UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

BLUE FLAME MEDICAL LLC, . Civil Action No. 1:20cv658

Plaintiff,

vs. . Alexandria, Virginia
November 17, 2020
10:07 a.m.

CHAIN BRIDGE BANK, N.A.,
JOHN J. BROUGH, and
DAVID M. EVINGER,

Defendants,

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CHAIN BRIDGE BANK, N.A.,

Counterclaim Plaintiff,

vs.

BLUE FLAME MEDICAL LLC,

Counterclaim Defendant.

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CHAIN BRIDGE BANK, N.A.,

Third-Party Plaintiff,

vs.

JPMORGAN CHASE BANK, N.A.,

Third-Party Defendant.

. . . . X

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE
(Via Teleconference)

(Pages 1 - 14)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

APPEARANCES:

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P R O C E E D I N G S

THE COURT: All right, counsel, can you hear me now?

MR. WHITE: Yes, Your Honor. This is Pete White for Blue Flame Medical. I can hear you fine.

THE COURT: All right, that's fine. We've got a different phone. For some reason, mine is not working. All right.

And do we have anybody here for Chain Bridge?

MR. BURKE: Good morning. This is Donald Burke for Chain Bridge Bank. Can you folks hear me?

THE COURT: Yes, we can hear you just fine.

And how about -- JPMorgan is not really involved in this directly. Is there anyone here for JPMorgan?

MR. PRIZGINTAS: Yes, Your Honor. This is Albinas Prizgintas for JPMorgan Chase Bank, N.A.

THE COURT: All right. Can you spell your last name, please, because I don't have you on my list.

MR. PRIZGINTAS: Certainly. It's P -- as in Paul -- r-i-z-g-i-n -- as in Nancy -- t-a-s -- as in Sam.

THE COURT: Okay. All right, this is --

MS. LORETTA: Meredith Loretta is also here from Wilmer Hale, representing JPMorgan Chase.

THE COURT: All right. Now, counsel, we're on the record, but my court reporter is working under difficult circumstances because we're in a different room. You need to state your name very clearly before you speak.

And this is Civil Action 20cv658, Blue Flame Medical LLC versus Chain Bridge Bank, et al., and Chain Bridge Bank by itself versus JPMorgan Bank.

Now, the only issue before us today is the plaintiff -- plaintiff/counterclaim defendant's motion to dismiss the two-count counterclaim by Blue Flame Medical -- I'm sorry, by the -- the two-count complaint that Chain Bridge has filed against Blue Flame Medical, and that is a claim that seeks the attorneys' fees and expenses involved in defending against this case.

I think what I want to hear, because I'm still very uncomfortable with the law on this, Mr. Burke, have you been able to find any cases that actually support your argument that you could still claim attorneys' fees and expenses under a contract that you terminated two-and-a-half months before the lawsuit was filed?

MR. BURKE: Your Honor, this is Donald Burke. I don't think we have identified any case that awarded attorneys' fees in precisely that situation, but I think the authorities we marshalled in our briefs convincingly demonstrate that there's no barrier to seeking damages for liability that accrued during the period in which a contract was enforced -- excuse me, in force, and parties do that routinely even long after termination. It's, in fact, very common for courts to award damages under a contract that's been terminated previously.

So although I can't point to you, you know, any, any particular case that has awarded attorneys' fees under that precise circumstance, I don't think there's any legal barrier to doing so in this case.

THE COURT: But as you've actually articulated the situation, haven't you actually shown how you don't have a cause of action here? Because the conduct that has led your client to incur attorneys' fees and expenses occurs after the contract has been terminated.

In other words, as the -- you terminated the contract on March 26 of 2020. That's when you closed the account, which essentially ends your relationship with Blue Flame. Blue Flame doesn't file a lawsuit until almost two-and-a-half months later, after the account was closed. So it is the filing of that lawsuit and your need to expend money to pay for attorneys to defend that case, all of that arose after the contract had terminated.

Doesn't that mean -- and your contract didn't have any language within it that would suggest that the obligation to pay attorneys' fees extended beyond the life of the contract, no survivorship kind of clause. So how do you get around that problem?

MR. BURKE: Well, I think I respectfully disagree with the basic description of the claim here. In fact, the action that Blue Flame took that has led to the bank's need to seek the advice of an attorney is inducing California officials to send a wire transfer on March 26, which, of course, occurred before the termination of the contract. So our point is that the, the conduct giving rise to the attorneys' fees here actually did occur during the period in which the contract was in force.

Now, maybe Blue Flame may assert that there's some factual dispute about whether our fees here are really attributable to that action rather than events that took place, you know, more recently after the termination of the contract, but it's still a -- I don't think that's a basis for dismissal of our claims on the pleadings. That's an issue that could be addressed at summary judgment or later in the case, but I think it would be premature to resolve that issue at this stage.

THE COURT: But the fact that California wired money to your bank did not in any respect require you to seek the advice of counsel, which required you to -- what requires Chain Bridge Bank to expend money to hire an attorney and to go to the expense of litigation is the filing of the lawsuit.

I don't know how you can connect -- I mean, it's true that had the wire transfer not occurred in the first place, there'd be no -- there never would have been a dispute between you-all, but that's, that's not what's causing you to have to expend those fees. I don't, I don't think you have any kind of legal support for the claim you're making.

And my understanding is you're also seeking the same type of fees and expenses from JPMorgan under a completely different theory, which might give you a much better shot at that. As I understand it, you've got almost a statutory basis that may support you in that respect.

MR. BURKE: Well, that is true, Your Honor, that we, we have asserted a claim for indemnification against JPMorgan, but I don't think the availability of that claim really bears on whether our claim directly against Blue Flame should be allowed to proceed or not. Of course, you know, the bank is entitled to pursue whatever sources of indemnification and attorneys' fees are available to it.

And just to return briefly to the point about when the relevant events occurred here, I think that the key point from our perspective is that all of the, the issues here that have given rise to the claim for attorneys' fees can be traced back to Blue Flame's conduct that occurred during the period in which the contract was in force.

It is obviously true that more recent events have increased the amount of the fees for which Blue Flame should be liable, but when you, when you consider the actual source of the attorneys' fee claim here, it's a dispute and it's an action that Blue Flame took during the period in which the contract was in force.

THE COURT: All right. Mr. White, would you agree that if the bank had not cancelled your account but had allowed your account to stay open, that they would now be able to recover their fees and expenses?

MR. WHITE: This is Peter White for Blue Flame Medical. Yes, Your Honor, I would agree. I think you've put your finger on the unified principle behind all of these cases, which is you look to when the cause of action accrued. If the cause of action accrued during the contract, then there can be continuing obligations. That happens all the time in breach of contract cases.

They haven't alleged a breach of contract case. Their counterclaim alleges that something happened on June 12, 2020, that gave rise to this cause of action and gave rise to this remedy. That was the filing of the lawsuit.

And the cases are unanimous in saying that the party cannot unilaterally terminate a contract and then claim a benefit that would exist only under the contract for something that occurred later. So I think that's the unifying principle behind all of these cases, and clearly, you know, there's no dispute about the facts or even the law, but their -- counterclaim plaintiffs do -- say the same thing that we do, that if you terminate a contract unilaterally and terminate your own obligation, then you terminate the other party's obligations to you at the same time. You can't pick and choose.

MR. BURKE: Your Honor, this is Donald Burke. Can I also respond briefly to your question?

THE COURT: Go ahead.

MR. BURKE: I think that -- what I wanted to point out is that the way that you had phrased the question, I think, really highlights the absurdity of Blue Flame's position here, that the way that their argument works, it would suggest that the bank has to continue doing business with a party no matter how obvious the fraud or illegality that party has engaged in if the bank wants to continue to be able to enforce its right to attorneys' fees, and I think that just doesn't make sense.

It's a reasonable self-protective step for the bank to stop doing business with a party that is engaged in that sort of conduct, and it doesn't make sense to -- for the party to agree that taking that step would result in a forfeiture of the bank's attorneys' fees claim.

THE COURT: Well, your other option would be to freeze the account, would it not be? In other words, you'd still have the account open, but no activity could occur. That way you'd be protecting the bank from any lawsuits from third parties or from any other liability, and, in fact, your agreement sort of envisions that, and one of the arguments the plaintiff has made is that because the contract actually includes language about the bank's ability to take funds out of the account to reimburse itself for, for example, attorneys' fees it might have to incur, that by having unilaterally ended the contract rather than just freezing the account, you've left yourself open for the problem you're in right now.

MR. BURKE: Well, Your Honor, I do suppose it's possible that the bank could have taken that step of just freezing the account or leaving the account agreement in place, but I think in those circumstances, you'd still have the problem of, you know, at least formally being in business with a counter-party that, you know, may have engaged in conduct that you just no longer wanted to be associated with anymore.

And I think more to the point that strikes me as a, sort of a formalistic line to draw that doesn't really make any sense, you know, if it's true that the bank could have frozen the account and kept the attorneys' fee obligation in place, I don't think there's much of a substantive difference between that and what the bank actually did here, so I don't think that should lead to a difference in result.

THE COURT: Well, Mr. White, what if a third party discovered that your client had committed some sort of a fraud using its Chain Bridge Bank account, all right? Slightly different fact pattern here, all right? And let's say that the bank in the meantime had ended the account. So the account was closed, as it is now, but two months after the bank closed your account, this third party sues the bank because it had allowed your client to use the account to commit a fraud.

And let's say that the bank is successful in defending itself against any liability in that case, and they then turn and file a suit against your client seeking reimbursement for the fees it had incurred in having to defend itself against that lawsuit. Why would it not be able to get the fees under that scenario?

MR. WHITE: Your Honor, Peter White for Blue Flame Medical. I'd like to start with that's not the situation here. There is no claim for fraud or breach of contract here.

THE COURT: No, no, I understand that, but --

MR. WHITE: I understand. I'm not sure, they may well be able to in that circumstance, because the cause of action, if there were a fraud on the bank itself, if the bank were a victim of fraud by a customer during the lifetime of the contract that existed, they may well be able to sue the customer for legal fees in connection with their defense or prosecution of that fraud under this contractual term. That's because that claim would have arisen at the time that the contract was in place.

They have made no allegations that any claim here arose at the time the contract was in place. They haven't alleged breach of contract, nor could they. They haven't alleged fraud, nor could they.

What they've alleged is that a cause of action accrued when this lawsuit was filed, which, as the Court has noted, was two-and-a-half months after they universally -- unilaterally terminated both sides' obligations under the contract.

THE COURT: Well, the cause of action, that is, the -- in the example that I gave you, the fraud, which is the cause of action, occurred while the contract was in place. Here, although it's not the cause of action -- it is still -- it's the lawsuit, yeah. It is still in my view -- it's a close question; I have no doubt about that; and the fact that we don't have any really direct case law is problematic; but, Mr. Burke, I am satisfied although it's a close question, that I don't think because of the way this occurred and the fact that it is the lawsuit, it is your being sued that creates the damage to Chain Bank -- Chain Bridge Bank in terms of having to hire counsel and having to pay counsel's fees and the expenses of litigation, that activity occurs two-and-a-half months after the contract has ended; and I think because there's nothing in the contract that would suggest that somehow there would be spillover or continuing liability for that type of situation, I am going to grant the motion to dismiss both counts.

I mean, the declaratory judgment, Count 2, is really duplicative of Count 1 in my view. And so I'm going to grant the motion.

And again, counsel, I think the last time you were before us, we suggested that you-all might want to see whether this is a case that can be resolved. It doesn't have direct impact for you; but you should know that the chief judge issued a new standing order today, it's Order 2020-22, in light of the COVID virus spread in the area, we have now terminated all criminal jury trials -- of course, we weren't conducting civil trials in any case -- and there'll be no criminal jury trials until at least January 19; and we'll have to see where we go from there; but I can tell you right now that my estimate would be that any civil jury trials at this point, I think it's realistic to expect that there will not be any tried until at least May or June at the earliest. So it continues to prolong this litigation, which is something you-all might want to think about.

But thank you for calling in. I'm sorry we had that confusion at the beginning, but we were able to hear you, and there will be a transcript available if you need one. Thank you for calling in.

MR. WHITE: Thank you for hearing us, Your Honor.

MR. BURKE: Thank you, Your Honor.

(Which were all the proceedings had at this time.)

CERTIFICATE OF THE REPORTER

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter.

/s/
Anneliese J. Thomson