Third District Court of Appeal

State of Florida

Opinion filed October 21, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-2255
Lower Tribunal No. 18-11879

Ronald Aleman,
Appellant,

vs.

Juan Gervas,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Thomas J. Rebull, Judge.

Fowler White Burnett, P.A., and Juan C. Zorrilla, for appellant.

Wasson & Associates, Chartered, and Annabel C. Majewski; Michael Lascelle, P.A., and Michael J. Lascelle; Jeffrey S. Greenhaus, P.A., and Jeffrey S. Greenhaus, for appellee.

Before FERNANDEZ, LOGUE and GORDO, JJ.

PER CURIAM.

Ronald Aleman appeals a final judgment in favor of Juan Gervas, denying recovery to Aleman in this breach of contract case. We have jurisdiction. Fla. R. App. P. 9.030(b)(1)(A). Aleman argues that the trial court erroneously interpreted an unambiguous contractual provision. Finding no error in the trial court's interpretation of the contractual language at issue, we affirm.

Aleman is the principal of RHC Capital, LLC, and Gervas is the principal of MHG Group, LLC. The LLCs were equal partners and owners of Morningside Management, LLC. Separately, the parties owned other entities that also did business with each other. In March of 2016, the parties decided to part ways and separate all their business interests. To that end, Aleman and Gervas executed a reorganization agreement.

The provision in the agreement relating to Morningside stated as follows:

> 6. Morningside Management LLC. The Parties are equal owners, directly or indirectly, of Morningside Management LLC ("MM"). The Parties will endeavor to restructure or liquidate this company and pay the amounts owed to Raymond [Aleman]. Within thirty (30) days of the date of this Agreement, each of Gervas and Aleman will pay one half of the amounts owed to the law firms of Murai Wald Biondo & Moreno P.A. and Lagos and Priovolos.

At the time the reorganization agreement was executed, Morningside owed Raymond Aleman, a company investor, $80,000. Aleman paid Raymond the full amount due, without contribution from Gervas. Raymond assigned his rights and

interest under paragraph 6 of the reorganization agreement to Aleman who then brought a breach of contract action against Gervas, personally.

The issue on appeal stems from the interpretation of the following sentence from the Morningside provision: "The Parties will endeavor to restructure or liquidate this company and pay the amounts owed to Raymond." At trial, Aleman and Gervas stipulated that the sentence was unambiguous but argued for varying interpretations of it.[1] Aleman argued that he and Gervas were individually responsible for paying Raymond any amounts due. Gervas argued that when read in context, the sentence at issue clearly demonstrates the parties did not intend for there to be individual liability to Raymond, but, rather, that the money should come from the restructuring or liquidation of Morningside Management, LLC. The trial court agreed the sentence was unambiguous, adopted Gervas's interpretation and entered judgment accordingly.

A court must begin its analysis by "examin[ing] the plain language of the contract for evidence of the parties' intent." Beach Towing Servs., Inc. v. Sunset Land Assocs., LLC, 278 So. 3d 857, 860 (Fla. 3d DCA 2019) (quoting Perez-Gurri

[1] Despite the stipulation of the parties, in an abundance of caution, the trial court held a non-jury trial during which it heard parol evidence in the event that the contractual provision was deemed ambiguous and required interpretation to ascertain the parties' intent. Aleman challenges the trial court's receipt of this parol evidence. We affirm that issue without further discussion. See Charbonier Food Services, LLC v. 121 Alhambra Tower, LLC, 206 So. 3d 755 (Fla. 3d DCA 2016).

Corp. v. McLeod, 238 So. 3d 347, 350 (Fla. 3d DCA 2017)). "To ascertain the intention of the parties to a contract, the trial court must examine the whole instrument, not just particular portions, and reach an interpretation consistent with reason, probability, and the practical aspects of the transaction between the parties." Bucacci v. Boutin, 933 So. 2d 580, 585 (Fla. 3d DCA 2006) (quoting Macaw v. Gross, 452 So. 2d 1126 (Fla. 3d DCA 1984)). "[A] court may not interpret a contract so as to render a portion of its language meaningless or useless." TRG Columbus Dev. Venture, Ltd. v. Sifontes, 163 So 3d 548, 552 (Fla. 3d DCA 2015) (citing Moore v. State Farm Mut. Auto. Ins. Co., 916 So. 2d 871, 877 (Fla. 2d DCA 2006)). Also, "[a]s a general proposition, the use of different language in different contractual provisions strongly implies that a different meaning was intended." Fowler v. Gartner, 89 So. 3d 1047, 1048 (Fla. 3d DCA 2012) (quoting Kel Homes, LLC v. Burris, 933 So. 2d 699, 703 (Fla. 2d DCA 2006)).

The parties agreed to "endeavor" to restructure or liquidate Morningside Management, LLC, in order to pay Raymond. To endeavor means "to attempt (something, such as the fulfillment of an obligation) by exertion of effort."[2] A reading of the plain language of the Morningside provision demonstrates that Aleman and Gervas, who each held interests in Morningside through their own,

[2] *Endeavor*, Merriam-Webster, https://www.merriam-webster.com/dictionary/endeavor (last visited October 20, 2020).

separate LLCs, endeavored to pay Raymond from the restructuring or liquidation of Morningside.

We note that to accept Aleman's interpretation of the contract, that the parties intended to impose individual liability on one another for the payment of funds due to Raymond, would run afoul of basic contract interpretation principles. The parties used different language where they specifically intended to impose individual liability, which "strongly implies that a different meaning was intended" where they omitted such language. Fowler, 89 So. 3d at 1048. The sentence in the contract immediately following the one at issue here,[3] makes clear that the parties knew how to draft a provision imposing individual liability where they intended it. Accordingly, we affirm the trial court's entry of final judgment in favor of Gervas.

Affirmed.

[3] That sentence states, "Within thirty (30) days of the date of this Agreement, each of Gervas and Aleman will pay one half of the amounts owed to the law firms of Murai Wald Biondo & Moreno P.A. and Lagos and Priovolos."