge's May 3, 2023 Order granting his Motion to Dismiss Third-Party Complaint and award him reasonable attorneys' fees.

Dated: April 8, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of April, 2024, a copy of the foregoing brief was served via electronic filing and email on all counsel of record.

/s/ *David G. Ross*
David G. Ross (D.C. Bar No. 469427)

District of Columbia
Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a "CV" docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:

   - An individual's social-security number
   - Taxpayer-identification number
   - Driver's license or non-driver's' license identification card number
   - Birth date
   - The name of an individual known to be a minor
   - Financial account numbers, except that a party or nonparty making the filing may include the following:

     (1) the acronym "SS#" where the individual's social-security number would have been included;
     (2) the acronym "TID#" where the individual's taxpayer-identification number would have been included;
     (3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
     (4) the year of the individual's birth;
     (5) the minor's initials; and
     (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.

/s/ David G. Ross
Signature

No. 23-CV-0720
Case Number(s)

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