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2024 IL App (3d) 220427-U

Order filed January 16, 2024

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2024

NATIONAL RIFLE & PISTOL ACADEMY, LLC, an Illinois Limited Liability Company,)	Appeal from the Circuit Court of the 18th Judicial Circuit, Du Page County, Illinois.
Plaintiff-Appellant/Cross Appellee,)	
v.)	Appeal No. 3-22-0427
)	Circuit No. 18-CH-1404
EFN BROOKSHIRE PROPERTY, LLC, an Illinois Limited Liability Company,)	
Defendant-Appellee/Cross Appellant.)	The Honorable Bonnie M. Wheaton Judge, Presiding.

PRESIDING JUSTICE McDADE delivered the judgment of the court.
Justices Brennan and Hettel concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court erred by relying on parol evidence to find the terms of the parties' contract ambiguous and unenforceable
- ¶ 2 In April 2018, National Rifle and Pistol Academy, LLC (Buyer) and EFN Brookshire Property, LLC (Seller) entered into a contract for the sale of a parcel of land that was to be created by subdividing the Seller's property. The contract included a leaseback provision and an integration clause and outlined the steps the Seller was to take to create the parcel. The parties

declared that the Buyer's earnest money was nonrefundable unless the Seller breached the contract. Shortly before the scheduled closing date, the Buyer filed its a complaint and, later, two amended complaints. The second-amended complaint sought declaratory judgment and alleged breach of contract and promissory estoppel. The Seller filed a counterclaim, requesting that it be awarded the Buyer's escrowed earnest money.

¶ 3 After trial, the trial court ruled that the contract was unenforceable, finding that the parcel to be sold could not be precisely identified and that the contract's material terms contained ambiguities. The court entered judgment in favor of the Buyer on the Seller's counterclaim, ordering the return of its earnest money. Both the Buyer and the Seller appealed.

¶ 4 Before this court, the Buyer argues that the property to be conveyed was adequately defined by the steps outlined in the contract and that all material terms and exhibits were complete and unambiguous prior to the scheduled closing date. In its cross-appeal, the Seller claims that the Buyer forfeited its earnest money when it was not ready, willing, and able to close on the scheduled date. We reverse the trial court's determination that the contract was unenforceable, as well as its return of the Buyer's earnest money, and remand the cause for further proceedings.

¶ 5 I. BACKGROUND

¶ 6 In 2017, the parties entered into negotiations for the Seller to lease a portion of its land to the Buyer. The parties eventually abandoned the idea, however, and instead entered into an agreement entitled "Agreement for Sale and Purchase of Real Estate" in April 2018. Under the terms of that agreement, the Seller would obtain approval from the City of Naperville to subdivide the property into two parcels, with the Seller retaining one parcel and conveying the other to the Buyer. The final scheduled closing date for the sale was November 19, 2018. After

the Buyer concluded that the transaction would not be able to close by that date, however, it filed its initial complaint in the Du Page County circuit court, seeking injunctive and declaratory relief, specific performance, and, alternatively, recovery for the Seller's alleged breach of contract. The Buyer subsequently filed two amended complaints.

¶ 7 The second-amended complaint, which is at issue here, asserted actions for declaratory judgment, breach of contract, and promissory estoppel. The Seller filed a counterclaim, requesting that it be awarded the Buyer's escrowed earnest money, which totaled \$300,000. The case was tried on September 26 and 27, 2022.

¶ 8 The trial evidence included emails and testimony from various agents and employees involved in the sale and lease negotiations, as well as in the Buyer's efforts to obtain financing, and a copy of the parties' April 2018 purchase agreement. That agreement contains a number of key provisions relating to a "Perpetual Switch Track Industrial Spur Easement," defining the parties' responsibilities during the subdivision process and due diligence periods preceding the closing date, requiring the parties "to negotiate in good faith a lease from Buyer to Seller" prior to the expiration of the due diligence period on August 17, listing the items the Seller was required to deliver at closing, and making the Buyer's \$300,000 deposit nonrefundable after the due diligence period unless the Seller was defaulted on the contract. The contract also included an integration clause.

¶ 9 The Seller sought approval from the City of Naperville to subdivide the property into two parcels, as required by the contract. Despite the parties' attempts to negotiate the Seller's leaseback of a portion of the parcel being sold to the Buyer, however, they were unable to come to mutually acceptable terms. Nonetheless, on October 24, 2018, the Buyer sent a proposed lease that included the rental of about 100 parking spaces on the north side of the parcel to the Seller.

The City notified the Seller on October 29 that its subdivision request had been approved, and, on that same day, the Seller responded to the lease proposal.

¶ 10 The Seller's agent, Richard Brandstatter, sent the Buyer a letter listing seven "major philosophical differences" pertaining to the terms of the proposed lease and the Seller's claimed retention of a "perpetual easement" permitting it to park on the northside of the building located on the parcel. On November 7, the City passed Ordinance 18-127, which approved the Preliminary/Final Plat of Subdivision for the property, and informed the Seller of the steps needed to record the newly created plat. The Seller, however, failed to initiate the process for recording the Plat and never sought to obtain any of the signatures required by that process.

¶ 11 After hearing the evidence, the trial court declared that it struggled to determine which "iterations of the plat actually constituted the contract." It added that, [t]he fact that so many of the exhibits were blank I think would render it impossible for the Court to exercise its [discretion] to order specific performance. *** I believe that the inclusion of the lease term, how vague it was in the contract, is indicative that the parties recognize this." The court also noted that, although both parties had agreed to negotiate the lease in good faith, the Buyer's submission of a proposed lease "at most, a couple of weeks before the intended closing indicates that although not in bad faith, it -- it wasn't in good faith either."

¶ 12 The trial court's oral ruling concluded that the contract was illusory and "ambiguous in that *** it did not explain a lot of the points that were in issue." It specifically found that "the contract was vague and unenforceable and that both the contract and the lease were an essential part of this entire transaction." Citing its oral ruling, the court's written order found "that Specific Performance of the contract is not appropriate. The Court declines to make a finding that either party breached the agreement and finds that the agreement is not enforceable." The

court then ordered that the escrowed earnest money be refunded to the Buyer. The Buyer filed a timely notice of appeal, and the Seller cross-appealed.

¶ 13

II. ANALYSIS

¶ 14

Before this court, the Buyer argues that the trial court erred by declaring the parties' agreement unenforceable after finding its material terms to be ambiguous. In its cross-appeal, the Seller contends that the trial court erred by ordering the return of the Buyer's earnest money. On appeal, we review the trial court's interpretation of a contract *de novo*. *Standlee v. Bostedt*, 2019 IL App (2d) 180325, ¶ 57. In reviewing the court's findings of fact, including whether the contract was breached, we generally consider whether those findings are against the manifest weight of the evidence. *Shields Pork Plus, Inc. v. Swiss Valley Ag Service*, 329 Ill. App. 3d 305, 315 (2002) (stating that "[t]he determination of which party to a contract breached is a question for the trier of fact" that will be reviewed under the manifest weight standard); *Galesburg Clinic Ass'n v. West*, 302 Ill. App. 3d 1016, 1019-20 (1999) (applying the manifest weight standard of review to factual determinations). We initially consider the question of whether the parties' contract was enforceable.

¶ 15

A. Enforceability of the Agreement

¶ 16

The Buyer argues that the trial court erred in finding the agreement unenforceable because it contained material terms that were vague and ambiguous. In making that finding, the trial court relied on three rationales: (1) the lack of certainty about the exact parcel being sold; (2) the attachment of blank exhibits to the contract; and (3) the parties' failure to agree on a lease provision, which the court believed constituted a material term of their agreement.

¶ 17

Addressing the court's first rationale, the Buyer asserts that the contract adequately defined the property by mandating the specific process to be followed to establish its borders, but

the Seller failed to complete those procedures. The Buyer argues that paragraphs 1 to 7 of the agreement clearly set out the steps the Seller was required to take to define the precise bounds of the property being sold. The contract provided that the newly subdivided plat would consist of two parcels: one to be conveyed to the Buyer and one to be retained by the Seller. The Seller was required to apply for approval of the plat from the City of Naperville and to record that plat once it obtained approval, thereby providing the necessary definition of the property being conveyed to the Buyer. Because the Seller failed to fulfill its contractual duty to perform all of those steps, however, the property was never fully defined in a recorded plat.

¶ 18 For a contract to be binding and enforceable, its terms must be definite and unambiguous. If those terms cannot be ascertained, the contract is unenforceable. *Shults v. Griffin-Rahn Insurance Agency, Inc.*, 193 Ill. App. 3d 453, 457-58 (1990). The evidence reveals that, although the Seller completed several critical steps in the process prescribed by the contract, it failed to record the subdivided plat after obtaining approval from the City of Naperville in Ordinance 18-27. If the Seller had recorded the plat as required under the contract, the property's boundaries could have been set out with sufficient certainty. The multi-step process mandated in the contract provided the requisite basis for defining the bounds of the property with sufficient precision to create an enforceable contract. The steps of that process were not ambiguous. Any ambiguity in the description of the property was the result of the Seller's failure to fully perform its contractual obligations, including the recording of the contract.

¶ 19 The trial court, however, found that the contract's description of the property was inadequate and ambiguous, barring its enforcement. That conclusion relied, at least in part, on the court's confusion as to which drawing of the plat "actually constituted the contract. Was it the original drawing which showed the Plaintiff to -- or, rather, the Defendant/the seller to retain

title to the area between the rail spur and the northern part of the property or was it the iteration that showed the buyer owning a strip of property to give it frontage on Ogden Avenue, or was it one of the other iterations.” The Buyer argues that the trial court erred by considering parol evidence of plat drawings that were not made part of the agreement to conclude that the contract was too ambiguous to be enforceable.

¶ 20 The Seller counters that the Buyer waived any objection to the trial court’s consideration of parol evidence by agreeing to a Joint Submission of Exhibits that included multiple plats and by failing to object to the relevant trial testimony. We note that it is the plain and unambiguous language of the parties’ contract that controls the terms of their agreement, not the exhibits they admitted at trial. *West American Insurance Company v. Yorkville National Bank*, 238 Ill.2d 177, 184 (2010); *Evitts v. DaimlerChrysler Motors Corp.*, 359 Ill. App. 3d 504, 511 (2005) (stating that “[b]ecause express warranties are contractual in nature, the language of the warranty itself controls and dictates the rights and obligations of the parties to it”). Here, the steps outlined in the parties’ contract provided an effective means of defining both the plat to be sold and the scope of the evidence that could be considered in interpreting their agreement.

¶ 21 The contract defined the relevant parcel as a portion of the plat that was approved by the City of Naperville. Once the Seller’s plat application was approved, the approved plat unambiguously set out the subject parcel as required by the agreement. Under the express language of the contract, the purchase agreement involved *only* the plat map approved by the City. It did not include any reference to prior versions of that plat or to other potential plat maps.

¶ 22 Although parol evidence may sometimes be considered in construing a contract, that exception applies only when the contract language itself is ambiguous or susceptible to multiple meanings. *Meyer v. Marilyn Miglin, Inc.*, 273 Ill. App. 3d 882, 888 (1995) (stating “[i]f the

contract terms are unambiguous, the parties' intent must be ascertained exclusively from the express language of the contract, as a matter of law”). Here, the trial court used parol evidence of other plat drawings to supplement the clear and unambiguous contract language setting forth the parties’ agreed means of establishing the boundaries of the parcel being sold. It erred by considering the Seller’s proffered sketch of the subdivided property that was created in September 2017, seven months before the parties even signed the contract. At that time, the parties were still considering a lease, not a sale, of the property to the Buyer. By relying on parol evidence of sketches pre-dating the signing of the contract to conclude that the agreement was too vague to be enforceable, the trial court failed to apply the proper rules of construction. Because the contract adequately identified the relevant plat, the trial court’s consideration of parol evidence of other plat maps to find the contract ambiguous was error.

¶ 23 Our conclusion is bolstered by the express terms of the integration clause contained in paragraph 31 of the parties’ agreement. That provision unambiguously barred the consideration of any drawings made before the contract was executed, stating, “This Agreement with Exhibits embodies the entire Agreement of the parties relative to the subject matter contained herein. There are no customs, promises, terms, conditions or obligations referring to the subject matter of inducements leading to the execution hereof, other than those contained herein.” By adopting that clause, the parties affirmatively agreed that no negotiations or materials preceding the execution of the contract were to be considered in its interpretation and enforcement. Because the alternative plat drawings offered by the Seller were created prior to the contract’s execution, the trial court was barred from considering them.

¶ 24 Next, the Seller argues that the contract was unenforceable because it was missing an essential term granting it a permanent parking easement on the northside of the parcel being

conveyed. Critically, that easement was not part of any of the materials the Seller submitted to the City when seeking approval of its subdivision plan. Although parol evidence of a pre-contract plat sketch offered by the Seller indicated that it retained a “perpetual parking easement” on the north side of a building on the subject parcel, both the extensive application materials filed with the City by the Seller and the parcel ultimately approved by the City lacked any reference to that easement. In fact, the record indicates that the Seller did not assert that the easement was an essential term of the contract until October 29, 2018, three weeks before the sale’s scheduled closing date, *after* the City approved a plat map that did not include the easement.

¶ 25 The trial testimony similarly refutes the Seller’s claim that the parties always considered the permanent easement to be an essential term of their agreement. The Seller’s agent and architect, who submitted the plat iterations to the City, testified he was never aware of any easement requirement. Testimony by the Buyer’s counsel confirmed that granting a permanent easement to the Seller was never part of the contract or any discussions that took place from the time it was signed until after the subdivided plat was approved. In addition, Rick Brandstatter, an agent for the Seller, testified that the leaseback was not a prerequisite to the sale for the Seller but, rather, that he wished to include an absolute right to park a car inventory on the north side of the parcel as a benefit to any entity that became the owner of the other parcel. The Seller’s subjective desire to retain parking privileges for the future owner of the second parcel, however, was not incorporated into the parties’ written agreement and cannot be used to alter the plain and unambiguous language of the contract, particularly in light of the limitations agreed to in the integration clause. *Meyer*, 273 Ill. App. 3d at 888.

¶ 26 As our supreme court explained in *Air Safety, Inc. v. Teachers Realty Corp.*, 185 Ill. 2d 457, 464-65 (1999), “[t]he integration clause makes clear that the negotiations leading to the written contract are not the agreement. Accordingly, considering extrinsic evidence of prior negotiations to create an ‘extrinsic ambiguity’ where both parties explicitly agree that such evidence will not be considered ignores the express intentions of the parties and renders integration clauses null.” Here, any subjective intent to retain a perpetual parking easement that the Seller may have had is undoubtedly overcome by the express language of the integration clause and the complete absence of any contractual reference to a permanent easement or any drawings that included it.

¶ 27 Although the Seller maintains that the trial court properly relied on parol and extrinsic evidence to determine whether the contract contained a latent ambiguity, citing *Stamatakis Industries, Inc. v. King*, 165 Ill. App. 3d 879, 887 (1987), we find that argument unpersuasive. *Stamatakis* simply states that parol evidence is to be permitted only “provisionally.” Moreover, that case is readily distinguishable on its facts.

¶ 28 In *Stamatakis*, the court addressed the interpretation of an employment contract that barred the employee from “ ‘engag[ing] in any business or perform any service, directly or indirectly, in competition with the business of Employer.’ ” *Id.* To apply that provision to the employee’s alleged conduct, the court necessarily had to identify the scope of “the business of the employer.” *Id.* In doing so, the court noted that, “The literal meaning of the contract would provide that the business of the employer is that of not only Stamatakis’ graphic arts business but every other business that Stamatakis and its subsidiaries are engaged in. However, the contract also shows that [the employee] was hired specifically to run the subsidiaries in the graphic arts business and it is that business that Stamatakis seeks protection from the competition of [the

employee].” *Id.* Therefore, the court relied on the lack of clarity on the intended scope of that key contract language to find a latent ambiguity. In contrast, the contract here is clear on its face; none of the alleged ambiguities asserted by the Seller were created by the parties’ adoption of overly broad contract language. The trial court erred by finding that a latent ambiguity justified the use of parol evidence to show that the contract was ambiguous and unenforceable.

¶ 29 Having determined that the language of the contract was not too vague and ambiguous to be enforced, we next turn to the trial court’s finding that the contract could not be enforced due to some blank exhibits attached to it. The trial court believed that “[t]he fact that so many of the exhibits were blank *** would render it impossible for the Court to exercise its [discretion] to order specific performance. *** I believe that the inclusion of the lease term, how vague it was in the contract, is indicative that the parties recognize this.” The trial court did not, however, specify the exhibits that supported its conclusion.

¶ 30 The Buyer maintains that all of the essential exhibits attached to the contract were complete and that only a few nonessential exhibits remained incomplete. The Seller counters that several paragraphs in the contract establish that the incomplete exhibits constituted essential terms of the parties’ agreement. The first of those provisions was paragraph 1, which stated that “[t]he Property is currently being surveyed by Seller and an accurate metes and bounds legal description, along with a survey, will be attached hereto once it becomes available as Exhibit A.”

¶ 31 The plain meaning of that language is that Exhibit A was intended to specify the legal description and survey of the subject property “once it becomes available.” That language is consistent with our prior determination that the parties intended that the legal description was to be derived from the plat that was ultimately approved by the City and subsequently recorded by the Seller. *Supra* ¶ 18. The Seller does not dispute that it failed to take any steps to record the

plat or to obtain the documents necessary to close the transaction after it obtained the City's approval. We conclude that Exhibit A remained blank solely due to the Seller's failure to fulfill its contractual duties under the contract. But for the Seller's failure to complete its obligations under the contract, Exhibit A could have been completed with a legal description derived from the approved plat, as the parties intended. The Seller cannot now use its own breach of its contractual duties to argue that an essential term of the agreement remains incomplete, creating a latent ambiguity that precludes its enforcement.

¶ 32 The same can be said for Exhibit E, which is a Special Warranty Deed form that paragraph 18 required as a means of conveying the Seller's interest and "marketable title to the Property" to the Buyer at the closing. As with Exhibit A, that deed was never completed because the Seller failed to take the requisite steps, starting with the recording of the plat. Because the failure to complete Exhibit E is fully attributable to the Seller, we reject its self-serving attempt to assert that deficiency as a justification for deeming the contract unenforceable.

¶ 33 Next, the Seller asserts Exhibit F remained incomplete, despite its being required in paragraph 3. As that paragraph stated, "Buyer and Seller acknowledge that Buyer may replace or augment the exterior walls of the Building, the replacement and/or augmentation of which is detailed in the plan attached as Exhibit F. Seller will pay its proportionate share of the cost of replacing or augmenting the exterior walls to match Buyer's replacement work as it applies to areas of the Building of which Seller shall retain possession pursuant to the Future Leasehold Interest described in Section 14."

¶ 34 The provision shows that the parties intended Exhibit F to be a construction plan for the improvement and replacement of exterior walls on property leased back to the Seller, with the costs being allocated between the landlord and the tenant. Thus, Exhibit F was only "essential" if

the parties entered into a leaseback agreement. It was immaterial to the remaining provisions that addressed the sale of the property. As we have decided from the trial testimony and the absence of any supporting contractual language, however, the leaseback was not an essential term or a condition precedent to the sale of the property. *Supra* ¶ 25. Because the parties never agreed to the terms of that arrangement, the completion of Exhibit F was not essential to the purchase transaction.

¶ 35 Similarly, Exhibit B also related to the potential leaseback of property to the Seller. It addressed the intended allocation of the parties' maintenance duties for the property's common areas. As with Exhibit F, it remained blank because the parties never entered into a leaseback agreement. In the absence of leasehold, the contract did not need to define the respective maintenance responsibilities of the landlord and the tenant. Accordingly, Exhibit B did not relate to an essential term of the contract, and the parties' failure to complete it did not create a latent ambiguity.

¶ 36 Finally, paragraph 4 of the contract related to attached Exhibits C and D. That paragraph stated, "[a] Perpetual Switch Track Industrial Spur Easement (the 'Easement') [that] exists on the Property and will remain an easement as granted and described in Exhibit C hereto." It also described the location of the spur as well as the Seller's right to its periodic use "as depicted on Exhibit D," allowing the parties mutual access to the spur and making them responsible for the costs associated with their respective usage. Based on our review of the record, neither Exhibit C nor Exhibit D is incomplete. Exhibit C provides a complete legal description of the Seller's easement for a pre-existing Perpetual Switch Track Industrial Spur, and Exhibit D adequately defines the access point to that spur. They are not the source of any latent ambiguity in the contract.

¶ 37 In sum, the only blank exhibits attached to the contract were B, E, and F. We conclude that none of those exhibits was sufficient to create a latent ambiguity that precluded enforcement of the contract. Each of those exhibits relates to either the deed that the Seller was obliged, but failed, to prepare or to the parties' obligations under a leaseback agreement that was never executed. For those reasons, the trial court erred in finding that the presence of some incomplete exhibits created a latent ambiguity that rendered the contract unenforceable. We reverse the court's finding that the parties' contract was unenforceable and remand the cause to that court for additional proceedings on the remaining claims.

¶ 38 B. Earnest Money

¶ 39 In its cross-appeal, the Seller contends that the Buyer's earnest money was forfeited under the terms of the contract and should not have been returned. Because the trial proceedings are not yet complete, however, we deem any award of the earnest money to be premature and reverse the order returning the Buyer's earnest money. In so reversing, we do not express an opinion on the proper remedy to be imposed at the completion of the trial court proceedings.

¶ 40 III. CONCLUSION

¶ 41 For the reasons stated, we reverse both the judgment finding the parties' contract to be unenforceable and the order returning the Buyer's earnest money. We remand the cause for further proceedings in the trial court.

¶ 42 Reversed and remanded.