

5th Circuit: Texas Partnership Liability Withstands 19th Century SCOTUS Ruling

By Mark Curriden – (July 4, 2017) – A North Dakota farming couple cannot rely on a 145-year-old court ruling to avoid paying past debts under Texas general partnership liability law, according to a decision by the U.S. Court of Appeals for the Fifth Circuit.

John and Dawn Keeley have until Thursday to file a petition for rehearing at the Fifth Circuit for their claims that the U.S. Supreme Court’s 1872 ruling in *Frow v. De Le Vega* protects them from



Clayton Bailey

individual liability from debts accumulated from a now-defunct agribusiness partnership.

But Clayton Bailey, a Dallas lawyer for Crop Production Services, says the Keeleys cannot use the 19th century decision to escape \$1.3 million owed his client.

A three-judge panel of the Fifth Circuit, in a nine-page *per curiam* decision, agreed in a unanimous ruling issued June 20.

“This case demonstrates that business partners need to take specific steps to protect themselves in general partnerships,” says Bailey, who is a partner at Bailey Brauer in Dallas.

The dispute dates back to a January 2008, when the Keeleys and another couple from North Dakota, Tom and Mary Grabanski, formed a business partnership to farm property in Northwest Texas.

A month later, the partnership, G&K Farms, borrowed an estimated \$642,669.55 in seeds, chemicals and fertilizer from Denver-based CPS.

“Mr. Keeley agreed to personally guarantee payment and performance of G&K Farms and

assumed personal liability for all obligations due to CPS,” court records show.

Court documents show that CPS invoiced G&K Farms multiple times in 2008 and 2009, but was never paid.

In September 2009, the Keeleys legally signed over their interests in G&K Farms to the Grabanskis.

Four years later, Grabanski filed for Chapter 7 in the U.S. Bankruptcy Court for the Eastern District of Texas.

The same month, CPS filed a civil lawsuit against G&K Farms, Grabanski and Keeley seeking payment. The case was consolidated into the federal bankruptcy claim.

The complaint was eventually transferred to U.S. District Court, which entered a default judgment in January 2015 for \$1.3 million after Grabanski declined to fight the lawsuit.

Lawyers for the Keeleys were aware of the litigation and offered no objection to the default judgment.

In April 2015, CPS asked the federal court to rule that the Keeleys were jointly and severally liable for the \$1.3 million award. After a one-day bench trial, the federal judge issued a final judgment in favor of CPS.

On appeal, lawyers for the Keeleys argued that the 145-year-old *Frow* decision should have prevented the district court from entering a final judgment against G&K Farms because they were “actively defending the claims involving joint and several liability.”

Frow determined that when there are multiple defendants, if some parties present a defense >

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and win, then the ruling can be applied to defaulting parties under certain circumstances.

The Fifth Circuit ruled that *Frow* did not apply in this case because “*Frow* presented directly inconsistent judgments.”

“This appeal presents no similar incongruity,” the three-judge panel stated.

“This case is about the Keeleys’ numerous efforts to dodge a debt by raising various unsupported arguments and defenses – many of which have been waived on appeal – in an effort to avoid paying for valuable goods and services that were accepted and consumed by the partnership, thereby benefiting the Keeleys,” Bailey wrote in his brief to the Fifth Circuit.

Bailey wrote that the “Keeleys initially employed a sneaky (albeit poor) legal strategy of laying behind the log in an effort to raise a statute of limitations defense at the last minute so they

could shirk personal liability for the general partnership debt.”



CPS is also represented by trial attorneys John Mark Stephens and Abel Leal, partners at Johnson Stephens & Leal.

“We are gratified that the Fifth Circuit saw through this smokescreen and affirmed the ruling of the district court,” Stephens said in a written statement.

The Keeleys are represented by Stewart Peck, Benjamin Kadden and Joseph Briggert, who are appellate lawyers at the New Orleans firm Lugenbuhl, Wheaten, Peck, Rankin & Hubbard. The couple is also represented by Sean Foss, Kennelly O’Keefe, Joshua Searcy and Jason Searcy.

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