

**NOTICE**

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2016 IL App (4th) 150677-U

NO. 4-15-0677

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

July 26, 2016  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

RYAN BANDY,	)	Appeal from
Plaintiff and Counterdefendant-	)	Circuit Court of
Appellant,	)	Sangamon County
v.	)	No. 13MR852
KENT DELAY and RANDALL STIEREN,	)	
Defendants and Counterplaintiffs-	)	Honorable
Appellees.	)	Chris Perrin,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.

Justices Harris and Appleton concurred in the judgment.

**ORDER**

¶ 1 *Held:* Based on our interpretation of the contract language, the trial court did not err by granting summary judgment in favor of defendants in this action for declaratory judgment.

¶ 2 In September 2010, plaintiff, Ryan Bandy, and defendants, Kent DeLay and Randall Stieren, formed RKR Clubs, L.L.C. (RKR), to operate a bar in Springfield, Illinois. However, because of defendants' tax debts, the State of Illinois refused to issue a liquor license to RKR. In response, plaintiff and defendants entered into a contractual agreement pursuant to which plaintiff would purchase defendants' interests in RKR in exchange for a \$20,000 promissory note. The agreement granted defendants an option to repurchase their interests in RKR if defendants satisfied their tax obligations.

¶ 3 In October 2013, plaintiff filed a complaint for declaratory judgment, explaining that he had attempted to satisfy his debt on the note but that defendants refused to accept pay-

ment. Plaintiff requested that the trial court declare how much plaintiff continued to owe on the note, so that plaintiff could satisfy his debt. Defendants filed an answer and counterclaim, claiming that they had attempted to exercise their option to repurchase their interests in RKR but that plaintiff had rejected their attempt, in breach of the agreement. Defendants requested that the court dismiss plaintiff's complaint and, instead, declare that plaintiff was required to return to defendants their respective former interests in RKR.

¶ 4 Both parties later filed motions for summary judgment. Plaintiff argued that the agreement granted him the right to refuse defendants' option to repurchase and, alternatively, that defendants had waived that option by previously demanding full payment on the note. Defendants argued that they properly exercised their option to repurchase and were entitled to their former interests in RKR. In March 2015, the trial court granted defendants' motion for summary judgment. The court ordered plaintiff to transfer to defendants an interest in RKR "in a proportional share of the forgiven indebtedness."

¶ 5 Plaintiff appeals, arguing that the trial court misinterpreted the language of the agreement and thereby erred in granting defendants' motion for summary judgment. We disagree and affirm.

¶ 6 I. BACKGROUND

¶ 7 The following facts were gleaned from the parties' filings and the hearing on their respective motions for summary judgment.

¶ 8 In September 2010, DeLay and plaintiff filed articles of incorporation for RKR. DeLay and Stieren collectively owned a 70% interest in RKR, and plaintiff owned a 30% interest. Plaintiff and defendants intended to use RKR to operate a bar in Springfield. However, the State denied the parties' application for a liquor license because of outstanding tax obligations

that defendants acquired while operating a bar through the Station House, Inc., the predecessor to RKR. RKR would be unable to secure a liquor license so long as defendants were co-owners with outstanding tax debts.

¶ 9                                   A. The Purchase Agreement and Promissory Note

¶ 10                   In October 2010, in order to secure a liquor license for RKR, the parties entered into a purchase agreement pursuant to which defendants would sell their interests in RKR to plaintiff for \$20,000. The purchase agreement explained that plaintiff would deliver a promissory note (note) for \$20,000, "payable on demand at an interest rate of 4.0% per annum."

¶ 11                   The purchase agreement included the following clause, entitled "Cancellation of Indebtedness Under Promissory Note":

"Upon the later to occur of one year having elapsed from the date of this agreement or upon the satisfaction, release, or non-assessment of any personal state or federal income tax liabilities that are now assessed or may be assessed against [defendants], now or in the future, resulting from their prior minority ownership of Station House, Inc., an Illinois business corporation, [defendants] shall have the option to forgive any portion of the indebtedness hereunder in exchange for the re-purchase of any ownership interest in a proportional share of the forgiven indebtedness. Nothing in this Purchase Agreement shall restrict the ability of [plaintiff] to satisfy this obligation by fully repaying such amounts due under the [note], with interest to date, at which time, the option for cancellation of indebtedness shall be terminated."

¶ 12

## B. The Assumption of Liability Agreement

¶ 13

In February 2011, plaintiff and defendants entered into an agreement, entitled "Assumption of Liability Regarding Indebtedness Associated with [RKR]" (assumption of liability). Pursuant to the assumption of liability, plaintiff agreed to assume liability for an outstanding \$8,000 debt owed by defendants to James Kuizin, resulting from a loan Kuizin made to defendants to fund RKR. Under the terms of the assumption of liability, plaintiff was to make 18 monthly payments to Kuizin of \$475.

¶ 14

The assumption of liability included the following terms relating to the purchase agreement:

"a. In the event that [plaintiff] buys out [defendants'] interest in [RKR], pursuant to the [purchase agreement and note], then the \$8,000 debt assumed by [plaintiff] in this agreement will be credited to the \$20,000 buyout price set forth in the Purchase Agreement and [note].

b. In the event that [defendants] acquire ownership in [RKR], pursuant to the aforementioned Purchase Agreement and [note], they agree to personally re-assume and satisfy any remaining indebtedness owed to Kuizin on the same payment schedule as is applicable to [plaintiff] by the terms of this agreement. Furthermore, [defendants] shall reimburse [plaintiff] for any payments made by him pursuant to this agreement as an additional payment to [plaintiff] upon the re-acquisition of their membership interests in [RKR]. Alternatively, at the option of [defendants], they may

reimburse [plaintiff] [by] making similar monthly payments to [plaintiff] in the amount of \$475 per month due on the 15th of the month following reacquisition by [defendants] with such payments continuing until full reimbursement is made."

¶ 15 C. The July 2011 Letter

¶ 16 In July 2011, defendants sent a letter to plaintiff, "requiring payment of principal and interest upon demand as stated in [the note]." The letter went on to demand that plaintiff pay "the entire balance on said note in the amount of \$20,000 including accrued interest to date" within the next seven days. Plaintiff did not comply with the letter's demands.

¶ 17 D. The February 2012 Letter

¶ 18 In February 2012, defendants sent a letter to plaintiff, asserting defendants' desire to "forgive [the \$20,000 note] in exchange for the repurchase of [their] ownership interest." The letter further explained that defendants expected plaintiff to return all of defendants' former ownership interests, such that defendants would own 70% of RKR and plaintiff would own 30%.

¶ 19 E. Plaintiff's Complaint for Declaratory Judgment

¶ 20 In October 2013, plaintiff filed a complaint for declaratory judgment pursuant to section 2-701 of the Code of Civil Procedure (735 ILCS 5/2-701 (West 2012)), asking the trial court to declare "the amount owed on the Note so that [plaintiff] can pay the remaining balance due to the [d]efendants." Attached to the complaint was a decision by the Illinois Department of Employment Security (IDES), upholding a \$2,883.65 assessment against RKR for unpaid unemployment insurance payments for Station House, Inc., the predecessor corporation of RKR.

¶ 21 In November 2013, defendants filed an answer and counterclaim. In the answer, defendants asserted that a controversy existed about how to interpret the purchase agreement.

Defendants therefore requested that the trial court determine whether plaintiff breached the purchase agreement by refusing to allow defendants to repurchase their interests in RKR. The answer also raised three affirmative defenses: (1) plaintiff's misinterpretation of the purchase agreement and failure to recognize defendants' option to repurchase contributed to plaintiff's claimed injury; (2) plaintiff was estopped from denying defendants' option to repurchase; and (3) the lien imposed by IDES did not invalidate defendants' option to repurchase. Defendants requested that the court dismiss plaintiff's complaint for declaratory judgment.

¶ 22 Defendants' counterclaim asserted that the purchase agreement granted defendants an option to repurchase, which defendants properly exercised and which plaintiff improperly refused. Defendants therefore requested that the trial court determine that plaintiff was required to return to defendants their respective former interests in RKR.

¶ 23 *1. Motions for Summary Judgment*

¶ 24 In July 2014, defendants filed a motion for summary judgment. They argued that (1) the purchase agreement granted them an option to repurchase their interests in RKR, (2) defendants properly exercised their option to repurchase in an October 2011 e-mail, (3) the IDES assessment did not preclude defendants' option to repurchase, (4) plaintiff breached the purchase agreement by refusing to honor defendants' option to repurchase, and (5) the purchase agreement did not grant plaintiff the ability to reject defendants' option to repurchase. Defendants requested that the trial court grant them summary judgment on the issue that defendants had the option to repurchase and that they validly exercised that option. Defendants requested further that the court order the parties to compute and submit the amount of indebtedness that remained on the note.

¶ 25 In December 2014, plaintiff filed a response to defendants' motion for summary

judgment, along with plaintiff's cross-motion for summary judgment. The response argued that summary judgment should not be granted because (1) the purchase agreement gave plaintiff an "overriding" and "paramount" right to repay the indebtedness under the note sufficient to prevent defendants from exercising their option to repurchase; and (2) defendants demanded full payment on the note in July 2011, thereby waiving their right to exercise the option to repurchase. Although plaintiff's response asserted that defendants' motion for summary judgment contained several factual inaccuracies, plaintiff did not argue that those factual inaccuracies created any genuine issue of material fact that would preclude an order of summary judgment.

¶ 26 Plaintiff's motion for summary judgment argued that the purchase agreement granted him a "superior and paramount" right to repay the indebtedness under the note, such that plaintiff could reject defendants' option to repurchase. Plaintiff requested that the trial court grant his motion and determine the proper amount that plaintiff continued to owe on the note so that plaintiff could satisfy that debt to defendants.

¶ 27 *2. The Trial Court's Judgment*

¶ 28 In March 2015, the trial court entered a written order granting defendants' motion for summary judgment and denying plaintiff's motion.

¶ 29 In support of its decision, the trial court determined the following: (1) defendants exercised their option to repurchase in their February 2012 letter, (2) defendants' July 2011 demand for payment on the note did not waive their option to repurchase because the demand was ignored by plaintiff, (3) the IDES assessment did not preclude defendants' right to repurchase, and (4) the purchase agreement did not grant plaintiff a right to refuse defendants' option to repurchase.

¶ 30 The trial court ordered plaintiff "to transfer an ownership interest in [RKR] in a

proportional share of the forgiven indebtedness back to [defendants]." The court further ordered that upon receiving their interests in RKR, defendants were to reimburse plaintiff for any payments he made on the Kuizin loan.

¶ 31 This appeal followed.

¶ 32 II. ANALYSIS

¶ 33 Plaintiff argues that, for the following reasons, the trial court erred by granting defendants' motion for summary judgment: (1) the purchase agreement granted plaintiff the right to refuse defendants' option to repurchase, (2) defendants never exercised their option to repurchase, and (3) defendants waived their option to repurchase. We address plaintiff's arguments in turn.

¶ 34 A. Plaintiff's Motion To Strike Improper Matter  
From Defendants' Brief

¶ 35 Before we reach the substantive issues raised by plaintiff, we first address a motion filed by plaintiff on appeal. In February 2016, after defendants filed their appellee's brief, plaintiff filed a motion in this court to strike improper matter from that brief. We have decided to address that motion with the case. We now deny plaintiff's motion.

¶ 36 In his motion to strike, plaintiff argued that defendants' brief failed to comply with Illinois Supreme Court Rules 341(h) and (i) (eff. Jan. 1, 2016), which govern the parts to be contained in an appellee's brief. Plaintiff essentially argues that certain parts of defendants' brief contain improper argument along with inaccurate and misleading statements of fact. We deny plaintiff's motion to strike. To the extent that defendants' brief contains improper argument or inaccurate statements of fact, we will disregard those improprieties without striking them from defendants' brief.



¶ 37 B. Summary Judgment and the Standard of Review

¶ 38 "The purpose of a summary-judgment proceeding is not to try an issue of fact but, instead, to determine whether a genuine issue of material fact exists." *Evans v. Brown*, 399 Ill. App. 3d 238, 243, 925 N.E.2d 1265, 1270 (2010). Summary judgment is a drastic means of disposing of litigation and should be allowed only when the right of the moving party is free from doubt. *Id.* Summary judgment is appropriate when the pleadings, depositions, admissions, and affidavits on file, viewed in the light most favorable to the nonmoving party, reveal that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2014).

¶ 39 We review *de novo* the trial court's granting of a motion for summary judgment. *Evans*, 399 Ill. App. 3d at 244, 925 N.E.2d at 1271.

¶ 40 C. Interpretation of the Agreement

¶ 41 Plaintiff argues that the agreement granted him a "right of first refusal," *i.e.*, a right to refuse defendants' attempt to exercise their option to repurchase. We disagree.

¶ 42 "The cardinal rule of contract interpretation is to discern the parties' intent from the contract language." *Buenz v. Frontline Transportation Co.*, 227 Ill. 2d 302, 308, 882 N.E.2d 525, 528-29 (2008). "Where the contract language is unambiguous, it should be given its plain and ordinary meaning." *Id.* at 308, 882 N.E. 2d at 529. "We must construe the statute so that each word, clause, and sentence, if possible, is given a reasonable meaning and not rendered superfluous \*\*\*." *Sylvester v. Industrial Comm'n*, 197 Ill. 2d 225, 232, 756 N.E.2d 822, 827 (2001).

¶ 43 The relevant language of the agreement was included under a section entitled "Cancellation of Indebtedness Under Promissory Note." That section granted defendants the op-

tion "to forgive any portion of the indebtedness hereunder in exchange for the re-purchase of any ownership interest in a proportional share of the forgiven indebtedness." The agreement granted defendants the power to exercise that option upon the later occurrence of the following: (1) one year after the date of the agreement; or (2) "the satisfaction, release, or non-assessment of any personal state or federal income tax liabilities that are now assessed or may be assessed against [defendants] \*\*\* in the future, resulting from their prior minority ownership of Station House, Inc. \*\*\*." The section concluded with the following sentence: "Nothing in this purchase agreement shall restrict the ability of [plaintiff] to satisfy this obligation by fully repaying such amounts due \*\*\* with interest \*\*\*, at which time, the option for cancellation of indebtedness shall be terminated."

¶ 44 Plaintiff argues that the final sentence of the "Cancellation of Indebtedness Under Promissory Note" section granted him the right to refuse any attempt by defendants to exercise their right to repurchase. We disagree. The purchase agreement granted defendants the option to forgive any amount of plaintiff's indebtedness on the note and repurchase a proportionate interest in RKR. If plaintiff's interpretation of the agreement were correct—that is, that plaintiff could reject defendants' attempt to exercise their option—then defendants would in effect have no option to repurchase, and the language of the agreement granting them that option would be rendered superfluous.

¶ 45 In support of plaintiff's argument that he had a "right to first refusal," plaintiff cites the following language, providing that "[n]othing in this [agreement] shall restrict the ability of [plaintiff] to satisfy this obligation by fully repaying \*\*\* the [note] \*\*\*, at which time, the option for cancellation of indebtedness shall be terminated." According to plaintiff, "[n]othing" could restrict the ability of plaintiff to satisfy his obligation on the note, not even defendants' ex-

exercising their option to repurchase. Again, such an interpretation would render superfluous the language the agreement granting defendants a right to repurchase. We interpret the language cited by plaintiff—that "[n]othing" restricted plaintiff's ability to fully repay the note—to clarify that plaintiff had the right to satisfy his obligation on the note at any time prior to defendants' exercising their option to repurchase.

¶ 46 In conclusion, the agreement did not grant plaintiff the right to refuse defendants' exercising of their option to repurchase. Instead, the agreement granted defendants a right to forgive plaintiff's debt that was valid until plaintiff fully satisfied his obligation on the note.

¶ 47 D. Whether Defendants Exercised Their Option To Repurchase

¶ 48 Plaintiff argues that defendants never exercised their option to repurchase. According to plaintiff, to exercise their option to repurchase, defendants were required to first (1) reimburse plaintiff for any amount he had contributed toward the balance of the note, (2) satisfy any remaining indebtedness on the Kuizin loan, and (3) reimburse plaintiff for any payments he made toward the Kuizin loan. Plaintiff further argues that, because defendants failed to meet these requirements, defendants' attempt to exercise their option to repurchase was ineffectual. We disagree.

¶ 49 In its March 2015 order, the trial court determined that defendants exercised their option to repurchase in their February 2012 letter, thereby terminating plaintiff's right to satisfy his obligation on the note. We agree with the court's interpretation of the purchase agreement that defendants were not required to first reimburse plaintiff before exercising the option to repurchase. The February 2011 assumption of liability provided that, in the event that defendants exercised their option to repurchase, "they agree to personally re-assume and satisfy any remaining indebtedness owed to Kuizin" and "shall reimburse [plaintiff] for any payments made by him

pursuant to this agreement." The assumption of liability did not require that defendants meet those obligations prior to exercising their option to repurchase. Instead, by exercising their option to repurchase, defendants were triggering the obligations required by the assumption of liability. Defendants therefore validly exercised their option to repurchase.

¶ 50 E. Whether Defendants Waived Their Option To Repurchase

¶ 51 Plaintiff argues that defendants waived their option to repurchase by demanding full payment on the note in their July 2011 letter to plaintiff.

¶ 52 In its March 2015 order resolving the parties' motion for summary judgment, the trial court determined that defendants' July 2011 demand for payment did not affect defendants' option to repurchase because plaintiff ignored the demand. We agree. The purchase agreement stated that the option to repurchase would terminate upon plaintiff fully satisfying his obligation on the note. Plaintiff has not yet fully satisfied that obligation. Had plaintiff complied with defendants' demand for repayment in full, defendants' option to repurchase would have terminated. However, plaintiff did not comply with that demand. Plaintiff cannot now argue that defendants waived their option by making a demand for repayment which plaintiff ignored.

¶ 53 For the foregoing reasons, we affirm the trial court's judgment granting defendants' motion for summary judgment. We remand the case for further proceedings.

¶ 54 III. CONCLUSION

¶ 55 For the foregoing reasons, we affirm the judgment of the trial court and remand for further proceedings.

¶ 56 Affirmed; cause remanded.