STATE OF MICHIGAN

COURT OF APPEALS

SHORES CLUB, INC.,

Plaintiff-Appellee,

v

THOMAS J. HARMAN,

Defendant-Appellant.

UNPUBLISHED
June 4, 2002

No. 235649
Mackinac Circuit Court
LC No. 00-005048-CK

Before: Griffin, P.J., and Hood and Sawyer, JJ.

PER CURIAM.

Following a bench trial, defendant appeals as of right the trial court's judgment and order requiring defendant to reassign a liquor license to plaintiff. We affirm.

In 1994, defendant and Ira Green, as principal for plaintiff, The Shores Club, Inc., (Shores Club), and its sister corporation, Bayview Land Development, Inc., (Bayview), entered into negotiations for the sale of a hotel, restaurant, and bar located in Brevort. The land and buildings were owned by Bayview, while the business and business assets, including a liquor license, were owned by plaintiff Shores Club. In December 1994, defendant and Bayview entered into a lease agreement with an option to purchase; Ira Green, as principal, signed on Bayview's behalf. For the next two years, defendant operated both the hotel and restaurant and sold liquor on the premises under the Shores Club liquor license. In February 1996, defendant exercised the option to purchase the property, which included the real estate, buildings, business (the Shores Club), fixtures, restaurant and bar equipment, and liquor inventory, and entered into a sales contract with Green acting on behalf of Bayview. The purchase price had already been established at $400,000 and defendant was given credit for payments already made, including a $15,000 option payment. The remaining $385,000 was to be financed by a land contract. In October 1996, an addendum to the purchase agreement and land contract was signed by the parties for the purpose of assigning separate values to the real estate and the business. The Shores Club business, fixtures, and equipment were valued at $14,260 and the real estate was valued at $370,740. Ira Green signed the addendum on behalf of both Bayview and plaintiff Shores Club. In January 1997, Bayview and defendant entered into a land contract for the sale of the property and credit was given for payments already made by defendant, leaving a balance of $354,010 owing on the land contract.

However, the Michigan Liquor Control Commission (LCC) refused to approve the contract as written. Because the business and real estate were held by separate corporations, the

LCC required that the land contract be used only to sell the real estate and that a bill of sale be executed to sell the business. Accordingly, a new ("corrected") land contract was executed in April 1997 between Bayview and defendant, and a bill of sale was executed between defendant and plaintiff Shores Club in May 1997. There were only two differences between the original land contract and the "corrected" one: the new land contract did not include any personal property and expressly excluded alcoholic inventory. The bill of sale was for the Shores Club business, fixtures, equipment, goodwill, food inventory, and alcoholic inventory. The bill of sale did not expressly mention the liquor license. In fact, the only reference to the liquor license in question was in the land contract (both the original and "corrected" versions); LCC rules permitted a security agreement providing for the license to be reassigned in case of default, and this provision was included in paragraph 3.d of the land contract.[1] The LCC ultimately approved the transaction and the liquor license was transferred to defendant.

Defendant defaulted on the land contract and in March 2000, the district court entered a judgment of forfeiture, awarding Bayview the amount of $365,803.45. The judgment of forfeiture did not include assets covered by the bill of sale, and although Green and defendant negotiated the return of Shores Club equipment for $8000, defendant refused to voluntarily reassign the liquor license. Plaintiff thereafter filed suit in circuit court, alleging in pertinent part breach of contract and seeking reassignment of the liquor license. Following a bench trial, the trial court entered a judgment and order requiring defendant to reassign the liquor license to plaintiff. This appeal followed.

On appeal, defendant asserts that the trial court clearly erred in ordering him to reassign the liquor license to plaintiff. Defendant maintains that in rendering its decision, the trial court pierced the corporate veil between plaintiff Shores Club and another corporation, Bayview, for the corporations' benefit and allowed plaintiff to use defendant's forfeiture on the land contract, to which it was not a party, to retain a security interest in the liquor license it sold outright to defendant. We disagree.

Initially, we note that defendant's argument with regard to piercing the corporate veil does not address the actual basis of the trial court's decision, which was determined solely on contract principles,[2] and thus we need not consider it. *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 175; 568 NW2d 365 (1997). We nonetheless address the propriety of the trial court's ruling. In so doing, we review the trial court's findings of fact in a bench trial for clear error and conduct a review de novo of the court's conclusions of law. *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001).

Whether the language of a contract is ambiguous is a question of law which this Court reviews de novo. *Farm Bureau Mut Ins Co of Michigan v Nikkel*, 460 Mich 558, 563; 596 NW2d 915 (1999). Where there is an ambiguity in its terms, a contract should be construed to

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[1] The UCC financing statement filed by the parties described only "fixtures, equipment, goodwill and inventory (and any replacement fixtures, equipment and inventory)" as security for the land contract.

[2] Nothing in the record indicates that the trial court's resolution of this case turned on the principles of piercing the corporate veil.

effectuate the intent of the parties when it was made. *Edison Sault Elec Co v Manistique Pulp & Paper Co*, 278 Mich 592, 596; 270 NW 799 (1937). A contract is ambiguous when its provisions are capable of conflicting interpretations. *Farm Bureau Mut Ins Co, supra* at 566. The intention of the parties will control the meaning of any particular word or phrase used in a contract. *Klever v Klever*, 333 Mich 179, 189; 52 NW2d 653 (1952). To determine the intent of the parties, the court must consider the contract in light of the circumstances existing at the time it was made. *Edison Sault Elec Co, supra* at 596.

In this case, the term "seller" as it is used in the land contract is ambiguous. Both the original and revised contract stated that "the Purchaser has also purchased from the Seller the fixtures, equipment, goodwill and inventory [excluding alcoholic inventory as set forth in the revised contract] of a business located on the Premises commonly known as The Shores Club Restaurant and has taken assignment of the related Class B liquor license." Bayview was identified as the seller, but the fixtures and equipment were purchased not from Bayview but from Shores Club. The land contract and the other associated documents drafted by the parties frequently interchanged the seller of the land (Bayview) and the seller of the business (plaintiff), treating them as one entity. The trial court found the intent of the parties pursuant to these contracts, notwithstanding the existence of two corporate entities, was to treat all of the property, real and personal, as "an entire package deal" and thus a single transaction. The court found the parties separated the elements of the sale to comply with the LCC, but that did not change their intent "to sell the entire operation, including the liquor license." The trial court reasoned that it would not have made sense to sell the business without the license or to take back the restaurant without the license. The court recognized that throughout the process, defendant had been dealing with Green directly and was aware that Green was the principal owner of both businesses, and the parties drew up the documents without the assistance of attorneys.

A review of the testimony leads us to the same conclusion. Defendant stated that he considered Ira Green, principal for both corporations, to be the seller, and defendant felt the real property and personal property were being sold as "all one deal." Significantly, defendant admitted that his intent from the beginning was to reassign the license to Green if he defaulted on the contract, but he decided not to return the license after getting legal advice. Green, too, testified that he considered himself to be the "seller," and that he intended the license to be reassigned to him in case of default. Defendant noted that originally the parties had put a price of $60,000 on the Shores Club and $340,000 on the real estate, but Green, relying on the reassignment provision, placed a value of only $14,260 on the Shores Club property when he drew up the bill of sale to satisfy the LCC. The evidence supports the conclusion that both parties considered the deal "one package" but defendant, when presented with a technical loophole, took his opportunity. Thus, the trial court correctly found defendant's position to be one of "form over substance" and did not clearly err in reforming the contract in plaintiff's favor.

Affirmed.

/s/ Richard Allen Griffin
/s/ Harold Hood
/s/ David H. Sawyer