Third District Court of Appeal

State of Florida

Opinion filed August 5, 2020.
Not final until disposition of timely filed motion for rehearing.

Nos. 3D19-1410 & 3D18-2612
Lower Tribunal No. 17-29539

UBS Financial Services, Inc.,
Appellant,

vs.

David Efron,
Appellee.

Appeals from the Circuit Court for Miami-Dade County, Spencer Eig, Judge.

Akerman LLP, and Noelle P. Pankey and Tracy T. Segal (West Palm Beach), for appellant.

Russomanno & Borrello, P.A., and Herman J. Russomanno III, for appellee.

Before EMAS, C.J., and LOGUE and HENDON, JJ.

LOGUE, J.

Appellant, UBS Financial Services, Inc., a United States corporation (hereinafter the “U.S. firm”), appeals the trial court’s judgment ordering an accounting and a bill of discovery. The question presented is whether the plaintiff made the showing required to justify compelling a domestic corporation to provide an accounting and respond to a bill of discovery regarding the records of a foreign affiliate. We hold it did not and reverse.

In this case, the plaintiff, David Efron, who resides in both Florida and Puerto Rico, sought to obtain information about two accounts opened by his parents with a predecessor to the Swiss corporation of UBS Switzerland A.G. (hereinafter the “Swiss firm”). His parents had accounts with a UBS affiliate in Puerto Rico, where they resided. In 1980, however, they traveled to Switzerland and opened two accounts with a UBS affiliate in Switzerland. After the death of his parents, the plaintiff became aware of these accounts. Around 2014, he contacted a UBS affiliate in Puerto Rico but “they couldn’t get anything done.” He then contacted a UBS affiliate in Florida that “got me in touch with people in Zurich.” He exchanged correspondence with the Swiss firm, but was unsatisfied with the information he received. He then sued the U.S. firm to obtain an accounting and a bill of discovery concerning his parents’ accounts opened with the Swiss firm.

At the bench trial of this matter, it was established by undisputed testimony that the records for the parents’ accounts were not in the possession of the U.S.

firm. To the extent they might still exist, they would be in the possession of the Swiss firm. The U.S. firm and the Swiss firm are members of the same global corporate family. Otherwise, they are separate corporate entities, organized and operated under the laws of different countries, with separate boards, accounts, records, and books. The U.S. firm does not access or use the records of the Swiss firm as a normal part of its business. If the U.S. firm has a client who also has an account with a foreign UBS affiliate, the U.S. firm does not service the account but refers the client and the affiliate to each other, as the plaintiff testified was done with him. Among other reasons for this practice is that different countries have different privacy laws. At the end of the trial, the trial court entered an order for an accounting and bill of discovery against the U.S. firm concerning the accounts with the Swiss firm. The U.S. firm timely appealed.

When a party seeks to compel a domestic corporation to produce the records of a foreign affiliate, without piercing the corporate veil, the party must carry the burden to prove that the domestic corporation has regular access to the records of the foreign affiliate sufficient to establish the domestic corporation's control of and legal right to obtain the records of the foreign affiliate. See, e.g., Sergeeva v. Tripleton Int'l Ltd., 834 F.3d 1194, 1201 (11th Cir. 2016) (ordering defendant domestic corporations to obtain records from a non-party foreign affiliate where the domestic corporations and the foreign corporation shared clients and the

domestic corporations "could not possibly perform their intended functions for [the joint] clients absent the ability to obtain information and documents from [the foreign corporation]."). The undisputed testimony in this case was that the U.S. firm did not need and did not routinely obtain such records to conduct its own business.

In making his claim, the plaintiff relied on the fact that the corporations are part of the same extended corporate family and share the brand "UBS." This evidence fell woefully short of meeting his burden. Michelin Tire Corp. v. Roose, 531 So. 2d 361, 363 (Fla. 4th DCA 1988) ("This record . . . supports the conclusion that the relationship between these corporations was not so close as to require one to obtain production of information and documents from the others without their consent.").

Reversed and remanded for entry of judgment in favor of Appellant.