IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

STEPHEN F. SEIDENSTICKER, Plaintiff, v. THE GASPARILLA INN, INC., a Delaware corporation, WILLIAM S. FARISH, SARAH S. FARISH, LAURA F. CHADWICK, and WILLIAM R. GOTWALS, Defendants.	)	Civil Action No. 2555-CC

MEMORANDUM OPINION

Date Submitted: November 8, 2007
Date Decided: November 8, 2007

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CHANDLER, Chancellor

Under Delaware law, courts interpret contracts to mean what they objectively say. This approach is longstanding and is motivated by grave concerns of fairness and efficiency.[1] Before me is plaintiff's motion for partial summary judgment seeking an order declaring the meaning of several disputed provisions of a Stock Purchase Agreement. Because there is only one reasonable interpretation of these unambiguous provisions, plaintiff's motion is granted.

FACTS AND BACKGROUND

Before the Court is Seidensticker's second motion for partial summary judgment. In June, the Court granted his earlier motion for partial summary judgment.[2] After that decision, the parties endeavored to settle their remaining issues, and stipulated that they would submit by letter to the Court any irresolvable differences. They have now done so.

Seidensticker was a longtime employee of The Gasparilla Inn who rose through the ranks to become its CEO in 1995.[3] The next year, Bayard Sharp, the sole shareholder of the Inn, transferred to Seidensticker 132 shares as a performance incentive. Because the Inn was a closely held corporation, the marketability and transferability of these shares were sharply restricted by the

[1] *See* Joseph M. Perillo, *The Origins of the Objective Theory of Contract Formation and Interpretation*, 69 FORDHAM L. REV. 427, 477 (2000) (concluding that a judicial attempt to uncover the subjective meaning of contracts would incentivize perjury and needlessly complicate litigation).

[2] *Seidensticker v. The Gasparilla Inn*, C.A. No. 2555-CC, 2007 WL 1930428 (Del. Ch. June 19, 2007).

[3] These facts are undisputed and are taken from the parties' submissions.

Stock Purchase Agreement ("SPA"). Specifically, the SPA limited the scope and means of both voluntary and involuntary transfers. An involuntary transfer was triggered under the SPA when (a few days after Sharp's death), Seidensticker's employment was terminated. Under section VI of the SPA, Seidensticker's termination triggered an involuntary transfer event that constituted a "deemed offer" by Seidensticker to sell his shares first to the Inn and then to Sharp. In its June 19, 2007 opinion, the Court held that the Inn and Sharp's estate failed to exercise their options to purchase the shares within the time period set out in the SPA.

The parties are now attempting to negotiate the terms of a final order and judgment. The Inn insists that a legend be placed on the stock certificate noting that the restrictions contained in section V continue to apply. Although both parties agree that these restrictions still have some effect, the Inn contends that the triggering events defined by solely Seidensticker's name and actions are also applicable to any of his transferees.

Section V of the SPA reads, "Upon the occurrence of any of the following events, Seidensticker, or his or her [sic] personal representative or successor (the 'Deemed Offeror') shall be deemed to have made an offer to sell [the shares]." It then goes on to list a series of seven events (the disputed provisions are underlined):

1. Commencement of federal or state bankruptcy, liquidation, or insolvency proceedings by or against the Deemed Offeror;
2. Attachment or garnishment of, or levy or seizure upon, or execution of a judgment against the Common Stock of the Deemed Offeror;
3. Any court order transferring an interest in the Common Stock of the Deemed Offeror to a third party, including a former spouse
4. Any attempt to Transfer any Common Stock of the Deemed Offeror in violation of any term of this Agreement;
5. Termination of employment with Sharp for any reason;
6. Disability for a continuous period of three (3) years; or
7. Seidensticker's death.

Subsection B of section V defines the date the offer is deemed to be made, and says that with respect to Seidensticker's death or disability, Common Stock is limited to the shares owned by Seidensticker. At issue now is whether paragraphs 6 and 7 of section V.A apply to Seidensticker's successors or transferees. [4]

ARGUMENTS

Seidensticker contends that paragraphs 6 and 7 need not be noted on the stock certificate legend going forward because they would have no applicability to transferred shares. Defendants, however, say that the purpose of the SPA was to allow the Sharp family to keep the Inn a closely held, family business. If

[4] Both sides agree that because Seidensticker has already been terminated, paragraph 5 is irrelevant.

Seidensticker's interpretation is correct, defendants contend, that purpose would be thwarted.

In support of his argument, Seidensticker relies heavily on section V.B, which he says limits the scope of the shares "deemed to be offered" under triggering events 6 and 7. The relevant text reads, "In connection with Seidensticker's death or disability, the phrase 'all of those shares of Common Stock of the Deemed Offeror subject to the event' shall mean all shares of Common Stock owned by Seidensticker." This provision, Seidensticker argues, renders events 6 and 7 inapplicable to any shares he transfers and, therefore, it is unnecessary to include these events in the legend on any transferred shares.

Defendants offer two chief reasons supporting their interpretation. First, they cite section III of the SPA, which states that "[a]ll shares of the Common Stock which may now or hereafter be owned by Seidensticker shall be subject to the restriction on Transfer imposed by this Agreement." Defendants contend that this language is universal and applies to any mention of common stock throughout the contract, regardless of whether or not Seidensticker still owns the stock. Second, defendants argue that the purpose of this agreement was to ensure the Inn's ownership did not become diverse. They suggest that the "plain intent" of the drafters militates against Seidensticker's interpretation.

ANALYSIS

Summary judgment is appropriate only when the record shows no genuine issue of any material fact and the court can rule as a matter of law.[5] While considering a motion for summary judgment, the court views the evidence in the light most favorable to the nonmoving party.[6] Where the dispute centers on the proper interpretation of an unambiguous contract, summary judgment is appropriate because such interpretation is a question of law.[7]

Delaware law adheres to an objective theory of contracts, under which a court does not resort to extrinsic evidence "to interpret the intent of the parties, to vary the terms of the contract or to create an ambiguity" when the contract terms are unambiguous.[8] Contract terms are not ambiguous merely because the parties to the contract disagree;[9] rather, the court "stand[s] in the shoes of an objectively reasonable third-party observer," and ascertains whether the contract language is unmistakably clear.[10]

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[5] Ct. Ch. R. 56(c); *Twin Bridges Ltd. P'ship v. Draper*, C.A. No. 2351-VCP, 2007 WL 2744609, at *8 (Del. Ch. Sept. 14, 2007).
[6] *HIFN, Inc. v. Intel Corp.*, C.A. No. 1835-VCS, 2007 WL 1309376, at *9 (Del. Ch. May 2, 2007).
[7] *Id.*
[8] *Eagle Indus., Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228, 1232–33 (Del. 1997).
[9] *Id.*
[10] *Dittrick v. Chalfant*, C.A. No. 2156-VCL, 2007 WL 1039548, at *4 (Del. Ch. Apr. 4, 2007).

The Supreme Court's recent decision in *Appriva Shareholder Litigation Co. v. EV3, Inc.*[11] does not set forth a new or different standard. There, the Supreme Court held that a trial court may not, on a Rule 12(b)(6) motion to dismiss, "choose between two differing reasonable interpretations of ambiguous provisions."[12] Where a contract term is objectively clear and there is only one "reasonable interpretation," it is well within the province of this Court to rule as a matter of law. The Supreme Court may have quoted language suggesting a subjective theory of contracts from *Klair v. Reese*,[13] but *Appriva* does not rely on a subjective theory to reach its holding. Because of this, and because the Supreme Court has—in an earlier opinion neither distinguished nor cited in *Appriva*—expressly "disapproved" of the "overbroad" language of *Klair*, I cannot determine that *Appriva* alters Delaware's stalwart and longstanding adherence to an objective theory of contracts.[14]

Here, section V unambiguously defines certain "triggering events," upon the occurrence of which Seidensticker, *or* his personal representative, *or* his successor

[11] Nos. 470, 2006, 623, 2006, 2007 WL 3208783 (Del. Nov. 1, 2007).
[12] *Appriva*, slip op. at 30, 2007 WL 3208783, at *10 (quoting *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 615 (Del. 2003)).
[13] 531 A.2d 219, 223 (Del. 1987) ("The primary search is for the common meaning of the parties, not a meaning imposed on them by law.").
[14] *See Eagle Indus., Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228, 1232 n.7. (Del. 1997) ("Unfortunately, certain language in the Court's opinion [in *Klair v. Reese*] is overbroad on the issue of when extrinsic evidence should be considered. To the extent that such language may be read to be broader than, or at variance with, the principles set forth in this opinion, it is disapproved. The *Klair* opinion should be construed narrowly to conform with this opinion." (citations omitted)).

shall be deemed to have made an offer to sell the shares back to the Inn. The contact language anticipates *three* different individuals who might be deemed to have made an offer (Seidensticker, his personal representative, or his successor). The contract provision then collectively defines the class of all three as the "Deemed Offeror." That definitional term would be entirely superfluous if any one of the three individuals could, on its own, stand for all three. When interpreting contracts, this Court gives meaning to every word in the agreement and avoids interpretations that would result in "superfluous verbiage."[15] The "Deemed Offeror" term would be rendered superfluous verbiage if this Court followed defendants' interpretation. Section V.B explicitly states that triggering events 6 and 7 implicate only those shares owned by Seidensticker. Seidensticker is only one of three individuals contemplated by section V; if "Common stock owned by Seidensticker" were to mean "Common Stock owned by Seidensticker, his personal representative, or his successor," the drafters would have used "Deemed Offeror." By saying only Seidensticker, the drafters excluded the other individuals contemplated by section V, because *expressio unius est exclusio alterius*.[16]

Defendants' interpretation makes rational sense (in that it is rational to think that the drafters may not have wanted to allow these shares to get away from the

[15] *NAMA Holdings, LLC v. World Market Center Venture, LLC*, C.A. No. 2756-VCL, 2007 WL 2088851, at *6 (Del. Ch. July 20, 2007).
[16] *Priest v. State*, 879 A.2d 575, 584 (Del. 2005).

Sharp family), but its interpretation is not *reasonable* in light of the indisputably clear language of the contract. Defendants' attempt to cabin the last sentence of section V.B by suggesting that it means all shares "ever" owned by Seidensticker necessarily fails: the contract does not use the word "ever." Moreover, defendants' contention that the language in section III applies throughout the entire agreement is refuted by the familiar interpretive rule that specific provisions prevail over general provisions.[17] Defendants offer no persuasive reason that the contract means anything other than what it says, and "Common Stock" in connection with Seidensticker's death or disability means only common stock held by Seidensticker.

CONCLUSION

Under the plain language of the SPA, no deemed offering of shares occurs upon Seidensticker's death or disability with respect to shares held by Seidensticker's transferees. Because this is the only reasonable interpretation of the SPA's language, I grant plaintiff's motion for partial summary judgment.

Counsel shall confer on the terms of a final order and judgment implementing this decision and the earlier ruling. In the event counsel are unable to resolve all disagreements as to the form of final order, each side shall submit a proposed form of order for the Court's consideration.

[17] *Cf. Shellburne Civic Ass'n, Inc. v. Brandywine School Dist.*, C.A. No. 2273-N, 2006 WL 2588959, at *4 (Del. Ch. Sept. 1, 2006).