

NOT DESIGNATED FOR PUBLICATION

THE MARRERO LAND AND
IMPROVEMENT
ASSOCIATION, LTD.

*

NO. 2003-CA-0662

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COURT OF APPEAL

VERSUS

*

FOURTH CIRCUIT

CYNTHIA ANNE WEGMANN,
IN HER CAPACITY AS THE
EXECUTRIX OF THE
SUCCESSION OF MAUDE
RODGERS

*

STATE OF LOUISIANA

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2001-18542, DIVISION "H-12"
Honorable Michael G. Bagneris, Judge

* * * * *

Judge Edwin A. Lombard

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(Court composed of Chief Judge William H. Byrnes III, Judge Terri F. Love,
Judge Edwin A. Lombard)

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AFFIRMED

This appeal is from the trial court’s judgment rendered on January 21, 2003, denying the Plaintiff’s motion for partial summary judgment and granting defendant’s exception of prematurity. The issue before the court is whether the trial judge correctly determined that, in accordance with plaintiff’s articles of incorporation, the plaintiff’s right of first refusal is not triggered until the executrix of the shareholder’s succession desires to sell the shares to non-permitted transferees. On appeal, the appellant contends that its “right of first refusal” was triggered at the time of Ms. Rodgers’ death or at the time the judgment of possession was entered in her father’s succession. We affirm the judgment of the trial court.

Relevant Facts and Procedural History

Plaintiff-appellant, Marrero Land and Improvement Association, Limited (“Marrero Land”), incorporated in 1904, is a closely-held, family-owned and managed business in Jefferson Parish, primarily engaged in owning, developing and managing immoveable property. Defendant-

appellee is Cynthia Anne Wegmann, in her capacity as the executrix of the succession of Maude Rodgers.

Pursuant to its articles of incorporation, all the shareholders of Marrero Land are related by blood or marriage to its original shareholders.

In 1980, Article VI of Marrero Land's articles of incorporation was amended in pertinent part as follows:

a – All sales, assignments, exchanges, transfers, donations, or other dispositions of the shares of the capital stock of this corporation shall be made on the books of the corporation and in accordance with this Article VI. Each share of the capital stock of this corporation is issued on the condition that any transfer in violation of this Article VI shall be void and the corporation shall be under no obligation to transfer such shares on its books, pay dividends to, or otherwise regard the holder thereof as a shareholder of this corporation. . . .

b – *If any shareholder of the corporation desires to sell, assign, exchange, transfer, donate, or otherwise dispose of shares of the capital stock of the corporation, he shall first offer such shares to the corporation by giving written notice to the corporation. For a period of forty-five (45) days after the corporation receives notice from the selling shareholder, the corporation shall have an option to purchase all the shares offered at the book value of the shares.*

. . . .

g – The donation inter vivos of shares of the capital stock of the corporation or *any transfer of such shares following the death of a shareholder shall be subject to the provisions of this Article VI unless such shares shall be transferred to the spouse, children, or other lawful descendants, or the spouse of any child or lawful descendant, or the father or mother, or other lawful descendant, or the collateral relations of the shareholder, whether outright, in trust, or to any other legal entity established for the exclusive benefit of any of the*

foregoing persons; provided, however, that the corporation shall not be required to record and honor such transfer, except upon receipt of written notice of such transfer.

h- Notwithstanding any other provision of this Article VI, a shareholder shall have the right to sell all or part of his shares to, or exchange such shares with, his spouse, children, or other lawful descendants, or the spouse of any child or lawful descendants, or the father, mother, or lawful ascendant, or the collateral relations of the selling shareholder, whether outright, in trust, or to any other legal entity established for the exclusive benefit of any of the foregoing persons; or consideration of no more than the book value of the shares, and provided, further, that the corporation shall not be required to record and honor such transfer except upon receipt of written notice of such transfer.

Article VI of the Articles of Incorporation of The Marrero Land and Improvement Association, Limited, as amended 1980 (emphasis added).

Maude Rodgers was the sole surviving residuary legatee of her father, Lynn M. Rodgers, a shareholder of Marrero Land, who died in February 1988. Ms. Rodgers died testate on April 21, 1998, while the succession proceedings of her father were still pending. In her will, Ms. Rodgers named Ms. Wegmann, the attorney for the Executor in her father's succession proceedings, as executrix and attorney for the executor. Ms. Rodgers, who never married or bore children, named as residuary legatees Esther Wynne Wilson and Elisabeth Wynne Wilson subject to the usufruct of their father, Harrison Kelly Wynne. Harrison, Esther, and Elisabeth

Wynne (“the Wynnes”) are not related to Ms. Rodgers by blood or marriage.

On June 29, 2001, a judgment of possession was entered in the Succession of Lynn M. Rodgers, recognizing the “Estate of Maude Rodgers” as the legatee of decedent Lynn M. Rodgers and owner of all remaining property belonging to the decedent’s succession, including his shares of Marrero Land. By letter dated September 21, 2001, Ms. Wegmann submitted a copy of the judgment of possession to Marrero Land with a request that the books of Marrero Land be amended to reflect the “Estate of Maude M. Rodgers” as the owner of the shares formerly owned by Lynn M. Rodgers.

Marrero Land refused to do so, arguing that because the Wynnes were not permitted transferees under Marrero Land articles of incorporation, Mr. Rodgers’ shares must be offered to Marrero Land by written offer to sell prior to any transfer of those shares. On November 7, 2001, Marrero Land filed this suit to force the defendant to sell the stock to the corporation, contending that judgment of possession recognizing the transfer of the shares from Mr. Rodgers to his daughter in conjunction with his daughter’s death required the defendant to extend a written offer to sell and transfer the shares to Marrero Land in accordance with Article VI of its articles of incorporation. The defendant filed her Exceptions and Answer to Petition

on December 27, 2001.

On February 13, 2002, the defendant instituted a separate proceeding to compel Marrero Land to transfer the disputed shares to her as Executrix for administration of Ms. Rodgers' succession. *See Cynthia Anne Wegmann, in her capacity as Executrix of the Succession of Maude Rodgers v. The Marrero Land & Improvement Association, Ltd.*, No. 02-2347, Civil District Court of Orleans Parish. On April 4, 2002, the trial court rendered judgment in favor of the executrix, finding that the judgment of possession was proper pursuant to La. Rev. Stat. 12:603 and granting the writ of mandamus requiring Marrero Land to transfer the shares to the succession of Maude Rodgers for the limited purpose of putting the matter in the proper procedural posture. On appeal by Marrero Land, this court affirmed the judgment of the trial court on February 12, 2003. *See* 2002-1538 (La. App. 4 Cir. 2/12/03), 838 So.2d 946 (table).

Meanwhile, on March 8, 2002, Marrero Land filed a motion for partial summary judgment in this case, requesting judgment on its claim for specific performance of the right of first refusal and reserving its separate claim for damages. In opposition to Marrero Land's motion for partial summary judgment, the defendant filed a response to the motion, a peremptory exception of non-joinder of a party, and a dilatory exception of prematurity.

After a hearing on July 17, 2002, and submission of post-hearing briefs, the trial court rendered judgment on January 21, 2003, in favor of defendant and dismissed the petition of Marrero Land. In his reasons for judgment, the trial judge looked at the specific language of Article VII(b) and determined that the “right of first refusal” is not triggered until a shareholder “desires” to transfer shares to non-permitted transferees, and to have such a transfer recognized by the corporation. The trial judge found that because Article VI (g) anticipates that transfer of shares after death and that such transfer shall be free of the restrictions of Article VI provided that the transfer is to a permitted transferee, “[s]ince, after the death of the shareholder, the only person who can transfer the shares of stocks in the corporation is the executor of the succession, Article VI takes this into consideration and allows the executor to transfer the shares to a permitted transferee.”

On appeal, the plaintiff-appellant challenges the judgment of the trial court. *Assignment of Error 1*

The appellant contends that dismissal of its petition based upon its motion for partial summary judgment was plain error. The hearing on July 17, 2002, was set as a hearing on the motion for partial summary judgment and the judgment itself refers only to the motion for partial summary judgment. However, a review of the transcript of the July 17, 2002, and the

trial judge's reasons for judgment indicate that the trial judge considered three motions before him, i.e., the motion for partial summary judgment, the exception of non-joinder of party, and the exception of prematurity. Moreover, at the end of the hearing, the trial judge specifically stated that he would hold his ruling on the "three motions that we actually went through" until he received the post-hearing briefs. Accordingly, we construe the dismissal of appellant's petition as judgment in favor of the defendant on her exception of prematurity.

Assignment of Error 2

Next, appellant argues that the trial court should have granted its motion for partial summary judgment and should not have granted the defendant's exception of prematurity because, in accordance with succession law, ownership of the shares transferred to the Wynne's immediately upon Ms. Rodgers' death, and thereby triggered the Article VI right of first refusal.

First, the appellant contends that in amending Article VI, the shareholders of Marrero Land clearly intended the right of first refusal to apply to every conceivable transfer of ownership of Marrero Land shares, including any transfers following death. However, "when the words of a contract are clear and explicit and lead to no absurd consequences, no further

interpretation may be made in search of the parties intent.” La. Civ. Code art. 2046 (West 2002).

In this case, Article VI clearly states that the right of first refusal is invoked only “*if* any shareholder of the corporation *desires* to sell, assign, exchange, transfer, donate, or otherwise dispose of shares of the capital stock of the corporation” (emphasis added). Article VI also clearly states that transfer of stock following the death of a shareholder is exempt from the Article VI provisions, including the right of first refusal, if the shares are transferred to permitted transferees, including collateral relations of the shareholder. Accordingly, because the language of Article VI is clear and explicit, the intent of the parties is not at issue.

Appellant contends that because only a person, not an estate or succession, can own property, the right of first refusal was triggered because ownership of the shares immediately vested in the Wynnes upon the death of Ms. Rodgers. Appellant argues that the judgment of possession in Lynn Rodgers’ succession is defective because it purported to transfer ownership of the shares to the Estate of Maude Rodgers when, as a matter of succession law, ownership of property is transferred to the successors immediately following death and a judgment of possession serves only to recognize the possession of the property by the successors. Whether the judgment of

possession in Lynn Rodgers' succession is defective is not properly before the court in this proceeding, although La. Code Civ. Proc. art 3224.1, which requires that a "succession representative of an estate owning a majority interest in a corporation or a partnership," indicates that appellant's theory is baseless and that ownership of the shares was properly transferred to the succession of Ms. Rodgers's pending the executrix's disposal of the property in accordance with Article VI.

Conclusion

For the foregoing reasons, we affirm the judgment of the trial court in denying appellant's motion for partial summary judgment and dismissing without prejudice the appellant's petition based upon appellee's exception of prematurity.

AFFIRMED.