CARLTON FIELDS

Note on Carlson v. FedEx regarding Independent Contractors

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In *Carlson v. FedEx Ground Package Systems, Inc.*, No. 787 F.3d 1313 (11th Cir. 2015), primarily at issue was whether drivers who work for FedEx in Florida are employees or independent contractors, resolution of which was critical to a class action lawsuit filed by those Florida drivers against FedEx. Below, the Northern District of Indiana, which the Eleventh Circuit referred to as the multidistrict litigation court (MDL), concluded that the FedEx drivers were independent contractors and entered summary judgment in favor of FedEx, which resolved the drivers' class claims seeking reimbursement of business expenses and back pay for overtime. *Id.* at 1317. The MDL court then remanded the case to the Middle District of Florida for resolution of individual common-law claims (false information negligently provided and breach of contract) asserted by plaintiffs Sheree Harting, Troy Upman, and David Mosher. FedEx also prevailed on these claims in the Middle District, and obtained a final judgment in its favor. *Id.* The Florida drivers appealed that judgment. Important to its analysis on this fact-based issue, the Eleventh Circuit first reviewed three cases decided by the Florida Supreme Court, which it must do when applying Florida law. Prior to its discussion on the three cases, the Court noted that (1) the Florida Supreme Court had previously explained that a determination on these issues is generally reserved for the trier of fact, *see Villazon v. Prudential Health Care Plan, Inc.*, 843 So. 2d 842, 853 (Fla. 2003), (2) the Florida Supreme Court had cautioned that this type of case "must be decided on its own facts in light of the totality of the circumstances," *Keith v. News & Sun Sentinel Co.*, 667 So. 2d 167, 169–71 (Fla. 1995), and (3) the standard set forth in the Restatement (Second) of Agency governs this inquiry. *Carlson*, 787 F.3d at 1318. The Court then acknowledged that two of the three cases the Court reviewed had concluded in a determination that the individual was an independent contractor. Nevertheless, the Court concluded that there was no Florida Supreme Court precedent to which it should adhere to given that the cited cases had different facts and different results, rendering them unhelpful to its task of "figuring out the status of the Florida drivers here." *Id.* at 1323. As a result, the Court reviewed the decision of Florida's First

District Court of Appeal, *Del Pilar v. DHL Global Customer Solutions (USA), Inc.*, 993 So. 2d 142 (Fla. 1st DCA 2008), which the Court described, "[f]actually speaking," as "the closest Florida opinion." *Carlson*, 787 F.3d at 1323, 1326; *see Winn-Dixie Stores, Inc. v. Dolgencorp, LLC*, 746 F.3d 1008, 1021 (11th Cir. 2014) (noting that in the absence of precedent from the Florida Supreme Court, the Eleventh Circuit adheres to decisions of Florida's intermediate appellate courts absent some indication that the Florida Supreme Court "would decide the issue otherwise"). The Court observed that *Del Pilar* concerned an accident between a motorcyclist and a van owned by a delivery company that had contracted with DHL—a company in the business of picking up, shipping, and delivering packages worldwide—to pick up and deliver all DHL packages in the Jacksonville area. *Id.* at 1323. The case also involved issues as to whether DHL drivers were independent contractors or employees of DHL. In this factually similar, but not identical, context, the First District held that whether DHL drivers were employees was a question reserved for the trier of fact. *Id.* Although stating that " *Del Pilar* is not binding in the Rule 56/summary judgment sense—because 'federal law determines whether the evidence … suffices to entitle [a party] to summary judgment,' *Bernard Schoninger Shopping Centers, Ltd. v. J.P.S. Elastomerics, Corp.*, 102 F.3d 1173, 1177 (11th Cir. 1997)," the Court acknowledged that *Del Pilar* involved the same package delivery industry and that Florida's summary judgment standard is similar to the federal standard. *Carlson*, 787 F.3d at 1326. Further, it noted that "*Erie* and its progeny have opted for vertical uniformity in diversity cases, so that with respect to substantive law a case filed in federal court will be handled in the same way as it would be in the courts of the state where the federal court sits." *Id.* Thus, the Eleventh Circuit ruled consistently with *Del Pilar* and reversed the district court's entry of summary judgment in favor of FedEx to "ensure that this case is decided in a Florida federal court as it would be in a Florida state court, and thereby discourage forum shopping as between federal and state courts in Florida and prevent the inequitable administration of the law." *Id.* With regard to the individual common-law claims, two of the Florida drivers contended that the district court erred in granting summary judgment in favor of FedEx on their individual claims. Both drivers argued that the district court erroneously concluded that they lacked standing to pursue their claims. The district court, however, provided additional alternative bases for granting summary judgment on their claims, with the exception of one claim raised by one of the drivers, and the two drivers did not challenge these alternative bases on appeal. The Court noted that "'[t]o obtain reversal on a district court judgment that is based on multiple, independent grounds, an appellant must convince [the Eleventh Circuit] that every stated ground for the judgment against him is incorrect.'" *Id.* at 1327 (quoting *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014)). Thus, the Eleventh Circuit held that the individual drivers "abandoned any challenges to those grounds, and the district court's judgment must therefore be affirmed." *Id.*

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