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IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

CHARLOTTE 650, LLC, a Florida limited liability company,

Appellant,

v.

PHILLIP RUCKS CITRUS NURSERY, INC., a Florida corporation,

Appellee.

Case No. 2D20-1525

Opinion filed April 21, 2021.

Appeal from the Circuit Court for Polk County; Catherine I. Combee, Judge.

Kristie Hatcher-Bolin, Mark N. Miller, and Adam M. Miller of GrayRobinson, P.A., Lakeland, for Appellant.

Douglas A. Lockwood, III, of Straughn & Turner, P.A., Winter Haven, for Appellee.

LABRIT, Judge.

Appellee Phillip Rucks Citrus Nursery, Inc. (Rucks), contracted to sell citrus trees to Appellant Charlotte 650, LLC (Charlotte). The trial court erred reversibly by determining that Charlotte breached the contract, and we reverse and remand with instructions to enter judgment in Charlotte's favor.

Background

In 2014, Charlotte obtained a grant from the United States Department of Agriculture (USDA) for partial reimbursement of costs associated with installing an irrigation system to support trees it wished to plant in its grove. The grant was contingent on Charlotte planting 25,000 trees by the end of 2015. In August 2014, the parties executed a written agreement—drafted by Rucks—pursuant to which Rucks agreed to sell Charlotte 25,000 citrus trees for delivery in summer 2015.

In March 2015, a ventilation system was turned off overnight in one of Rucks' greenhouses, damaging many of the trees destined for Charlotte's grove. As a result, Rucks did not deliver the trees in summer 2015; instead, Rucks indicated that most of the trees would not be ready for delivery until spring 2016. In December 2015, after the USDA denied Charlotte's request to extend the planting deadline for the grant, Charlotte informed Rucks that it was cancelling the contract and demanded the return of its $100,000 deposit. After Rucks refused to return the deposit, Charlotte brought this suit, alleging claims for breach of contract and conversion. The trial court entered final judgment for Rucks following a bench trial, and Charlotte timely appealed.

Analysis

This case principally turns on the trial court's construction of the parties' agreement, which we review de novo. Hester v. Fla. Capital Grp., Inc., 189 So. 3d 950, 955 (Fla. 2d DCA 2016). We are free to "reach a construction or interpretation of the contract contrary to that of the trial court." Id. Our primary task in interpreting a contract is to examine its "plain language . . . for evidence of the parties' intent[,]" and in so doing, to give effect to all provisions of the contract. Famiglio v. Famiglio, 279 So. 3d

736, 740 (Fla. 2d DCA 2019). And "[c]ourts should not employ an interpretation of a contractual provision that would lead to an absurd result." Id. Furthermore, when interpreting a contract, "any ambiguity . . . should be construed against the drafter." Coastal Caisson Drill Co. v. Am. Cas. Co. of Reading, 523 So. 2d 791, 792 (Fla. 2d DCA 1988).

The Charlotte/Rucks contract contains the following relevant provisions:

> 4. **DELIVERY OF TREES.**
> (a) READY DATE. It is anticipated that the Trees will be ready for delivery on or before **Summer 2015**. This is not a guarantee of the ready date, and [Charlotte] acknowledges that numerous horticultural factors may accelerate or delay the ready date.
> (b) NOTICE. When the Trees are ready for transplanting, [Rucks] shall notify [Charlotte], and [Charlotte] shall accept delivery of the Trees within sixty (60) days after such notice. This 60-day period shall be referred to as the "Delivery Period" . . . .
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> . . . .
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> (g) EVENTS BEYOND SELLER'S CONTROL. If, because of freeze, hail, hurricane, other unusual weather, acts of God, disease, national emergency, fire or any other cause which is not within the reasonable control of [Rucks], which results in damage to or prevents the normal growth of the Trees, [Rucks] reserves the right to reduce the quantity of the Trees to be delivered to [Charlotte], in which event, the Purchase Price of the Trees shall be reduced proportionately. Alternatively, in the event that such acts result in the actual or constructive destruction of some or all of the Trees, [Charlotte] agrees that all risk associated with such events is borne by [Charlotte], that [Charlotte] shall forfeit all previous payments of the Purchase Price, and [Charlotte]'s sole and exclusive remedy shall be to receive a pro-rata, per tree, refund . . . .
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> . . . .
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> 7. **BUYER DEFAULT.** In the event [Charlotte] defaults with respect to any obligation under this Agreement, including, without limitation,
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> . . . .

> (b) the failure of [Charlotte] to accept delivery of the Trees within the Delivery Period; . . . .
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> . . . [T]hen [Rucks] shall have the right to retain all previous payments paid by [Charlotte] without thereby forfeiting or releasing any other remedies or claims it may have in law or equity, and [Charlotte] shall have automatically been deemed to relinquish all rights or interests in the Trees.

The trial court entered judgment for Rucks on Charlotte's breach of contract claim, reasoning as follows:

> The Court finds that the Contract is unambiguous, and specifically provides that the delivery period prescribed in the Contract was not a guarantee of the delivery date. As it relates to the force majeure provision in the Contract, this Court finds the fact that the ventilation system in one of the greenhouses was turned off was not within the reasonable control of [Rucks] based on the evidence presented. [Rucks] notified [Charlotte] that the trees were damaged and would not be ready in the summer of 2015. **The Court finds that [Charlotte] breached the contract by rejecting delivery of the trees**.

(Second emphasis supplied.)

The trial court's finding that the ventilation system shut-off was not within Rucks' reasonable control is contradicted by the court's observation at the close of trial that there was no competent, substantial evidence as to how the system was turned off. As Rucks' counsel candidly acknowledged during oral argument, the record confirms this observation. The ventilator system switch was in a locked box to which only Rucks' managers had keys. Rucks' president testified that when the ventilator shut-off problem was discovered, the system switch had been turned off, and when it was turned back on, the system was reactivated. Additionally, there was no evidence of electrical problems and no indication that power had gone out. And the greenhouse in which the

ventilation system shut-off occurred was the only one of several greenhouses on Rucks' property that was so affected.

A trial court's findings of fact and conclusions of law are presumed correct and will not be disturbed unless they are unsupported by competent, substantial evidence. Randy Int'l, Ltd. v. Am. Excess Corp., 501 So. 2d 667, 670 (Fla. 3d DCA 1987); accord City of Cocoa v. Leffler, 803 So. 2d 869, 872 (Fla. 5th DCA 2002). "However, if a trial court's decision is manifestly against the weight of the evidence, contrary to the legal effect of the evidence, or unsupported by competent [substantial] evidence, it becomes our duty to reverse." Randy Int'l, 501 So. 2d at 670. Here, the trial court expressly (and correctly) stated that no competent, substantial evidence established the cause of the ventilation system shut-off but then inconsistently found that the shut-off was not within Rucks' reasonable control. This is tantamount to saying that no matter what caused the shut-off, Rucks was not responsible for it. In short, no competent, substantial evidence supports Rucks' affirmative defense that what had occurred was an event beyond its control or supports the trial court's finding that the ventilation system shut-off was not within Rucks' control. Accordingly, the trial court erroneously relied upon paragraph 4(g) to excuse Rucks' delay.[1]

[1]Even if Rucks had proven its force majeure defense sufficient to invoke paragraph 4(g), it would not have been entitled to *delay* delivery of the trees. Pursuant to paragraph 4(g), if a force majeure event "results in damage to or prevents the normal growth of the Trees" (as opposed to total destruction of some or all of the trees), Rucks agreed to deliver fewer (presumably undamaged) trees for a reduced price. But there is no evidence that Rucks could deliver—or attempted to deliver—any trees before December 2015; to the contrary, the evidence showed that Rucks undertook to rehabilitate all of the trees that were damaged by the ventilation system shut-off and such rehabilitation efforts were expected to—and did—last well into 2016.

Having determined that paragraph 4(g) does not apply to excuse Rucks' delay in delivery of the trees, we turn to the trial court's conclusion that Charlotte "breached the contract by rejecting delivery of the trees." Once again, the trial court misapprehended the text of the contract, and no competent, substantial evidence supports its ultimate finding of breach. Paragraph 4(b) requires Rucks to notify Charlotte "[w]hen the trees are ready for transplanting" and further provides that Charlotte "shall accept delivery of the Trees within sixty (60) days after such notice." Paragraph 4(b) specifically defines this sixty-day period as the "Delivery Period." And paragraph 7(b) provides that Charlotte would be in default if it failed "to accept delivery of the Trees within the Delivery Period."

The evidence conclusively establishes that the trees were not ready for transplanting until sometime in early 2016 at the soonest. And Rucks never gave Charlotte any notice that the trees would be ready for transplanting within sixty days. Because Rucks never gave such a notice, and consistent with the text of paragraph 7(b) of the contract, Charlotte was not in default (and did not breach the contract) by "rejecting delivery" of the trees in December 2015 after Rucks failed to deliver them in summer 2015 and it became clear that Rucks could not deliver them until early 2016 at the soonest.

Paragraph 4(a) states that summer 2015 is "not a guarantee of the ready date, and [Charlotte] acknowledges that numerous horticultural factors may accelerate or delay the ready date." A reasonable reading of this provision is that the trees would be ready in summer 2015 unless horticultural factors delayed the ready date. While horticultural factors were discussed at trial, the court did not find that horticultural factors

caused the delivery delay. No party contended that paragraph 4(a) is ambiguous, but even if it were, any such ambiguity was resolved by Rucks' own trial testimony that "summer 2015" as used in the contract referred to June through September. See Coastal Caisson Drill Co., 523 So. 2d at 792 (holding that ambiguity is construed against party that drafted contract). The trial court's acceptance of Rucks' position effectively negated the parties' agreement that absent delay caused by horticultural factors, the trees would be delivered in summer 2015, i.e., no later than September 2015. This outcome is plainly erroneous both because it (1) ignores the parties' stated intent and (2) creates an absurd result whereby Charlotte would be required to accept the trees whenever Rucks saw fit to deliver them, no matter how long it took. See Famiglio, 279 So. 3d at 740.

Lastly, we address Rucks' affirmative defense that the parties agreed to modify the contract. Rucks contended that after the trees were damaged by the ventilation system shut-off, the parties agreed to a spring 2016 delivery date. According to Rucks, this would have permitted Rucks to rehabilitate the trees and would have allowed Charlotte to plant the trees in the spring planting season. The trial court made no findings or legal rulings on this defense at trial or in the final judgment, but Rucks argues on appeal that there is sufficient evidence of modification to support affirmance.

We reject Rucks' argument because there is no evidence of additional consideration to support the purported modification. A party who alleges a contract modification carries the burden of proving it, and it is well-established that "[m]odifications of contracts must be supported by new consideration as well as the consent of both parties." Newkirk Constr. Corp. v. Gulf County, 366 So. 2d 813, 815

(Fla. 1st DCA 1979). Rucks argued that additional consideration was shown because it undertook to rehabilitate the damaged trees and invested time and nursery resources in so doing; Rucks also admitted that it would have rehabilitated the trees no matter what. Because Rucks did not prove that it did more than what it was already obligated to do, Rucks did not prove the additional consideration necessary to support its modification defense. See Slattery v. Wells Fargo Armored Serv. Corp., 366 So. 2d 157, 159 (Fla. 3d DCA 1979) ("The performance of a pre-existing duty does not amount to the consideration necessary to support a contract.").

Conclusion

The judgment is at odds with the text of the contract and is unsupported by competent, substantial evidence. Rucks' duty to deliver the trees by summer 2015 (which Rucks agrees was September 2015 at the outside) was not alleviated by the ventilation system shut-off. Because there is no evidence that Rucks ever gave notice that the trees were ready for delivery, Charlotte was within its rights to cancel the contract in December 2015. The final judgment resulted in a windfall to Rucks, which kept Charlotte's $100,000 deposit and all the trees, at least several thousand of which Rucks had resold by the time of trial. On this record, Charlotte is entitled to judgment as a matter of law.

For these reasons, we reverse the final judgment and remand with instructions to enter judgment in favor of Charlotte on its claim for breach of contract and award damages in the amount of Charlotte's deposit plus applicable prejudgment interest in an amount to be calculated by the trial court.

Reversed and remanded.

SILBERMAN and BLACK, JJ., Concur.