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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

WAYNE WEAVER, Plaintiff/Appellant, v. TED ASHFORD and BONNIE ASHFORD, husband and wife, Defendants/Appellees.	2 CA-CV 2009-0184 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C-20092905

Honorable Ted B. Borek, Judge

AFFIRMED

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H O W A R D, Chief Judge.

¶1 Appellant Wayne Weaver appeals from the dismissal on the grounds of forum non conveniens of his collection action against appellees Bonnie and Ted Ashford (collectively "Ashford"). He argues that the trial court erred because a forum selection clause in the underlying contract precludes consideration of forum non conveniens factors. Because we find that the clause is not applicable to this action, we affirm.

Factual and Procedural Background

¶2 In reviewing a trial court's decision granting a motion to dismiss, we view the facts in the light most favorable to the non-moving party. *A. Uberti and C. v. Leonardo*, 181 Ariz. 565, 566, 892 P.2d 1354, 1355 (1995). Ashford purchased several multi-million dollar life insurance policies from Weaver, and Weaver helped him secure some of the initial financing through FFR Tucson, Inc. ("FTI"). Ashford and FTI then entered into a contract to formalize the financing. FTI later assigned its rights and obligations under the contract to Weaver. When Ashford failed to make the required loan payments, Weaver sued him in Arizona. Ashford then moved to dismiss the suit based, inter alia, on forum non conveniens. The trial court granted Ashford's motion, and Weaver now appeals from this ruling.

Forum Selection Clause

¶3 Weaver argues that the trial court erred in dismissing the case based on forum non conveniens because a forum selection clause in the contract precluded this issue. However, Ashford claims that, because the forum selection clause is located in the section of the contract entitled "Security Agreement" and because the lawsuit was

brought on the section entitled "Promissory Note," the forum selection clause does not apply to this action.[1]

¶4 We review the interpretation of a contract de novo. *Dreamland Villa Cmty. Club, Inc. v. Raimey*, 224 Ariz. 42, ¶ 17, 226 P.3d 411, 415 (App. 2010). "The court's purpose in interpreting a contract is to achieve the parties' intent." *Nahom v. Blue Cross and Blue Shield of Ariz., Inc.*, 180 Ariz. 548, 551, 885 P.2d 1113, 1116 (App. 1994). To determine intent, we look at the plain meaning of the words in the context of the whole agreement. *United Cal. Bank v. Prudential Ins. Co. of Am.*, 140 Ariz. 238, 259, 681 P.2d 390, 411 (App. 1983).

¶5 The contract is divided into three sections: Principle Terms, Promissory Note, and Security Agreement. Only one clause in the contract relates to forum selection, and it is located in the Security Agreement. The clause reads: "Venue: Debtor agrees that any actions arising under this Agreement shall be heard and resolved in the courts of Arizona." Thus, in determining whether this clause applies to the Promissory Note section, which was the basis for this action, we must ascertain what the parties meant by the term "Agreement."

[1]Appellant does not claim on appeal that there is an issue of fact with respect to the interpretation of the contract and the applicability of the forum selection clause to other sections of the contract. Therefore, any argument that there were questions of fact sufficient to withstand the motion to dismiss has been waived. *See* Ariz. R. Civ. App. P. 13(a)(6) ("An argument . . . shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on."); *Polanco v. Indus. Comm'n of Ariz.*, 214 Ariz. 489, n.2, 154 P.3d 391, 394 n.2 (App. 2007) (appellant's failure to develop and support argument waives the issue on appeal).

¶6 The first paragraph of the Security Agreement refers to "this 'Agreement'" in such a way as to imply that the term was intended to refer to this section alone. Additionally, in section 7.2(a) of the Security Agreement, the contract reads: "amounts due under this Agreement, as well as the Promissory Note." Furthermore, referring to the "Agreement" and the Promissory Note separately further indicates that "Agreement" was not intended to be construed as the entire contract. Also, all three parts of the contract contain separate choice-of-law provisions, and both the Promissory Note and the Security Agreement contain attorney-fees clauses. The attorney-fees and choice-of-law clauses in the Security Agreement both use the term "this Agreement," while the clauses in the Note refer to "this Note." Were we to read "Agreement" in the clauses in the Security Agreement as referring to the contract as a whole, the other clauses would be redundant. Therefore, because we will not construe a contract in such as way as to render its clauses meaningless, *see Morgan Bank v. Wilson*, 164 Ariz. 535, 539, 794 P.2d 959, 963 (App. 1990), we conclude that the forum selection clause does not apply to actions arising from the Promissory Note.

¶7 Weaver claims, however, that the location of the forum selection clause in the Security Agreement is not significant because the contract is fully integrated and was contemporaneously executed. But whether a contract is fully integrated is only relevant when prior versions of the contract or oral agreements exist. *See Anderson v. Preferred Stock Food Mkts., Inc.*, 175 Ariz. 208, 211, 854 P.2d 1194, 1197 (App. 1993) (integrated contract is "finalized obligation" between parties). It does not mean that all provisions of the contract apply equally throughout; this is a matter of contract interpretation. And we

have construed the sections as "two parts of one contract" as Weaver urges. *See Childress Buick Co. v. O'Connell*, 198 Ariz. 454, ¶ 9, 11 P.3d 413, 415 (App. 2000) ("substantially contemporaneous documents are to be read together"). But that method of interpretation does not mandate the result he seeks.

¶8 Focusing his argument on the enforceability of the forum selection clause and, therefore, the impropriety of a forum non conveniens analysis, Weaver does not assert that the court erred in weighing the relevant factors in its forum non conveniens analysis. *See Parra v. Cont'l Tire N. Am., Inc.*, 222 Ariz. 212, ¶¶ 10, 12, 20, 213 P.3d 361, 364, 366 (App. 2009) (listing certain factors relevant to forum non conveniens application). Thus, any such argument is waived. *See* Ariz. R. Civ. App. P. 13(a)(6) ("An argument . . . shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on."); *Polanco*, 214 Ariz. 489, n.2, 154 P.3d at 394 n.2 (appellant's failure to develop and support argument waives the issue on appeal).

Attorney Fees

¶9 Relying on A.R.S. § 12-341.01, Weaver and Ashford both request attorney fees on appeal. Because this action arises out of a contract and because Ashford is the prevailing party in this action, we grant his request for attorney fees upon compliance with Rule 21, Ariz. R. Civ. App. P. Conversely, Weaver's request is denied.

Conclusion

¶10 In light of the foregoing, we affirm the trial court's dismissal of the complaint based on the ground of forum non conveniens.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge