

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JASON (GABRIEL) FELIX,)	No. 66303-8-1
Appellant,)	DIVISION ONE
v.)	UNPUBLISHED OPINION
PICO COMPUTING, INC., a Washington)	
corporation,)	
Respondent.)	FILED: February 4, 2013
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Appelwick, J. — Felix appeals summary judgment dismissing his claim for declaratory relief and specific performance of the appraisal terms in the stock buy-back provision of Pico’s shareholder agreement. We conclude that Pico did not provide a valid appraisal as contemplated by the shareholder agreement. We reverse and remand for entry of summary judgment for Felix.

FACTS

Jason Felix began working for Pico Computing Inc. as an electrical engineer in November 2004. He purchased \$195,189 worth of stock for \$118 per share before he left the company in December 2007.

Pico’s shareholder agreement requires departing employees to sell all shares

back to the company. Pico, in turn, is obligated to purchase the shares. The shareholder agreement provides detailed instructions on how to value the shares. The purchase price is calculated by dividing Pico's fair market value by the total number of outstanding shares. If the price cannot be agreed to by unanimous consent of all shareholders with voting rights, then it is determined by independent appraisal.

The appraiser is required to

consider all opinions and relevant evidence submitted to them by the parties, or otherwise obtained by them, and shall set forth their determination in writing together with their opinions and the considerations on which the opinions are based, with a signed copy of the appraisal delivered to each party.

The appraisal is conducted by an agreed to independent appraiser. But, if Pico and the departing employee cannot agree on an appraiser, then each can select their own. If the employee fails to select an appraiser, then Pico's independent appraiser alone determines the purchase price.

Felix elected not to obtain his own appraiser. Pico's president, Robert Trout, notified Felix that Pico had appointed William Hanlin, CPA, as its independent appraiser. Months later, Trout informed Felix via e-mail that the appraisal was complete and the stock was worthless. He forwarded an e-mail from Hanlin, in which Hanlin wrote that he had completed Pico's corporate tax return and the K-1s for each shareholder. In conclusion, Hanlin stated:

Attached is a brief finding of value for the Company. As you probably expected, we value [the] stock at \$0.00. Please call me at your convenience to go over any of the details.

The attachment was a scant two page document titled "Value of stock as of December 31, 2007."

Felix hired an attorney after he began to doubt the legitimacy of Hanlin's appraisal. Pico's attorney refused to give Felix's attorney a signed copy of the appraisal or permission to speak with Hanlin. In fact, Pico's attorney threatened to pursue sanctions against Felix's attorney if he tried to speak with Hanlin. Unable to speak with Hanlin directly, Felix's attorney drafted a letter explaining why he believed there had been fraud and requested that Pico's attorney forward it to Hanlin. Hanlin never received the letter.

Felix sued Pico under the Uniform Declaratory Judgments Act (UDJA), chapter 7.24 RCW. He sought a declaration that the shareholder agreement had been breached and that important rights had been violated. He requested specific performance of the appraisal portions of the shareholder agreement or a declaration that the appraisal was null and void, as well as consequential damages, reasonable attorney fees, and any other relief available at law or equity.

At a deposition, Hanlin testified that the two page document he sent to Trout was not intended to be a valid, independent appraisal for the purpose of evaluating stock and that the parties should not have relied upon it for that purpose. In fact, he advised Trout that if he wanted a valid appraisal he should have a full report. Trout said a full report would not be necessary. But, Hanlin conceded that the results would have likely been the same if he had conducted a full report.

Another accountant, Mark Kucik, opined that the document was not a valid appraisal. He stated that, if Hanlin was a competent appraiser, then he probably did not intend for the document to be a valid appraisal.

Pico and Felix submitted competing motions for summary judgment. Felix

argued that the document Hanlin e-mailed to Trout was not a valid appraisal. Pico argued that Felix did not allege any damages, that Felix waived his right to enforce the terms of the shareholder agreement, and that Hanlin provided a valid, signed appraisal. The trial court granted Pico's motion for summary judgment, but did not specify which theory its decision was based on. It awarded Pico its reasonable attorney fees. Felix appeals.

DISCUSSION

We review summary judgment orders de novo. Hadley v. Maxwell, 144 Wn.2d 306, 310-11, 27 P.3d 600 (2001). Summary judgment is proper when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); Peterson v. Groves, 111 Wn. App. 306, 310, 44 P.3d 894 (2002).

I. Appraisal

Pico's shareholder agreement requires an appraisal by an independent appraiser. Here, Hanlin sent Trout a two page document and concluded that the stock was worthless.¹ But, Hanlin later testified that the document was not intended to be a valid appraisal. In fact, he stated that Trout did not want him to conduct a full report. Another expert testified that the document was so deficient that Hanlin could not have intended for it to be a valid appraisal. These facts are not disputed.

Indeed, Pico does not even argue that the document was a full appraisal report. Instead, it simply asserts that the valuation was proper because the shareholder

¹ The e-mail from Hanlin to Trout indicates that Hanlin performs other accounting work for Pico. This calls into question whether or not Hanlin is an independent appraiser as contemplated by the shareholder agreement. Felix does not raise this argument.

agreement requires a signed appraisal and the e-mail from Hanlin was signed. Specifically, it claims that the document was signed as contemplated by the Uniform Commercial Code (UCC), Title 62A RCW, and the federal Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15 U.S.C. §§ 7001-7031. The UCC defines a signature as “any symbol executed or adopted by a party with present intention to authenticate a writing.” RCW 62A.1-201(39) (2001). The E-Sign Act defines an electronic signature as “an electronic sound, symbol or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.” 15 U.S.C. § 7006(5). Pico claims those definitions are satisfied because Hanlin’s e-mail to Trout included his signature block and concluded, “Kind regards,” “Bill.” The adequacy of the signature or identity of the signor is of no consequence here. The uncontroverted evidence is that Hanlin did not intend for the document to be a valid appraisal.²

There was no valid appraisal as contemplated by the shareholder agreement. The trial court erred by granting Pico’s motion for summary judgment and by not granting Felix’s motion for summary judgment.

II. Waiver

Pico nevertheless claims that summary judgment in its favor was proper, because Felix waived his right to enforce the terms of the shareholder agreement.

Pico’s waiver argument comes from two short sentences in an e-mail from Felix to Trout. After Trout forwarded Hanlin’s alleged appraisal to Felix, Felix responded:

² Further, the shareholder agreement requires that the independent appraiser sign and deliver the appraisal to each party. Even if the e-mail was signed, Hanlin’s independence is in question and he did not send it to Felix.

Thank you for fulfilling the terms of the shareholders agreement. I will do my part and return the certificate to you shortly.

Waiver is the voluntary and intentional relinquishment of a known right. Naches Valley Sch. Dist. No. JT3 v. Cruzen, 54 Wn. App. 388, 396, 775 P.2d 960 (1989). The party waiving their legal recourse must have intended to relinquish the right, advantage, or benefit and his action must have been inconsistent with any intent other than to waive. Wagner v. Wagner, 95 Wn.2d 94, 102, 621 P.2d 1279 (1980). The party asserting waiver bears the burden of proving an intention to relinquish the right. U.S. Oil & Refining Co. v. Lee & Eastes Tank Lines, Inc., 104 Wn. App. 823, 831, 16 P.3d 1278 (2001).

Felix's e-mail response is consistent with a belief that Pico had fulfilled its obligation. It cannot be read as an express waiver of his rights and clearly cannot be considered as inconsistent with anything but a waiver. We reject the assertion that Felix waived his rights under the contract.

III. Damages

Pico also argues that summary judgment in its favor was proper, because Felix is not challenging the accuracy of Hanlin's appraisal and has not suffered damages. Generally, a plaintiff alleging breach of contract must establish the existence of a valid and enforceable contract, the rights of the plaintiff and obligations of the defendants under the contract, violation of the contract by the defendant, and damages to the plaintiff. Citoli v. City of Seattle, 115 Wn. App. 459, 476, 61 P.3d 1165 (2002). But, Felix filed his complaint pursuant to the UDJA and was not required to allege or prove damages.

Under the UDJA, courts are expressly given the power to declare legal rights or status, regardless of whether further relief is or could be claimed. RCW 7.24.010. The purpose of the statute is to enforce legal rights, not provide a damages remedy. The UDJA explicitly permits an interested party to bring an action seeking a declaration of legal rights arising under a contract. RCW 7.24.020. The UDJA also gives courts the power to grant further relief when necessary or proper. RCW 7.24.080.

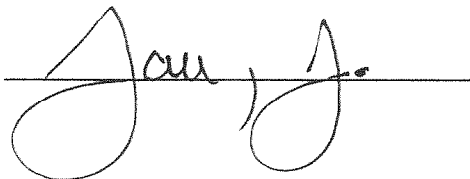
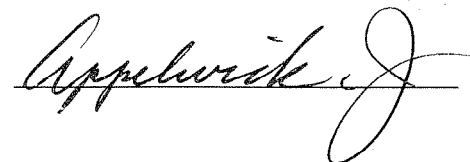

Here, Felix sought a declaration that Pico breached the shareholder agreement. He also sought specific performance, which was consistent with the shareholder agreement's explicit provision that any breach be remedied via specific performance. Felix was entitled to seek declaratory relief and specific performance under the UDJA. He was not required to prove damages and, in fact, whether such damages exist will not be known until Pico complies with the terms of the shareholder agreement and provides a valid appraisal. Until that point, any statement that Felix has not incurred damages is pure conjecture.

IV. Attorney Fees

We award Felix his reasonable fees and costs incurred below and on appeal pursuant to RAP 18.1 and the attorney fee provision in the shareholder agreement.

We reverse and remand for entry of summary judgment in favor of Felix.

WE CONCUR

A handwritten signature in cursive script, appearing to read "J. J. Jones", written over a horizontal line.A handwritten signature in cursive script, appearing to read "Appelwick J.", written over a horizontal line.A handwritten signature in cursive script, appearing to read "Leach, C. J.", written over a horizontal line.