

The Supreme Court of the State of Louisiana

STUART SERVICES, L.L.C.

No. 2023-C-00015

VS.

NASH HEATING & AIR CONDITIONING, INC.
AND RONNIE CAMET

IN RE: Stuart Services, L.L.C. - Applicant Plaintiff; Applying For Writ Of
Certiorari, Parish of Jefferson, 24th Judicial District Court Number(s) 707-856,
Court of Appeal, Fifth Circuit, Number(s) 22-CA-105;

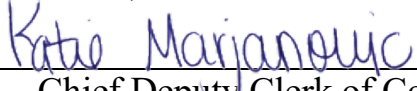
March 14, 2023

Writ application granted. See per curiam.

JTG
JDH
SJC
WJC
JBM
PDG

Weimer, C.J., would grant and docket.

Supreme Court of Louisiana
March 14, 2023



Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 2023-C-00015

STUART SERVICES, L.L.C.

VS.

NASH HEATING & AIR CONDITIONING, INC. AND RONNIE CAMET

On Writ of Certiorari to the Court of Appeal, Fifth Circuit, Parish of Jefferson

PER CURIAM

The lower courts erred in awarding attorney fees and costs in favor of Defendant after finding Defendant breached an employment agreement with Plaintiff.¹ For the reasons that follow, we reverse the lower courts’ judgments awarding attorney fees and costs to Defendant.

Our jurisprudence has consistently held that where one party substantially breaches a contract, the other party to the contract has a defense and an excuse for nonperformance. La. C.C. art. 2013 (“When the obligor fails to perform, the obligee has a right to the judicial dissolution of the contract or, according to the circumstances, to regard the contract as dissolved.”);² *Commerce Ins. Agency, Inc. v. Hogue*, 618 So.2d 1048, 1052 (La. App. App. 1 Cir. 1993), *writ denied*, 626 So.2d 1171 (La. 1993)(citations omitted)(finding breach of a non-solicitation clause a material breach); *J.H. Garrison & Son v. Sherill Hardwood Lumber Co.*, 156 La. 147, 150, 100 So. 253, 254 (1924)(a party may not claim damages for non-performance of a contract to which he has not performed); *Iberia Bank v. Broussard*, 907 F.3d 826, 837 (5th Cir. 2018)(in accordance with La. C.C. art 2022, an employee

¹ Although Defendant answered the appeal, his answer was limited to the issue of attorney fees and costs. He did not raise as an issue the lower court’s finding that he breached the employment agreement.

² Conversely, “a contract may not be dissolved when the obligor has rendered a substantial part of the performance and the part not rendered does not substantially impair the interest of the obligee.” La. C.C. art. 2014.

could not recover under an employment agreement, a commutative contract under La. C.C. art. 1911,³ due to his own breach); *B.F. Edington Drilling Co. v. Yearwood*, 118 So.2d 419 (1960); and *Olympic Ins. Co. v. H.D. Harrison Inc.*, 463 F.2d 1049 (5th Cir.1972), *cert. denied*, 410 U.S. 930, 93 S.Ct. 1373, 35 L.Ed.2d 593 (1973). *See also*, *V.P. Owen Const. Co. v. Dunbar*, 532 So.2d 835, 837 (La. App. 4 Cir. 1988) (trial court did not err in rejecting a claim for attorney fees and interest made by construction company that breached the contract).

The undisputed facts reveal that Defendant, Mr. Ronnie Camet, sold his business to Plaintiff, Stuart Services, L.L.C. (“Stuart”). In addition, Mr. Camet was hired by Stuart to serve as a liaison to his former clients. In conjunction with the sale and his employment with Stuart, Mr. Camet signed an employment agreement, which contained non-compete and non-solicitation clauses. In granting Stuart’s motion for partial summary judgment, and as the lower courts found, Mr. Camet breached the provisions of the employment agreement when he became employed with Nash Heating & Air Conditioning, Inc., a direct competitor, shortly after ending his employment with Stuart. This finding has not been appealed.

Given Mr. Camet breached an essential component of his employment agreement, Stuart was entitled to raise non-performance as an affirmative defense to Mr. Camet’s request for attorney fees under the contract.

For these reasons, we find Mr. Camet, as the breaching party, is not entitled to recover damages in the form of attorney fees and costs under the contract. Accordingly, the lower courts erred in applying the attorney fee provisions in those contracts and in awarding attorney fees and costs in favor of Mr. Camet. We, therefore, reverse the lower courts and vacate the award of attorney fees and costs to Mr. Camet.

³ La. C.C. art. 1911 states: “A contract is commutative when the performance of the obligation of each party is correlative to the performance of the other.”