2013 IL App (4th) 120809-U

NO. 4-12-0809

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 23, 2013
Carla Bender
4th District Appellate
Court, IL

STEPHEN H. SANNER,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Macon County
T.Q. SANNER FARMS, INC., an Illinois Corporation,	)	No. 11L14
	)	
Defendant-Appellee.	)	Honorable
	)	Thomas E. Little,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Steigmann concurred in the judgment.
Justice Appleton dissented.

ORDER

¶ 1 *Held*: After a bench trial, the trial court correctly found defendant did not breach its contract with plaintiff as the contract did not require payment of remaining unpaid principal and interest at the end of its 30th and final year.

¶ 2 Plaintiff, Stephen Sanner, brought an action for breach of contract against defendant, T.Q. Sanner Farms, Inc., for damages for the remaining amount due under a stock redemption agreement he signed with defendant in 1982. The agreement called for $300,000 in payments with 11% interest payable in 30 annual installments. The agreement provided for "standard" yearly payments of approximately $34,000 to be paid unless defendant had a net cash flow of less than that amount for the year or defendant engaged in investment in capital improvements, in which case the amount of the annual payment could be reduced to the amount of that year's cash basis net income after capital improvements. The trial court found the agreement was

unambiguous and plaintiff failed to prove he was entitled to any additional sums at the end of the contract. Plaintiff appeals. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was incorporated in 1960 by Truman Q. Sanner, his children, Karl D. Sanner, Jewel Sanner Sims, Truman J. Sanner, James Q. Sanner, Samuel W. Sanner, and Truman's grandson, plaintiff. Following Truman Q. Sanner's death, all of the shares were owned equally among his children and plaintiff. From 1960 to 1982, plaintiff was actively involved in defendant's business. He served as an officer until 1977 and was a director until he sold his stock. The shareholders and directors of defendant met every year form 1960 to 1982 and plaintiff attended every directors' meeting except for one.

¶ 5 In 1968, defendant redeemed Karl's shares using the proceeds of a loan. Plaintiff was a member of the board of director's purchasing committee and signed the resolution approving the redemption. In 1977, defendant redeemed Sam and Truman's shares under a contract calling for payment of $300,000 to each seller in 30 fixed annual installments. Plaintiff was one of the authors of the Sam and Truman contract through his participation in the buyer's committee representing the board of directors and his execution of that contract as an officer of defendant.

¶ 6 As early as 1978, plaintiff inquired about selling his shares on the same terms as the Sam and Truman contract. Defendant responded favorably but only if funds might be available as loans were needed to finance the buyout of Karl and defendant was still paying on the Sam and Truman contract. James Q. Sanner represented defendant in negotiations with plaintiff on the sale of his shares.

¶ 7 In 1982, when plaintiff entered into the agreement to sell his shares to defendant, he was aware defendant was making payments on the loan used to redeem Karl's stock and also on the Sam and Truman contract and James expressed concern about defendant's financial ability to redeem plaintiff's shares. Plaintiff knew the amount of cash available to defendant for a redemption of his shares was uncertain because he knew James and Jewel had been repeatedly required to make loans to defendant over the years to cover cash needs. He was also aware of defendant's projected cash needs for the fiscal year ending January 31, 1983.

¶ 8 Plaintiff asked for the same deal as Sam and Truman. James prepared a preliminary draft of the agreement by marking up a copy of the Sam and Truman contract. James sent plaintiff a first draft of the agreement by letter dated April 2, 1982. This draft included paragraphs 1.A-C which provided for potential reductions to all of the specified payments to plaintiff. These paragraphs were not in the Sam and Truman contract. They provided:

> "1. [Plaintiff] hereby sells the 409 1/3 shares of [Defendant] and [Defendant] hereby purchases such shares of [Defendant] from [Plaintiff] for a purchase price of $300,000, payable in 30 installments on January 30th of each year, commencing with the years 1982, with interest on the unpaid principal at the rate of 11% per annum, from February 1, 1981. The standard amount of said annual installments is to be the amount in accordance with the amortization schedule attached hereto and made a part hereof as Schedule 'A'. However, annual installments may be less than such standard amounts in the following circumstances:

A. If the cash basis net income as determined for income tax reporting by [Defendant] for any fiscal year in which a payment is due is less than the standard payment provided by Schedule 'A,' then the amount of that year's installment will be limited to the amount of such year's cash basis net income; and

B. If expenditures for capital improvements or equipment purchases are made by [Defendant] during any fiscal year, [Defendant] will have the option of further reducing the amount of such year's installment by the cost of such capital improvements or equipment purchases; and

C. If [Defendant's] cash basis net income for any year is not sufficient to provide funds for scheduled principal payments on its debt existing prior to this Agreement, [Defendant] will have the option of further reducing the amount of such year's installment by such deficiency."

¶ 9 In addition, the agreement presented to plaintiff included paragraphs 1.D and 2, and Schedule B. These paragraphs provided:

"D. In the event [Defendant] reduces an

installment below the Standard Amount, in accordance with Paragraphs A., B. and C. above, such amounts as are paid shall be first applied to the payment of the accrued interest on the actual unpaid principal due hereunder, with any balance of such payment to be applied to the principal of said indebtedness. All payments and their application shall be accounted for on Schedule B attached hereto.

2. [Defendant] shall have the right to prepay in any one year up to $75,000 of the principal indebtedness due hereunder and to pay at any time any part or all of the amounts shown from time to time as Arrearages on the Schedule of Payments and Arrearages (Schedule B attached hereto)."

¶ 10 Plaintiff objected to the inclusion of paragraphs 1.A to C but defendant refused to remove them. Paragraphs 1.A to C were the only provisions of the draft plaintiff recalled discussing with James and upon which there was disagreement. Plaintiff did not recall discussing payment of any accumulated "Arrearages" as the final payment but assumed arrearages would be paid at the end of the 30-year term of the contract. He and James did not discuss this when the agreement was made.

¶ 11 Plaintiff received the final version of the agreement 11 days later with James' letter dated April 13, 1982. The final version of the agreement included some changes about

interest computation as described in James' letter but paragraphs 1.A to C were not changed. Plaintiff did not like the risks associated with paragraphs 1.A to C, but chose to accept the terms of the agreement.

¶ 12 After the agreement went into effect, plaintiff received reduced or no payments every year in accordance with paragraphs 1.A to C. The 30th and final payment came due on January 30, 2011. The agreement defined the standard amount of the "final payment" as $34,179 and also provided it may be less than the standard amount based on the allowable reductions stated in paragraphs 1.A to C. Defendant had a loss for the year and the final payment to plaintiff was $0.

¶ 13 On February 10, 2011, plaintiff filed a complaint for breach of contract. Plaintiff alleged the contract required a payment of the unpaid principle balance and all accrued interest to be paid in the final payment. Plaintiff claimed he was owed the sum of $1,005,094.72 plus interest of $89,956 per day until paid.

¶ 14 On March 31, 2011, defendant filed a motion to dismiss plaintiff's complaint. On June 17, 2011, the trial court denied defendant's motion. On June 20, 2011, plaintiff filed a motion for summary judgment. On August 30, 2011, the court denied plaintiff's motion for summary judgment.

¶ 15 On April 30, 2012, a bench trial was held. On August 22, 2012, the trial court held the agreement contained "no such language" for a final payment of all unpaid principal and interest and entered judgment for defendant. A timely notice of appeal was filed.

¶ 16 II. ANALYSIS

¶ 17 Although plaintiff argues at times the trial court found the agreement to be

ambiguous, there is no language in the court's order finding the agreement to be ambiguous. Either way, whether a contract is ambiguous is a question of law and is reviewed *de novo*. *Shields Pork Plus, Inc. v. Swiss Valley Ag Service*, 329 Ill. App. 3d 305, 311, 767 N.E.2d 945, 949 (2002). The interpretation of an ambiguous contract is a question of fact. *UIDC Management, Inc. v. Sears Roebuck & Co.*, 141 Ill. App. 3d 227, 230, 232, 490 N.E.2d 164, 166, 167-68 (1986).

¶ 18 The objective in interpreting a contract is to ascertain and give effect to the intent of the parties. Subjective intentions are irrelevant as the inquiry must focus on the language used by the parties in the contract. *Carey v. Richards Building Supply Co.*, 367 Ill. App. 3d 724, 726-27, 856 N.E.2d 24, 27 (2006). Where the language of a contract is plain, it provides the best evidence of the parties' intent and will be enforced as written. *Id.* Only if a term of an agreement is susceptible to more than one reasonable interpretation it is ambiguous. Mere disagreement between the parties as to the interpretation of terms in the contract does not make a term ambiguous. *Id.*

¶ 19 Plaintiff argues defendant has only partially performed under the terms of the contract by paying $280,201.30 but has failed to pay the remainder of the principal and accrued interest. Defendant contends its only obligation under the contract was to pay 30 annual installments reduced by the conditions set forth in paragraphs 1.A to C.

¶ 20 A review of the agreement reveals there is no provision requiring defendant to pay anything more than the 30 annual installments as determined by the formula set out in paragraph 1 reduced by the provisions of paragraphs 1.A to C. There is no requirement for a balloon payment and no provision stating payments must continue until the face amount of $300,000 is

paid in full. There is no language suggesting the final payment should be calculated in a manner different than the preceding 29 payments. Plaintiff admits this is what the agreement states but argues it also states he would receive the purchase price of $300,000 plus accrued interest of 11% per annum on the unpaid principal balance by the end of 30 years.

¶ 21 Plaintiff supports his argument by pointing to a cover letter from James sent to him with the contract on April 13, 1982 in which James stated "you will be paid interest on the unpaid principal balance if our payments should be other than 'standard.' " Plaintiff also contends there is no reason for James to maintain a meticulous record of the amounts of paid interest, paid principal, unpaid interest, unpaid principal, cumulated unpaid interest and cumulated unpaid principal in Schedule B unless defendant intended to pay these amounts by the end of the contract term. These may have been defendant's intentions as this was a family-run business dealing with another family member, but under the plain language of the contract, defendant was not required to do so. Plaintiff does not question the reductions in annual payment amounts made by defendant under the provisions of paragraphs 1.A to C as fraudulent or inaccurate. Defendant simply did not have the cash basis net income to make the hoped-for "standard" payment amounts.

¶ 22 Plaintiff knew of the contracts to buy out Karl, Sam, and Truman when he entered into this agreement. He knew loans had to be made to defendant in order to make all of those payments. It is apparent defendant did not want to have to incur more loans to buy back shares in the corporation. Plaintiff admitted during contract negotiations with James he objected to paragraphs 1.A to C because he understood if there were insufficient funds, he would be paid a reduced amount or nothing at all in any given year. James refused to remove the paragraphs.

Plaintiff also admitted he did not recall discussing what would happen if, at the end of 30 years, defendant was behind on payments, and whether accumulated arrearages would be paid at the end of the 30 years.

¶ 23 Despite his objections to paragraphs 1.A to C and the obvious detriment they potentially presented to him, plaintiff signed the agreement with defendant. He was not required or forced to do so. There is no evidence he did not freely sign the agreement. Despite the inherent risks, plaintiff executed the agreement. The fact plaintiff experienced an unsatisfactory result cannot serve as a basis to rewrite the agreement.

¶ 24 III. CONCLUSION

¶ 25 We find the trial court did not err in finding the agreement between the parties did not include a provision to pay all remaining principal and accrued interest at the end of the 30-year run of the contract. The agreement specifically stated 30 annual payments were required to be paid and those payments were allowed to be reduced each year under certain circumstances even if the reduction took the payments down to $0. Therefore, we affirm the court's judgment granting judgment to defendant.

¶ 26 Affirmed.

¶ 27 JUSTICE APPLETON, dissenting.

¶ 28 I respectfully dissent from the majority's decision because the majority misses the significance of paragraph 1(D) of the parties' agreement. By its references to the "principal," paragraph 1(D) signifies that a below-standard installment payment does not change the fact that, in return for the stock, defendant ultimately must pay the "principal" amount of $300,000, with interest of 11% per year. Subparagraph 1(D) provides:

> "D. In the event [defendant] reduces an installment below the Standard Amount, in accordance with Paragraphs A., B. and C above, such amounts as are paid shall be first applied to the payment of the accrued interest on the *actual unpaid principal due hereunder*, with any balance of such payment to be applied to *the principal of said indebtedness*. All payments and their application shall be accounted for on Schedule B attached hereto." (Emphases added.)

Thus, despite any installment payment that is under the standard amount, there still is the "unpaid principal hereunder" or "the principal of said indebtedness": there still is the "indebtedness" in the "principal" amount of $300,000, reduced by whatever portion of the installment payment was applied toward that "principal."

¶ 29 I understand the majority's reasoning that, by the terms of the agreement, there are supposed to be only 30 installment payments, any and all of which can be less than the standard amount, pursuant to paragraphs 1(A), (B), and (C). The problem is, construing those paragraphs as creating conditions to defendant's promise to pay $300,000, with 11% interest, would make

the price for the stock indefinite, and defendant's promise illusory, because the conditions in those paragraphs are within defendant's control. See *Dwyer v. Graham*, 99 Ill. 2d 205, 209 (1983); *Chicago Title & Trust Co. v. Telco Capital Corp.*, 292 Ill. App. 3d 553, 557-58 (1997). It would be like A's promising B, "I will buy your Jaguar this year for $40,000 unless I spend my money on something else or unless I clear less than $40,000, and in either of those events, I will pay you whatever lesser sum I have at my disposal." A could spend his money on a swimming pool, or he could fool around and earn little. The price he ended up paying for the Jaguar would be under his control and therefore would be indefinite.

¶ 30 Similarly, net income, capital expenditures, and purchases of equipment are within defendant's control. This is not to say it is within defendant's power to earn an unlimited amount of income. But it is within defendant's power *not* to earn enough net income to reach the threshold amounts in paragraphs 1(A) and (C), electing to be enriched by the reduction of its liability to plaintiff instead of by its normal business pursuits. It also is within defendant's power to make capital improvements and to buy new equipment. Under the majority's interpretation, defendant could avoid paying plaintiff, or could reduce its liability to plaintiff, simply by converting its money into new buildings and new equipment, in effect compelling plaintiff to donate new buildings and new equipment to defendant. This interpretation of the agreement strikes me as implausible, and therefore incorrect, because defendant would control whether and how much it ultimately paid plaintiff. See *Dwyer*, 99 Ill. 2d at 209.

¶ 31 According to the American Law Institute, there are only two circumstances in which "a promise may be conditional on an event within the control of the promisor." Restatement (Second) of Contracts § 76 cmt. d (1981). One of the circumstances is when the promisor

"has also promised that the condition will occur." *Id.* In the present case, defendant made no promise to plaintiff that the conditions for its making standard installment payments would occur.

¶ 32 The other circumstance is when "forbearance from causing the condition to occur would itself have been consideration if it alone had been bargained for." *Id.* In this circumstance, the promisor is understood to make "a promise in the alternative." *Id.* Comment d provides the following illustration: "A promises B to pay him $5000 if A enters a competing business within three years. This is consideration for a return promise, since forbearance to compete would be consideration." *Id.* In other words, in return for whatever B promised, A's forbearance to compete with B for three years would qualify as consideration, even without A's payment of $5,000. In the present case, if we delete the payment of $300,000 with interest, defendant's forbearance to earn more than the threshold amount of net income or its forbearance to make capital improvements or to buy new equipment would not qualify as consideration for plaintiff's transfer to defendant of his stock in the company. Therefore, the second circumstance likewise is absent in this case.

¶ 33 In the absence of either of the two circumstances in comment d of section 76, I turn to the rule "Words of promise do not constitute a promise if they make performance entirely optional with the purported promisor." *Id.* The agreement, however, need not founder on that rock because one could reasonably interpret the agreement as requiring defendant ultimately to pay the stated principal of $300,000 with interest of 11% per year, as paragraph 1(D) contemplates. See *Chicago Title*, 292 Ill. App. 3d at 557-58. To not construe paragraph 1(D) as a continuing obligation to pay the sums due under the agreement renders the entire contract

illusory. In effect, the majority sanctions the "sale" of 409 1/3 shares of plaintiff's stock in the family farm corporation, valued in 1982 at $300,000, for a pittance. Paragraph 1(D) includes, by reference, schedule B, which tracks the payments made and the interest accrued. It is that amount which is due plaintiff.

¶ 34 All contracts are reflective of a meeting of the minds between two or more parties. It is inconceivable that plaintiff would agree to sell his valuable interest in the family farm corporation for next to nothing. "[W]here a contract is susceptible to one of two constructions, one of which makes it fair, customary, and such as prudent men would naturally execute, while the other makes it inequitable, unusual, or such as reasonable men would not be likely to enter into, [the] interpretation which makes [a] rational and probable agreement must be preferred." (Internal quotation marks omitted.) *Chicago Title*, 292 Ill. App. 3d at 557. While plaintiff did agree to accept payments based on defendant's available resources, nowhere in the agreement is there expressed an intent of plaintiff not to be paid or an intent of defendant never to pay. That would be irrational and improbable. Rather, the agreement specifies that, while annual payments may be shorted or skipped, schedule B, made a part of the contract, forms an account stated under the terms of paragraph 1(D).