

STATE OF MICHIGAN
COURT OF APPEALS

BALINT RYDER HANDLING EQUIPMENT
CORP.,

UNPUBLISHED
June 30, 2000

Plaintiff-Appellant,

and

BALINT THARPE SERVICE CORP.,

Plaintiff,

v

No. 218002
Cass Circuit Court
LC No. 97-000522-CK

R. JAMES RYDER,

Defendant-Appellee.

Before: Doctoroff, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

Plaintiff Balint/Ryder Handling Equipment Corporation appeals as of right from the trial court order granting defendant James Ryder's motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse and remand.

Until 1986, defendant owned fifty percent of plaintiff Balint/Ryder Handling Equipment Corporation and plaintiff Balint/Tharpe Service Corporation, both of which were located in Indiana. At that time, the two corporate plaintiffs bought defendant's interest pursuant to agreements that also governed their post-sale relationship. In a document entitled "Redemption Agreement," defendant agreed to not compete with plaintiffs for five years following the date of the agreement. The redemption agreement stated that the non-competition clause would take effect upon the termination of the parties' "Representative Agreement," which was signed at the same time and provided for defendant's continued employment with plaintiffs for sixty days. More than one year later, defendant was still working for plaintiffs. Therefore, an amendment to the redemption agreement was created and signed by the two parties. It stated that the five-year

non-competition period would begin when defendant's employment with plaintiffs ended. When defendant later began competing with plaintiff Balint/Ryder Handling Equipment Corporation in a manner plaintiff believed contrary to their non-competition agreement, plaintiff Balint/Ryder and plaintiff Balint/Tharpe Service Corporation filed this lawsuit alleging breach of contract. The trial court granted defendant summary disposition after concluding that the amendment to the redemption agreement was unenforceable for lack of consideration and, therefore, that the non-competition period was not extended beyond the five years following the initial agreements.

Because the vast majority of the events involved in this lawsuit occurred in Indiana, that state has an interest in having its law applied in this case. Furthermore, the redemption agreement specifies that the laws of Indiana govern the agreement. For these reasons, we will apply Indiana law. See *Chrysler Corp v Skyline Industrial Services, Inc*, 448 Mich 113, 125-127; 528 NW2d 698 (1995). Under Indiana law, a trial court's findings of fact and conclusions of law are reviewed for clear error. *Skweres v Diamond Craft Co*, 512 NE2d 217, 219 (Ind App, 1987). Such a decision will be overturned only if, after reviewing the entire record, the reviewing court is left with a definite and firm conviction that a mistake has been made. *Id.*

Under Indiana's law of construction of contracts, courts should "ascertain the intention of the parties from their expression of it, and . . . give effect to that intention, if it can be done consistently with legal principles." *Fort Wayne Bank Bldg, Inc v Bank Bldg & Equipment Corp of America*, 309 NE2d 464, 467 (Ind App, 1974). Further, courts should recognize parties' ability to amend a contract. See *Skweres, supra*, 512 NE2d at 220. "The law is clear that parties competent to contract may mutually so modify or change their contracts." *Fort Wayne Bank Bldg, supra*, 309 NE2d at 466-467. Finally, "the courts will not inquire into the adequacy of consideration." *Gorbett v Estelle*, 438 NE2d 766, 768 (Ind App, 1982).

In the present case, plaintiff and defendant signed the redemption agreement that clearly expresses their understanding that defendant would not compete with plaintiff for five years after he left plaintiff's employ. As noted by that provision and the referenced representative agreement, the parties believed that defendant would work for plaintiff for sixty days after his ownership interest was sold back to plaintiff. When it became clear that the original redemption agreement did not accurately reflect the parties' intentions because defendant continued working for plaintiff after the initial sixty days, they agreed to and signed the amendment to the redemption agreement. Defendant then continued to work for plaintiff for several years. Defendant does not allege that he unknowingly, unwillingly, or unwittingly signed the amendment to the redemption agreement or that it did not reflect his intentions at that time.

As noted above, parties may modify contracts and the intentions of the parties should be honored by the courts. Defendant willingly agreed to modify the redemption agreement and the intentions of the parties are unambiguously expressed in that agreement and its amendment. Therefore, after carefully reviewing the record, we conclude that the trial court clearly erred in holding that the parties did not mutually modify the non-competition clause of their contract for adequate consideration. See *id.*

We reverse the trial court's order granting defendant summary disposition and remand for further action consistent with this opinion. We do not retain jurisdiction.

/s/ Martin M. Doctoroff

/s/ David H. Sawyer

/s/ Mark J. Cavanagh