

STATE OF MICHIGAN
COURT OF APPEALS

GREENDOME PETROLEUM, L.L.C., and
GRAYSTONE SERVICE GROUP, INC.,

UNPUBLISHED
June 16, 2009

Plaintiffs-Appellees,

v

FAST TRACK VENTURES, L.L.C., and ATLAS
OIL COMPANY,

No. 285671
Wayne Circuit Court
LC No. 07-713813-CH

Defendants-Appellants,

and

MARATHON ASHLAND PETROLEUM, L.L.C.,

Defendant.

Before: O’Connell, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Defendants Fast Track Ventures, L.L.C. (“Fast Track”), and Atlas Oil Company (“Atlas”), appeal as of right from a circuit court order permanently enjoining them from interfering with plaintiffs “obtaining delivery of Marathon products . . . from other Marathon distributors of trademarked Marathon products as similarly distributed by Atlas Oil Company relative to a gasoline service station . . .” at a gasoline filling station purchased by Greendome Petroleum, L.L.C. (“Greendome”). The order also dismissed plaintiffs’ remaining claims with prejudice. Because the trial court erred in its interpretation of the restrictive covenant, we vacate the trial court’s order and remand for further proceedings. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Atlas is an authorized distributor of Marathon fuels and a manager of defendant Fast Track. In 2001, Fast Track and Mark and Abe Ajrouches (“the Ajrouches”) entered into a lease agreement that included an option to purchase the subject property. On November 22, 2005, the Ajrouches assigned the purchase option to plaintiff Greendome, which then exercised the option. The closing was completed, and a warranty deed was recorded on December 21, 2005. Attached to the deed when it was recorded was Exhibit B that contained two restrictive covenants pertinent to this appeal.

The first restrictive covenant limits the use of the property with respect to motor fuels other than the products of Marathon Ashland, L.L.C.

This conveyance is made by Grantor and accepted by Grantee upon the express condition and subject to the following restriction and covenant: Grantee agrees that for a period of twenty (20) years from and after the date of this conveyance, the Property shall not be used for the sale, marketing, storage or advertising of motor fuels, except the trademarked products of MARATHON ASHLAND PETROLEUM LLC, its successors and assigns, purchased either directly from MARATHON ASHLAND PETROLEUM LLC, its successors and assigns, or from a MARATHON® branded Jobber (hereinafter defined). This restriction shall be a covenant running with the land

The second restrictive covenant states:

Grantee agrees that for a period of Ten (10) years from and after the date of the Deed, the premises shall not be used for the sale, marketing, storage or advertising of petroleum fuels except the trademarked products distributed by Atlas Oil Company or one of its subsidiaries and this restriction shall be a covenant running with the land

Apparently, Atlas offered to remove the restriction if Graystone Service Group, Inc. (“Graystone”), signed a Product Supply Agreement. According to plaintiffs’ counsel, Atlas refused to sell plaintiffs gas unless they signed a seven-year contract. Plaintiffs began selling non-Marathon fuel products. Plaintiffs filed this 20-count action against defendants and Marathon claiming that Greendome was not aware of the covenants in the Exhibit B to the deed and had not agreed to them. The counts included slander of title, breach of contract, “tortious interference,” fraud, innocent misrepresentation, silent fraud, and violation of the Michigan Anti-Trust Reform Act, MCL 445.771 *et seq.* Plaintiffs also sought to enjoin the enforcement of the second restrictive covenant representing to the trial court that they needed the purported restriction removed to be able to purchase Marathon products from another distributor. In response, defendants argued plaintiffs were not entitled to an injunction characterizing them as “the poster boys for unclean hands,” because they purchased the property subject to a use restriction, sold non-Marathon branded fuel in violation of the restriction, and then lied about it to the trial court. In addition, defendants contended they were entitled to an injunction forcing plaintiffs to comply with the Marathon covenant, the validity of which was undisputed.

At the hearing on the motion to enforce settlement or for injunctive relief, plaintiffs characterized the second restrictive covenant as precluding plaintiffs from buying from other Marathon distributors, but indicated that another distributor had been found. Defendants believed that the disputed covenant was, in essence, an exclusive delivery covenant. However, the trial court pointed out that its interpretation of the restriction allowed the sale of “products distributed” by Atlas, that Marathon products are products that Atlas distributed, and therefore, plaintiffs had the option of having another distributor deliver to them a product that was distributed by Atlas at the time the provision was included. On the basis of the trial court’s interpretation of the restrictive covenant, the trial court enjoined Atlas from interfering with

plaintiffs' obtaining of Marathon fuel, a product distributed by Atlas, from other distributors and stated that Atlas does not have exclusive delivery rights to plaintiffs.

After the trial court's ruling, plaintiffs filed a brief in support of their motion for partial summary disposition and also asked the trial court to "extend the injunction against Atlas to the life of the deed restriction at issue." At the hearing on the motion, plaintiffs informed the trial court that they had obtained a contract with another Marathon "driver," and were selling Marathon products. The trial court held that the provision was not ambiguous and required that the product used at the facility be the same as that distributed by Atlas. The trial court also rejected defense counsel's argument that plaintiffs were not entitled to relief because they had unclean hands. Ultimately, the trial court entered an order dismissing plaintiffs' claims with prejudice and enjoining defendants from interfering with plaintiffs obtaining Marathon products from another distributor if Atlas similarly distributed the products.

The appeal concerns whether the trial court correctly determined that the second restrictive covenant in the warranty deed from defendants Fast Track and Atlas to plaintiff Greendome, is unambiguous and does not preclude Greendome or its tenant, Graystone from acquiring Marathon fuel from other distributors. Defendants argue on appeal that the trial court erred in granting summary disposition for plaintiffs and by determining that the second restrictive covenant in the warranty deed from Fast Track to Greendome was unambiguous. We must note at the outset that contrary to defendants' argument, the trial court did not grant summary disposition in favor of plaintiffs. Rather, the trial court granted an injunction and dismissed plaintiffs' claims with prejudice.

This Court reviews a trial court's decision to grant injunctive relief for an abuse of discretion, which occurs when a trial court's decision is not within the range of reasonable and principled outcomes. *Taylor v Currie*, 277 Mich App 85, 93; 743 NW2d 571 (2007). Underlying the trial court's decision to grant injunctive relief was the trial court's interpretation of the second restrictive covenant. "The interpretation of restrictive covenants is a question of law that this Court reviews de novo." *Johnson Family Ltd Partnership v White Pine Wireless, LLC*, 281 Mich App 364, 389; 761 NW2d 253 (2008) (citation omitted).

In construing restrictive covenants, the overriding goal is to ascertain the intent of the parties. Where the restrictions are unambiguous, they must be enforced as written. However, restrictions are strictly construed against the would-be enforcer and doubts are resolved in favor of the free use of the property. [*Id.* (citations omitted).]

Again, the first restrictive covenant is as follows:

This conveyance is made by Grantor and accepted by Grantee upon the express condition and subject to the following restriction and covenant: Grantee agrees that for a period of twenty (20) years from and after the date of this conveyance, the Property shall not be used for the sale, marketing, storage or advertising of motor fuels, except the trademarked products of MARATHON ASHLAND PETROLEUM LLC, its successors and assigns, purchased either directly from MARATHON ASHLAND PETROLEUM LLC, its successors and

assigns, or from a MARATHON® branded Jobber (hereinafter defined). This restriction shall be a covenant running with the land

And the second restrictive covenant states:

Grantee agrees that for a period of Ten (10) years from and after the date of the Deed, the premises shall not be used for the sale, marketing, storage or advertising of petroleum fuels except the trademarked products distributed by Atlas Oil Company or one of its subsidiaries and this restriction shall be a covenant running with the land

Specifically, defendants assert that the trial court's interpretation of the restrictive covenants is flawed because it renders the second restrictive covenant meaningless in light of the plain language of the first restrictive covenant. No language "may be needlessly rejected as meaningless, but, if possible, all the language of a deed must be harmonized and construed so as to make all of it meaningful." *Dep't of Natural Resources v Carmody-Lahti Real Estate, Inc*, 472 Mich 359, 370; 699 NW2d 272 (2005) (citation and internal quotations omitted). Pursuant to the plain language of the first restrictive covenant, plaintiffs are obligated to sell only the trademarked products of Marathon Ashland Petroleum, LLC for a period of twenty years. Pursuant to the plain language of the second restrictive covenant, plaintiffs are obligated to use Atlas or one of its subsidiaries as the sole distributor of the Marathon products referenced in the first restrictive covenant for a period of ten years. In other words, the second restrictive covenant sets forth the source of distribution of the Marathon products clearly described in the first covenant. The trial court's interpretation of the second restrictive covenant renders it meaningless because the first restrictive covenant by itself requires that plaintiffs purchase and sell only Marathon fuel for a 20-year period. Reading the two covenants together, and harmonizing the language of the covenants in a manner making both covenants meaningful, reveals that the second restrictive covenant is not ambiguous when considered in light of the first restrictive covenant. *Id.* Because the language of the restrictive covenants is unambiguous, they must be enforced as written. *Johnson Family Ltd Partnership, supra* at 389.

Contrary to the plain language of the covenants, the trial court determined that the second restrictive covenant allowed the sale of "products distributed" by Atlas, and that plaintiffs would not be in violation of the covenant if they obtained products from another distributor, so long as the products were also distributed by Atlas. This was error. When interpreting a restrictive covenant that contains no ambiguity, a court should not enlarge or extend the meaning of a covenant by judicial interpretation. *Webb v Smith (After Remand)*, 204 Mich App 564, 572; 516 NW2d 124 (1994).

Although defendants contend that the trial court should have employed the "rule of practical construction," whereby the parties' practical interpretation is used to determine the meaning of a provision, that rule applies only where the meaning of contractual language is uncertain or doubtful. See *North West Michigan Constr, Inc v Stroud*, 185 Mich App 649, 653; 462 NW2d 804 (1990). Here, we agree with the trial court that the language is not ambiguous. Thus, the rule of practical construction does not apply.

Defendants' second stated issue addresses whether the trial court rejected their "clean hands argument on the basis of impermissible fact finding and a misapphension [sic] of the clean

hands doctrine.” Defendants indicate that this issue need be reached only if the case is remanded to the circuit court. Because we conclude that the trial court erred in its interpretation of the restrictive covenant, the trial court will have the opportunity to re-examine the “clean hands” argument when it evaluates plaintiffs’ entitlement to equitable relief on remand.

Vacated and remanded. We do not retain jurisdiction.

/s/ Peter D. O’Connell

/s/ Richard A. Bandstra

/s/ Pat M. Donofrio