IN THE SUPREME COURT OF THE STATE OF DELAWARE

SUSSEX EQUIPMENT COMPANY, a Delaware corporation and GEORGE M. ANDERSON,	§	No. 75, 2004
Plaintiffs Below, Appellants,	§	Court Below: Superior Court in and for New Castle County,
v.	§	
BURKE EQUIPMENT COMPANY, a Delaware corporation and MARK BABBITT,	§	No. 02C-11-152
Defendants Below, Appellees.	§	

Submitted: September 22, 2004
Decided: October 26, 2004

Before **HOLLAND**, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 26th day of October, 2004, on consideration of the parties' briefs, it appears that:

(1) Sussex Equipment Company and George M. Anderson ("Sussex") appeal from a decision of the Superior Court granting summary judgment to Burke Equipment Company and Mark Babbitt ("Burke"). The trial judge determined that as a matter of law, the letter of intent executed by the parties on November 16, 1999 was not a valid contract. Sussex appeals the trial judge's decision arguing that the letter of intent was a contract, and that

genuine issues of material fact exist as to the parties' intent and objective manifestations of assent. We have examined the record and conclude that the trial judge committed no legal error. Accordingly, the decision of the Superior Court is affirmed.

(2) In August or September 1999, Mark Babbitt approached George Anderson about acquiring Sussex Equipment Company after learning that Sussex was having financial difficulties. Sussex was in the business of selling Bobcat and Kubota agricultural, construction and commercial mowing equipment. Babbitt owned similar businesses in New Castle and Kent Counties and was seeking to expand his business into Sussex County.

(3) In the Spring of 1999, Anderson learned that Sussex was "out-of-trust" with Bobcat and Kubota because his former partner had been selling equipment without forwarding any proceeds to Bobcat and Kubota. Prior to the commencement of their negotiations, Anderson informed Babbitt that Sussex was out-of-trust with Bobcat and Kubota and that its franchise was in jeopardy. For this reason, Anderson allowed Babbitt to inspect the books, premises and inventory of Sussex.

(4) On or about November 16, 1999, Anderson and Babbitt executed a document regarding the terms of the sale of Sussex to Burke. The last paragraph of the document, paragraph fourteen, provided, "<u>This is an agreement in principle, subject to final negotiations</u>."[1] In January 2000, Bobcat and Kubota revoked Sussex's franchise. As a result, Babbitt broke-off negotiations with Anderson.

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[1] Appendix to Appellants' Opening Brief at A-12.

(5) Sussex filed a lawsuit in Superior Court on November 19, 2002 against Burke for breach of contract. The trial judge granted summary judgment to Burke on the basis that as a matter of law, the parties did not have a contract. Sussex appeals the decision of the Superior Court, arguing that formation of a contract should be determined by analyzing extrinsic evidence to determine whether the parties intended to enter a contract, and whether there were objective manifestations of assent. Sussex maintains that there are genuine issues of material fact that should be decided by the trier of fact.

(6) Contract interpretation is a question of law.[2] We therefore review the trial judge's decision for legal error.[3] Under Delaware law, purported contracts are to be "construed as a whole, to give effect to the intentions of the parties."[4] If the contract language is clear and unambiguous, then the parties' intent is ascertained by "'a reasonable reading of the plain language of the policy.'"[5] Extrinsic evidence is only used if the parties' intent cannot be derived from the plain meaning of the contract.[6]

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[2] *Rhone-Poulenc Basic Chems. Co. v. American Motorists Ins. Co.*, 616 A.2d 1192, 1195 (Del. 1992) (citing *Aetna Cas. and Sur. Co. v. Kenner,* 570 A.2d 1172, 1174 (Del. 1990)).

[3] *Kenner,* 570 A.2d at 1174.

[4] *Northwestern Nat'l Ins. Co. v. Esmark, Inc*., 672 A.2d 41, 43 (Del. 1996) (citing *E.I. duPont de Nemours and Co., Inc. v. Shell Oil Co*., 498 A.2d 1108, 1113 (Del. 1985)).

[5] *E.I. du Pont de Nemours & Co. v. Allstate Ins. Co.,* 686 A.2d 152, 156 (Del. 1996) (quoting *Kenner*, 570 A.2d at 1174).

[6] *See Pellaton v. Bank of New York*, 592 A.2d 473, 478 (Del. 1991) (citing *Hibbert v. Hollywood Park, Inc.*, 457 A.2d 339, 343 (Del. 1983)). *See also Cleveland Trust Co. v. Wilmington Trust Co.,* 258 A.2d 58, 65 (Del. 1969) ("Parol evidence may not be admitted to vary or contradict a plain and unambiguous provision of a trust agreement.") (citations ommitted).

(7) The language of the letter of intention in this matter clearly indicates that the document was not intended to be a contract. The language in paragraph fourteen is plain, and its placement as the last paragraph of the document and emphasis by underlining emphasizes the fact that the parties did not intend for the documents to be a binding contract. No further analysis of the parties' intention is therefore required.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is ***AFFIRMED***.

BY THE COURT:

/s/Henry duPont Ridgely
Justice

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