

No. 16-2236

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

2201-09 DEVELOPMENT, LLC,)	Appeal from the Circuit Court of
)	Cook County, Chancery Division
Plaintiff-Appellant,)	
)	
v.)	
)	
(YAROSLAV KOT,)	
)	No. 09 CH 14380
Defendant,))	
)	
and)	
)	
MOHAMMAD ALI ZAHEDI and PATRICIA ZAHEDI,)	
)	Honorable Alexander P. White,
Intervenors-Appellees.)	Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Justices Harris and Mikva concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding that a release executed by two parties was a full release was against the manifest weight of the evidence. Plaintiff's execution of the release did not extinguish its judgment lien. Any technical failure on plaintiff's part to comply with the Illinois Supreme Court Rule concerning successive supplementary proceedings did not cause the circuit court to be without jurisdiction.

¶ 2

BACKGROUND¹

¶ 3 On March 31, 2009, Ravenswood Bank foreclosed a mortgage executed by UA Group Development. The loan secured by the mortgage was guaranteed by defendant Yaroslav Kot. Judgment was entered in favor of Ravenswood Bank on April 14, 2010. Ravenswood Bank subsequently failed and Northbrook Bank & Trust acquired certain of its assets, including the rights to the judgment in this case. Northbrook Bank & Trust assigned its rights to the judgment to plaintiff 2201-09 Development, LLC (2201 Development). 2201 Development took over the foreclosure proceedings. On October 5, 2010, the trial court confirmed the sale of the underlying property and entered a deficiency judgment against the mortgagors for \$1.4 million. The judgment included an *in personam* judgment against Kot for \$1.4 million on the personal guaranty he executed. 2201 Development recorded its judgment with the Cook County Recorder of Deeds.

¶ 4 In December 2009, not long after the above-described foreclosure proceedings had begun and before any judgment was entered, Kot sold a separate property he personally owned (the Campbell Property) to Koda Investments, Inc. The property was not subject to any attachment based on 2201 Development's judgment against Kot and was entirely unrelated to the mortgage that was foreclosed upon. There is no insinuation that this sale was designed to improperly move assets or anything of the sort.

¶ 5 In a then-unrelated proceeding, in August 2014, the intervenors in this case, Mohammad Ali and Patricia Zahedi, obtained a separate *in personam* judgment against Kot. The Zahedis' judgment against Kot was for more than \$600,000.

¶ 6 In November 2015, Koda Investments, the company that bought the Campbell Property

¹ The Zahedis argue that we should disregard certain argumentative language contained in 2201 Development's statement of facts. We are cognizant of their request and, in arriving at our conclusion, relied only on facts verified by the record.

from Kot five years earlier, sought to refinance it. For some reason, the potential lender's title report raised a title exception because of 2201 Development's judgment against Kot. All indications were that 2201 Development's judgment against Kot should not have affected the Campbell Property title in any way. So Kot asked 2201 Development to sign a release declaring that it had no claim against the Campbell Property.

¶ 7 But this is where things went awry. Kot drafted the release and brought it to 2201 Development to sign. 2201 Development executed it. Kot and 2201 Development maintain that the release was intended to only evidence that 2201 Development released any claim related to the Campbell Property. However, instead of expressly limiting the release to the Campbell Property as the parties claim to have intended, the release portends to release Kot from any claim 2201 Development had against him in its entire judgment and concerned all of the properties. The release states that 2201 Development releases Kot from "all right, title, claim or demand whatsoever the LLC may have acquired in, through or by Judgment dated October 5, 2010 . . . and to the premises therein described . . ." Following that though, the release refers back to "the premises therein described" stating "to-wit: (the legal description of the Campbell Property)."

¶ 8 So in a battle for Kot's assets and for the priority of judgment liens, the Zahedis brought the release to the court's attention. 2201 Development had already been granted a turnover on Kot's corporate stock. The stock represents his ownership stake in corporations that own several properties in Chicago. Based on the release, however, the Zahedis filed an adverse claim.

¶ 9 In that adverse claim, the Zahedis argued that the release should terminate 2201 Development's judgment against Kot and the lien should be extinguished. The Zahedis also maintained that there was collusion between Kot and 2201 Development with their intention being to shield Kot's assets from the Zahedis enforcing their judgment. On the other side, 2201

Development argued that the parties intended a partial release that only concerned the Campbell Property and that any indication to the contrary in the release showed that there was a latent ambiguity that was the result of a mutual mistake. The trial court held an evidentiary hearing with respect to the legal effect of the release.

¶ 10 At the evidentiary hearing, the only people that testified were Kot and Walter Boitchouk. Boitchouk is the president of 2201 Development and was the one who executed the release on its behalf. Kot and Boitchouk both testified that the document they executed was not intended to be a full release. Both testified that Kot still owed 2201 Development money. And both testified that there should have never been a lien on the Campbell Property from 2201 Development's judgment against Kot, so the "release" was not really releasing anything, its purpose was just to assure a prospective third-party lender for the Campbell Property that there was no title defect from 2201 Development's judgment against Kot. There was also unrebutted testimony that 2201 Development got nothing in return for executing the release. The Zahedis did not call any witnesses.

¶ 11 In its order ruling on the adverse claim, the trial court quoted extensively from the parties' arguments and then stated only that "the Court agrees with the Zahedis. The Release is valid. The Adverse Claim is valid." The trial court then issued its order: that "the corporate stock of Kot is turned over to Adverse Claimants, the Zahedis." In its order, the court did not discuss the evidence or arguments adduced at the evidentiary hearing, focusing only on what was in the pleadings for the Zahedis' adverse claim. The court denied 2201 Development's motion to reconsider, and 2201 Development now appeals.

¶ 12 ANALYSIS

¶ 13 The principal issue on appeal is whether the release should operate as a full release or a

partial release that is limited to one property. The question is one of contract interpretation.

¶ 14 Releases are governed by principles of contract law. *Adams v. American International Group*, 339 Ill. App. 3d 669, 676 (1st Dist. 2003). Generally, the construction of a contract is an issue of law to be determined by the court. *Intersport, Inc. v. NCAA*, 381 Ill. App. 3d 312, 318 (1st Dist. 2008). The primary goal of contract interpretation is to give effect to the intent of the parties. *Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 2014 IL App (1st) 111290, ¶ 75. A contract must be interpreted as a whole. *Id.*

¶ 15 In interpreting a contract, the court first examines the language of the contract alone because the plain and ordinary meaning of the contract's terms are the best indication of the parties' intent. *Intersport Inc.*, 381 Ill. App. 3d at 319. If the language of the contract is facially unambiguous, then the contract is interpreted by the trial court as a matter of law. *Air Safety, Inc. v. Teachers Realty Corp.*, 185 Ill. 2d 457, 462 (1999). If the trial court interprets a contract based on the four corners of the contract, we review its interpretation *de novo*. *Village of Palatine v. Palatine Assocs., LLC*, 406 Ill. App. 3d 973, 979 (2010).

¶ 16 However, where the provisions of a contract are ambiguous, its construction becomes a question of fact, and parol evidence is admissible to resolve the ambiguity. *Thompson v. Gordon*, 241 Ill. 2d 428, 441 (2011). A contract is ambiguous if it is susceptible to more than one reasonable interpretation. *Id.* When the trial court evaluates evidence to determine the meaning of a contract or a contractual term, we review the trial court's decision under the manifest weight of the evidence standard. *Elliott v. LRSL Enterprises, Inc.*, 226 Ill. App. 3d 724, 730 (1992).

¶ 17 It is unclear if the trial court ever made a specific finding that the contract was ambiguous. Apparently it did find the contract to be ambiguous because it held an evidentiary hearing and took evidence on the release signatories' intentions. On appeal, even the Zahedis

argue that the trial court’s ultimate decision on the issue should be reviewed under the manifest weight of the evidence standard.² In any event, we review whether a contract is ambiguous *de novo* (*River's Edge Homeowners' Ass'n v. City of Naperville*, 353 Ill. App. 3d 874, 878 (2004)) and then, if it is, we review whether the evidence-aided interpretation is against the manifest weight of the evidence (*Elliott*, 226 Ill. App. 3d at 730). For the reasons that follow, the release at issue is ambiguous, so we will explain why it is, and then we will move to whether the court’s interpretation was against the manifest weight of the evidence.

¶ 18 The contract at issue is titled “partial release.” If, as the Zahedis contend, the document was a full release, there would have been no reason to call it a “partial release.” The release says it is given in return for “*part* of the payment of the indebtedness due” under the judgment (emphasis added). The release would also have significant surplusage if the parties intended it to apply to all the properties without exception. The release lists the legal description of the Campbell Property to the exclusion of any express reference to the other properties. If the release was intended to apply to all properties subject to the judgment, all of the language about the Campbell Property specifically would be rendered superfluous. In interpreting a contract, meaning and effect must be given to every part of the contract including all its terms and provisions, so that no part is rendered meaningless. *Atwood v. St. Paul Fire & Marine Ins. Co.*, 363 Ill. App. 3d 861, 864 (2006). Were we to accept the Zahedis’ proffered interpretation as a matter of law, we would have to accept that the entire reference to the Campbell Property specifically is surplusage, violating a basic principle of contract construction. *Fontana v. TLD Builders, Inc.*, 362 Ill. App. 3d 491, 511 (2005).

¶ 19 In addition, the release states that its intention is to apply to the premises covered by the

² Even though the Zahedis say in their section heading that the trial court did not abuse its discretion in making its ruling, all of the citations in that section of its brief say that the manifest weight of the evidence standard is appropriate. See Appellee Br. p. 7.

judgment and then states, “to wit” the Campbell Property. “‘To wit’ is used to indicate that you are about to state or describe something more precisely.” Collins English Dictionary, <https://www.collinsdictionary.com/us/dictionary/english/to-wit> (last visited Dec. 6, 2017). “To wit” means: “that is to say; namely.” Webster’s Third New International Dictionary 2418 (1993); see also Black’s Law Dictionary 1719 (10th ed. 2014) (same). So consider the release in light of that phrasing: the release applies to the premises described in the judgment, *namely*, 1510 N. Campbell. It could reasonably be said that the parties did specifically set out what the release covered, namely, the Campbell Property.

¶ 20 Depending on how one reads the contract, there are either two reasonable interpretations or there are none. The release could possibly be read to convey, as the Zahedis advocate, that it applies to the judgment and all of the premises described therein. The release could also possibly be read to convey, as 2201 Development advocates, that it applies specifically to the Campbell Property and only to the Campbell Property. The release could also be read to be hopelessly in conflict. But there is not one interpretation that can be made as a matter of law. Thus, the ambiguity must be resolved by resorting to external evidence.

¶ 21 At the evidentiary hearing the trial court was charged with resolving the ambiguity by ascertaining the contracting parties’ intent. The only witnesses that testified were Kot and Boitchouk. Both Kot and Boitchouk testified: that the document they executed was not intended to be a full release; that Kot still owed 2201 Development money; that there never was or never should have been a lien on the Campbell Property; and that 2201 Development got nothing in return for executing the release. 2201 Development’s judgment against Kot did not even attach to the Campbell Property so the “release” was not really releasing anything, its purpose was just to assure a prospective third-party lender for the Campbell Property that there was no title defect.

The release may well not even be a contract at all due to a lack of consideration. It is more of a covenant from 2201 Development that it has no interest encumbering the property. But, in any event, all of the testimony at the hearing was that only a partial release was intended. That testimony went unrebutted.

¶ 22 The Zahedis did not call any witnesses. The only thing the Zahedis have done both here and in the trial court is to seize on an apparent scrivener's error or a minor drafting mistake in a contract made by two non-native English speakers. Everything else in the case supports 2201 Development. 2201 Development presented unrebutted and uncontradicted evidence of the parties' intent, and the Zahedis presented nothing or even called the evidence presented into question. Our interest is in what Kot and 2201 Development intended when they executed the contract. See *Palm*, 2014 IL App (1st) 111290, ¶ 75.

¶ 23 The events subsequent to the execution of the release also demonstrate what the parties thought the release meant. Before the Zahedis even came into the case, 2201 Development filed and was pursuing a motion for a turnover and even obtained a turnover order. If it had granted Kot a full release, why was it still pursuing its judgment? Boitchouk testified that he has continued to demand payment from Kot. The Zahedis have also failed to explain what justification there might have been for 2201 Development to fully release a \$1.4 million judgment for nothing in return. Yet the explanation offered by Kot and Boitchouk makes sense. Their testimonial explanation likewise went unrebutted, and it was unrebutted that the release was executed for a title issue that should have never existed.

¶ 24 The Zahedis argue that 2201 Development and Kot are colluding and that 2201 Development's collection proceedings against Kot are designed to shield Kot from his creditors. In support of their argument, the Zahedis cite to their own pleadings in which they made

allegations of collusion. Those allegations were denied and cannot be considered here. As for actual evidence, the Zahedis point to Boitchouk's testimony in which he stated that he knew Kot personally and had visited Kot's home. Boitchouk also testified that he spoke to Kot "pretty often" and that he has known Kot for 10 years. The Zahedis also point out that Kot responded to a question on cross-examination that "it's possible" that he and Boitchouk had business dealings sometime in the last 10 years, but that he could not remember. None of this is evidence of collusion.

¶ 25 The Zahedis offered nothing but rank speculation that something nefarious might be afoot between 2201 Development and Kot in an attempt to thwart creditors. The fact that they know each other is insufficient. That is the only evidence that the Zahedis elicited to support any theory of collusion. Kot and Boitchouk denied the allegations of collusion. Moreover, the trial court did not find that there was collusion. It never addressed the issue. The trial court found that "the release is valid" and then ordered a turnover in favor of the Zahedis.

¶ 26 To summarize: the release at issue is likely a nullity because neither party gave up anything. Nonetheless, even if it is valid, the trial court's finding that 2201 Development fully released its claim against Kot was against the manifest weight of the evidence. If, alternatively, the trial court's ruling was based on the existence of collusion, that finding was likewise improper because there was no *evidence* to support it.

¶ 27 The Zahedis argue that 2201 Development's supplementary proceedings against Kot are void because 2201 Development violated the Illinois Supreme Court Rules by improperly initiating successive supplementary proceedings. The Zahedis focus primarily on a part of the Rule governing supplementary proceedings that states: "If there has been a prior supplementary proceeding with respect to the same judgment against the party, whether he is the judgment

debtor or a third party, no further proceeding shall be commenced against him except by leave of court.” Ill. S. Ct. R. 277(a) (eff. Jan. 4 2013). The Rule also requires that the creditor file an affidavit and that service of process be achieved. Ill. S. Ct. R. 277(a-c) (eff. Jan. 4 2013). The Zahedis argue that this is the third supplementary proceeding that 2201 Development has initiated against Kot and that 2201 Development only complied with Rule 277 the second time, but not the third.

¶ 28 Again citing their own suspicions and their own pleadings (but not any evidence), the Zahedis question 2201 Developments motives and suggest that its proceedings against Kot are a ruse to shield Kot from other creditors. Apparently, these allegations somehow tie into its argument regarding a failure to comply with Rule 277. And apparently, the Zahedis ultimate contention is that 2201 Development’s failure to comply with Rule 277 means we lack jurisdiction to consider the appeal.³

¶ 29 The Zahedis’ argument takes several unfounded leaps in order to arrive at the conclusion they desire. The argument lacks any clarity to show how the Zahedis might be entitled to any relief. To start, the Zahedis do not cite one case that would explain why it would have the authority to raise a Rule 277 violation when the proceedings are between 2201 Development and Kot. The Zahedis are not judgment debtors and do not have property of nor are they indebted to Kot so as to be someone that the Rule ostensibly protects. See Ill. S. Ct. R. 277(a). The Zahedis cannot challenge faulty service of process and the like on Kot’s behalf.

¶ 30 In addition, Kot appeared and participated in the proceedings without objecting on this basis, so any objection to a failure to properly obtain leave of court or properly serve him is waived. See *First State Bank of Princeton v. Leffelman*, 160 Ill. App. 3d 394, 396 (1987)

³ The argument also might be that we should vacate the trial court’s order because the *trial court* lacked jurisdiction. The Zahedis do not seem to settle on one or the other in their brief. Either way, both arguments are incorrect as a matter of law.

(judgment debtor waived any objection to the commencement of a second citation to discover assets initiated without leave of court under Supreme Court Rule 277 where the debtor failed to raise an objection at the initial hearing on the second citation). For that matter, the Zahedis appeared and participated. The primary purpose of the Supreme Court Rule governing supplementary proceedings for payment to judgment creditors is to prevent the harassment of the judgment debtor or third party subject to the citation proceeding. *Kirchheimer Brothers Co. v. Jewelry Mine, Ltd.*, 100 Ill. App. 3d 360, 364 (1981). Here, Kot accepted service each time and participated without objection.

¶ 31 The trial court did not lack jurisdiction and neither does this court. A trial court retains indefinite jurisdiction to enforce its judgments. *Director of Insurance ex rel. State v. A & A Midwest Rebuilders, Inc.*, 383 Ill. App. 3d 721, 723 (2008). The trial court was simply entertaining supplementary proceedings in which 2201 Development sought to enforce its judgment. Then, when the Zahedis intervened and filed an adverse claim, the trial court was confronted with a live dispute in which it was charged with assessing the continued validity of 2201 Development's judgment liens and determining lien priority between 2201 Development and the Zahedis. Any technical violation of Supreme Court Rule 277 provides the Zahedis no grounds for relief.

¶ 32 CONCLUSION

¶ 33 Accordingly, we reverse.

¶ 34 Reversed.