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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STALWART CAPITAL, LLC, a New
Jersey limited liability company,

Plaintiff-Appellant,

v.

ICAP PACIFIC NORTHWEST
OPPORTUNITY AND INCOME FUND,
LLC, a Delaware limited liability company
et al.,

Defendants-Appellees.

No. 16-35079

D.C. No. C14-cv-01128 TSZ

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Thomas S. Zilly, District Judge, Presiding

Argued and Submitted March 6, 2018
Seattle, Washington

Before: RAWLINSON and CHRISTEN, Circuit Judges, and BENCIVENGO,**
District Judge.

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The Honorable Cathy Ann Bencivengo, United States District Judge
for the Southern District of California, sitting by designation.

This appeal is back before this panel following a recall of the prior mandate remanding the case to the district court to ascertain the citizenship of all the parties and determine if there was complete diversity of citizenship at the time the complaint was filed. On remand, the district court found that there was complete diversity of citizenship at the time the complaint was filed. We find no error in the district court's findings of fact regarding the citizenship of the parties and are satisfied that the district court had subject matter jurisdiction on the basis of diversity under 28 U.S.C. § 1332(a). Accordingly, it is now appropriate to reach the merits of the appeal.

Appellant Stalwart Capital, LLC ("Stalwart") appeals the district court's judgment in favor of Appellees following a jury trial. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

The threshold issue raised by Stalwart on appeal concerns the district court's conclusion that, as a matter of law, Appellees iCap Pacific Northwest Opportunity and Income Fund, LLC ("iCap Income Fund II") and Chris Christensen cannot be liable for breach of contract based on a successor liability theory. The district court instructed the jury that to establish breach of contract against iCap Income Fund II, the jury must find that Stalwart had established that iCap Pacific Northwest Real Estate Fund, LLC ("iCap Real Estate Fund II"), is liable for breach

of the “Best Efforts Placement Agreement” (the “Placement Agreement”). The jury found that iCap Real Estate Fund II did not breach the Placement Agreement. The district court thereafter concluded that the jury’s finding precluded an equitable holding that iCap Income Fund II is liable to Stalwart pursuant to the Placement Agreement based on a theory of successor liability. Similarly, the district court held that the jury’s finding that iCap Real Estate Fund II was not liable under the Placement Agreement precludes a finding that Christensen was liable based on his involvement in the formation of the various iCap entities. These legal conclusions by the district court are reviewed *de novo*. *See Husain v. Olympic Airways*, 316 F.3d 829, 835 (9th Cir. 2002) (“A district court’s conclusions of law are reviewed *de novo*.”); *Wall Data Inc. v. L.A. Cty. Sheriff’s Dep’t.*, 447 F.3d 769, 784 (9th Cir. 2006) (“We review *de novo* whether a jury instruction misstates the law.”).

Under Washington’s successor liability law:

a corporation purchasing the assets of another corporation does not, by reason of the purchase of assets, become liable for the debts and liabilities of the selling corporation. The courts have recognized, however, that the traditional rule allows a transferring corporation, under certain circumstances, to effectively avoid its obligations to the detriment of *creditors* and minority *shareholders*. Thus, Washington has recognized four narrow exceptions to the traditional rule: (1) the purchaser expressly or impliedly agrees to assume liability; (2) the purchase is a *de facto* merger or consolidation; (3) the purchaser is a

mere continuation of the seller; or (4) the transfer of assets is for the fraudulent purpose of escaping liability.

Martin v. Abbott Labs., 689 P.2d 368, 384 (Wash. 1984) (en banc) (*emphasis in original*); *see also Stoumbos v. Kilimnik*, 988 F.2d 949, 961 (9th Cir. 1993). Here, questions of successor liability are irrelevant. In light of the jury's findings, iCap Real Estate Fund II did not owe any debts or have any liabilities to Stalwart. Without a finding that iCap Real Estate Fund II had such debts or liabilities, there could be no finding that iCap Income Fund II or Chris Christensen were liable to Stalwart because of their relationships to iCap Real Estate Fund II. In other words, because there was no liability to Stalwart, there was no need to engage in an analysis of successor liability under Washington law.

Stalwart also appeals the district court's award of attorney's fees in favor of Appellees. "A district court's decision to award attorney's fees is reviewed for abuse of discretion. Elements of legal analysis and statutory interpretation that figure into the district court's attorney's fees decision are reviewed de novo."

Tutor-Saliba Corp. v. City of Hailey, 452 F.3d 1055, 1059-60 (9th Cir. 2006) (internal quotation marks and citation omitted). The district court did not abuse its discretion in awarding attorney's fees, and Stalwart does not identify any errors in

the district court's legal analysis related to that decision. Accordingly, we affirm the attorney's fee award as well.

AFFIRMED.