STATE OF MICHIGAN

COURT OF APPEALS

DAVID L. SEYMOUR,

Plaintiff-Counterdefendant-Appellant,

v

CITY OF MUSKEGON,

Defendant-Counterplaintiff-Appellee.

UNPUBLISHED
October 31, 1997

No. 197141
Muskegon Circuit Court
LC No. 96-3-34006-CK

Before: Griffin, P.J., and Wahls and Gribbs, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order of the circuit court granting summary disposition in favor of defendant. We affirm.

This case arises out of a contract dispute between plaintiff, the manager of Chase Hammond Golf Course, and defendant, the owner of the property. On April 14, 1983, the parties entered into a written contract, in which plaintiff agreed to operate the Chase Hammond Golf Course pursuant to a compensation arrangement with defendant. The initial agreement provided that it would remain in effect for ten years, terminating on March 31, 1993, or earlier if the parties agreed. As part of the agreement, plaintiff bargained for and received a right of first refusal, giving plaintiff the option to purchase the course if defendant elected to sell the facility during the term of the agreement. The record reveals that the parties amended the agreement on three occasions and extended it twice. Pursuant to the second extension of the agreement, the parties agreed that the contract would terminate on December 30, 1995.

Following the December 30, 1995, expiration of the first agreement, the parties entered into a second agreement for the year 1996. The terms of the second agreement did not provide plaintiff with a right of first refusal.

It is undisputed that during the term of the first agreement, defendant decided to sell the golf course. However, defendant claims that it neither listed the golf course for sale nor received an offer to purchase by the December 30, 1995, expiration of the agreement. Further, as of the time the parties submitted their briefs to this Court, defendant had not yet listed the golf course for sale.

Plaintiff brought this action in circuit court, arguing that the right of first refusal found in the first agreement endured beyond the expiration of that agreement because defendant decided to sell the golf course during term of the first agreement, even though defendant did not receive an acceptable offer for sale during the term of the first agreement. The lower court summarily dismissed plaintiff's claims.

Plaintiff argues that because it is undisputed that defendant decided to sell the golf course during the term of the first agreement, the lower court erred in concluding that plaintiff's right of first refusal did not vest during that time. We disagree.

Under ordinary contract principles, if contract language is clear, its construction is a question of law for the court. *G&A Inc v Nahra*, 204 Mich App 329, 330; 514 NW2d 255 (1994). If the contract is subject to two reasonable interpretations, factual development is necessary to determine the intent of the parties and summary disposition is therefore inappropriate. *SSC Associates Ltd Partnership v General Retirement System of the City of Detroit*, 192 Mich App 360, 363; 480 NW2d 275 (1991). However, if the contract fairly admits of but one interpretation, it is not ambiguous. *Allstate Ins Co v Goldwater*, 163 Mich App 646, 648; 415 NW2d 2 (1987).

In this case, the lower court found the subject contract provision unambiguous. We agree. The subject contract provision provides as follows:

> During the term of this agreement should CITY by and through its authorized officials elect or determine to sell the premises commonly known as Chase Hammond Golf Course to any person, persons, or entities, SEYMOUR shall have the absolute right of first refusal to purchase said premises and assets on the same terms and conditions as any other prospective purchaser or purchasers have proposed to the CITY and which the CITY has accepted. SEYMOUR shall receive no less than thirty (30) days following receipt by SEYMOUR of written notice by the CITY that the CITY has received such offer or offers and intends to accept same on the terms and conditions set forth in said written notice.

Plaintiff contends that the language of the provision provides that he shall be granted an option to purchase the golf course if defendant *elected or determined* to sell the course during the term of the agreement. The lower court concluded that, before plaintiff's right of first refusal is triggered, defendant must have elected or determined to sell the golf course to a specific person or entity and received an acceptable offer. Only then, the court reasoned, would plaintiff be entitled to the absolute right of first refusal to purchase the golf course on the same terms and conditions as the prospective purchaser.

Plaintiff cites *Bennett v Eisen*, 64 Mich App 241; 235 NW2d 749 (1975), for the proposition that, consistent with Michigan law, agreements containing a right of first refusal are not invalid for lack of a specific time for performance, but endure for a reasonable period of time. Although the panel in *Bennett* stated that "[o]ptions should be strictly construed and, absent specific time limits, are only for a reasonable period of time," *id*. at 246, the instant contract provision contains a specific time limit. As indicated previously, the provision begins with the phrase "during the term of this agreement."

Strictly construing the contract language, we conclude that the lower court correctly determined that defendant must have elected or determined to sell the golf course to a person or entity and received an acceptable offer during the term of the parties' agreement before plaintiff's right of first refusal could mature. Accordingly, the lower court did not err in granting defendant's motion for summary disposition with respect to this claim.

Plaintiff also argues that because he made substantial improvements to the golf course, above and beyond what the contract required and in the expectation that his right of first refusal would be honored, the lower court erred in determining that plaintiff had not stated a claim for unjust enrichment. We disagree.

In order to establish a claim of unjust enrichment, the plaintiff must show the following: (1) receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant. *Dumas v Auto Club Ins Ass'n*, 437 Mich 521, 546; 473 NW2d 652 (1991). If the plaintiff is successful, the law operates to imply a contract in order to prevent unjust enrichment. *Martin v East Lansing School Dist*, 193 Mich App 166, 177; 483 NW2d 656 (1992). However, a contract will be implied only if there is no express contract covering the same subject matter. *Id*.

In this case, the lower court concluded that the parties' agreement covered the same subject matter as plaintiff's claim for unjust enrichment and, therefore, granted defendant's motion for summary disposition on that ground. Our review of the record leads us to the same conclusion. Plaintiff alleges that he made uncompensated improvements to the golf course in reliance upon defendant's promises to honor his right of first refusal. In support of this claim, plaintiff submitted an affidavit to the lower court describing those improvements. However, the parties' agreement required plaintiff to maintain the golf course at an acceptable level and degree, which was not to fall below the level of maintenance in effect before the agreement or below a manner consistent with good maintenance practices at other public golf courses. Further, the agreement detailed plaintiff's rights and responsibilities with respect to improvements and alterations to the facility. Upon a comparison of plaintiff's alleged expenditures with the parties' agreement, we conclude that the parties' agreement fully encompassed those expenditures. Therefore, the lower court was correct in granting defendant's motion for summary disposition with respect to this claim.

Next, plaintiff argues that because the pleadings and affidavits supported a finding that defendant promised to renew his right of first refusal, thereby causing him to expend resources he might not have otherwise expended, the lower court erred in granting defendant's motion for summary disposition with respect to plaintiff's claim of promissory estoppel. We disagree.

In order to prevail on a claim of promissory estoppel, the plaintiff must show the following: (1) a promise, (2) that the promisor [defendant] should reasonably have expected to induce action of a definite and substantial character on the part of the promisee [plaintiff], (3) which in fact produced reliance or forbearance in that nature, (4) in circumstances such that the promise must be enforced in order for injustice to be avoided. *Barnell v Taubman Co Inc*, 203 Mich App 110, 122; 512 NW2d 13 (1993).

Plaintiff failed to offer any evidence in the lower court that a promise to renew the right of first refusal was ever made by defendant. The only reference to anything resembling a promise is found in plaintiff's affidavit, where he swears that he agreed to extend the contract with defendant numerous times "with the understanding" that the right of first refusal would remain intact. However, plaintiff did not submit any evidence showing that defendant had made any representation respecting the renewal of the right of first refusal. Therefore, plaintiff having failed to support with affidavits or other evidence the existence of a promise, the trial court did not err in granting defendant's motion for summary disposition as to this claim.

Plaintiff argues that the lower court erred in granting defendant's motion for summary disposition with respect to his claim that defendant acted in bad faith in extinguishing the right of first refusal. We disagree.

In *Eastway & Blevins Agency v Citizens Ins Co*, 206 Mich App 299, 302-303; 520 NW2d 640 (1994), this Court stated that "[i]n contract termination cases, good faith is required only where the terminating party has unbridled discretion with respect to the other party's performance under the contract. A lack of good faith cannot override an express provision in a contract." [Citations omitted.] In the instant case, there can be no allegation of bad-faith contract termination because the right of first refusal expired pursuant to the express terms of the parties' first agreement, and the parties chose not to provide for such a right in the later contract. Accordingly, the lower court properly granted defendant's motion for summary disposition as to this issue.

Plaintiff's remaining claim that the lower court erred in failing to grant his motion for summary disposition is without merit because we have already determined that the lower court properly granted defendant's motion for summary disposition on all claims.

Affirmed.

/s/ Richard Allen Griffin
/s/ Myron H. Wahls
/s/ Roman S. Gribbs