

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

RALPH L. FOSTER, JR.

Appellee

v.

KEITH A. BLESSING

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1050 MDA 2012

Appeal from the Order Entered May 22, 2012
In the Court of Common Pleas of Cumberland County
Civil Division at No(s): 08-1980

BEFORE: PANELLA, J., SHOGAN, J., and COLVILLE, J.*

MEMORANDUM BY PANELLA, J.

Filed: April 26, 2013

Appellant, Keith A. Blessing, appeals from the order granting judgment on the pleadings to Appellee, Ralph L. Foster, Jr., entered on May 22, 2012, by the Honorable Kevin A. Hess, Court of Common Pleas of Cumberland County. After careful review, we affirm in part and vacate in part.

This appeal arises from two related real estate transactions involving a farm in Franklin Township. On March 31, 2004, Foster sold the farm to Blessing for \$200,000.00. Simultaneously, the parties entered into an installment sales agreement which obligated Foster to pay Blessing a monthly payment for thirty years the sum of which was equivalent to a 30 year loan for \$200,000.00 at 6% interest.

* Retired Senior Judge assigned to the Superior Court.

On July 21, 2006, Blessing instituted an action in ejectment against Foster. A bench trial was held on the ejectment action, with the trial court dismissing Blessing's complaint. Thereafter, Foster filed a complaint seeking to compel Blessing to accept pre-payment of the contract price in return for transferring title to the farm back to Foster. In response to preliminary objections filed by Blessing, Foster filed an amended complaint which dropped a request for attorney's fees. The trial court subsequently overruled Blessing's preliminary objection in the nature of a demurrer to the amended complaint.

Following the trial court's order, Blessing filed an answer to the amended complaint, with new matter and counterclaims. Foster responded by filing a reply to Blessing's new matter, an answer to the counterclaim, and new matter, to which Blessing filed an answer to Foster's new matter. Shortly thereafter, Foster filed a motion for judgment on the pleadings, to which Blessing filed an answer. Following argument, the trial court ultimately granted Foster's motion in its entirety. This timely appeal followed.

On appeal, Blessing raises three issues for our review:

- A. Did the court err in granting judgment on the pleadings, where the answer pled by defendant materially denied plaintiff's factual allegations and basis for relief, creating material issues of fact sufficient to at least allow for further discovery, if not a trial. Further, considering matters outside the pleadings as the court did was improper, and should

have awaited summary judgment, where those matters might be applicable?

- B. Did the court err in granting judgment on the pleadings, where the trial court chose to categorize the land sale contract as a deed in fee simple and mortgage like document. Defendant pled, and was prepared to show that no mortgage was employed, nor was the land transferred in fee simple, making the cases applied by the trial court not controlling, and requiring further factual development?
- C. Did the court err in granting judgment on the pleadings as to defendant's counterclaim for breach of contract, because collateral estoppel is not applicable to such counterclaim, and further factual development would, in any event, be necessary, where further, and in the alternative, if collateral estoppel should apply, it would run against plaintiff, not defendant. Finally pursuant to the applicable standard to be employed to judgment on the pleadings, it was inappropriate for the trial court to dismiss defendant's counterclaim at the pleading stage?

Appellant's Brief, at 6.

All three of Blessing's issues on appeal contest the trial court's grant of Foster's motion for judgment on the pleadings. In reviewing a trial court's grant of a motion for judgment on the pleadings, our scope of review is plenary. **See *Vetter v. Fun Footwear Co.***, 668 A.2d 529, 531 (Pa. Super. 1995) (*en banc*). "A motion for judgment on the pleadings is similar to a demurrer. It may be entered when there are no disputed issues of fact and the moving party is entitled to judgment as a matter of law." ***Citicorp N. Am. v. Thornton***, 707 A.2d 536, 538 (Pa. Super. 1998).

To determine whether there are disputed issues of fact, we must confine the scope of our consideration to "the pleadings and documents

properly attached thereto." *DeSantis v. Prothero*, 916 A.2d 671, 673 (Pa. Super. 2007) (citing *Lewis v. Erie Ins. Exch.*, 753 A.2d 839, 842 (Pa. Super. 2000)). Accordingly, "[w]e must accept as true all well pleaded statements of fact, admissions, and any documents properly attached to the pleadings presented by the party against whom the motion is filed, considering only those facts which were specifically admitted." *Lewis*, 753 A.2d at 842. No factual material outside the pleadings may be considered in determining whether there is an action under the law. *See Bensalem Twp. Sch. Dist. v. Commonwealth*, 518 Pa. 581, 586, 544 A.2d 1318, 1321 (1988).

A court should only grant judgment on the pleadings if "the moving party's right to succeed is certain and the case is so free from doubt that trial would clearly be a fruitless exercise." *Lewis*, 753 A.2d at 842. We should determine whether the trial court's grant of the motion for judgment on the pleadings "was based on a clear error of law or whether there were facts disclosed by the pleadings which should properly go the jury." *Id.* Thus, if disputed facts exist that should properly go to the jury, the decision to grant judgment on the pleadings should be reversed.

In his first issue on appeal, Blessing argues that the trial court erred as the pleadings reveal a disputed issue of material fact. Specifically, Blessing contends that since he denied that the installment sales contract permitted pre-payment, there is a disputed issue of material fact. However, the trial

court concluded that the installment sales contract explicitly provided for pre-payment. Blessing has not challenged the authenticity of the installment sales agreement attached as exhibit "B" to Foster's complaint. His challenge is premised upon interpretation of that document.

Interpretation of a contract poses a question of law and our review is plenary. *See Charles D. Stein Revocable Trust v. General Felt Industries, Inc.*, 749 A.2d 978, 980 (Pa. Super. 2000). "In construing a contract, the intention of the parties is paramount and the court will adopt an interpretation which under all circumstances ascribes the most reasonable, probable, and natural conduct of the parties, bearing in mind the objects manifestly to be accomplished." *Id.*

To give effect to the intent of the parties, we must start with the language used by the parties in the written contract. *See Szymanski v. Brace*, 987 A.2d 717, 722 (Pa. Super. 2009), *appeal denied*, 606 Pa. 688, 997 A.2d 1179 (2010). Generally, courts will not imply a contract that differs from the one to which the parties explicitly consented. *See Kmart of Pennsylvania, L.P. v. M.D. Mall Associates, LLC*, 959 A.2d 939, 944 (Pa. Super. 2008), *appeal denied*, 602 Pa. 667, 980 A.2d 609 (2008). We are not to assume that the language of the contract was chosen carelessly or in ignorance of its meaning. *See id.*

Where the language of the contract is clear and unambiguous, a court is required to give effect to that language. *Prudential Property and*

Casualty Ins. Co. v. Sartno, 588 Pa. 205, 212, 903 A.2d 1170, 1174 (2006). Contractual language is ambiguous “if it is reasonably susceptible of different constructions and capable of being understood in more than one sense.” *Hutchison v. Sunbeam Coal Co.*, 513 Pa. 192, 201, 519 A.2d 385, 390 (1986).

The installment sales contract provides that Foster’s monthly payments would be due starting on April 15, 2004, and on the 15th day of every month thereafter. **See** Complaint, filed 3/28/2008, at ¶ 2 (a). Furthermore, the agreement requires that Foster “pay the full amount due and owing under this Agreement, to include any and all interest then due, on or before April 15, 2034.” *Id.*, at ¶ 3. We agree with the trial court that this language is not reasonably susceptible of different constructions. We cannot treat the words “or before” as mere surplusage or that it was carelessly chosen. No other reasonable explanation can explain its presence; it clearly allows for payment of the full amount due, including “interest then due,” before April 15, 2034. As such, we conclude that Blessing’s first issue on appeal merits no relief.¹

¹ This conclusion renders Blessing’s second, explicit, issue on appeal moot, as it is irrelevant whether the agreement is treated as a mortgage. The issue we will treat as Blessing’s second issue on appeal is actually contained in Blessing’s first explicit issue on appeal. While Blessing’s phrasing of the issues technically violates the Rules of Appellate Procedure, we conclude that this violation does not impede our ability to review this appeal, and therefore no sanction is appropriate.

Next, Blessing argues that the trial court erred in considering trial transcripts from the previous ejectment action in making its determination on Foster's motion for judgment on the pleadings. Blessing argues that the transcripts, which reveal that Blessing admitted under oath that Foster was entitled to pre-payment under the contract, were not pleadings and therefore could not be part of the record before the trial court at the judgment on the pleadings stage. However, Foster attached the transcript passage at issue to his answer to Blessing's preliminary objection in the form of a demurrer to Foster's amended complaint. Responses to preliminary objections are pleadings under Pa.R.C.P., Rule 1017. As noted above, the record for judgment on the pleadings includes not only the pleadings themselves, but all documents "properly attached thereto." As such, the trial court did not err by considering the transcript in ruling on Foster's motion. In any event, even if this had been error, we would conclude that it would be harmless based upon our conclusion, *supra*, that the installment sales contract clearly provided for pre-payment. Blessing's second issue on appeal therefore merits no relief.

In his final issue on appeal, Blessing argues that the trial court erred in granting Foster's motion for judgment on the pleadings on Blessing's counterclaims. Initially, we note that Blessing does not develop any argument regarding his counterclaims for abuse of process and wrongful use of civil proceedings. Blessing notes that the trial court initially held that

these claims could be litigated separately from the other claims in the case, and therefore refused to grant judgment on the pleadings on those claims. However, the trial court's final order, dated May 22, 2012, does explicitly deal with these claims and dismisses them.

Under Rule 2119(a) of the Pennsylvania Rules of Appellate Procedure, a brief shall have "the particular point treated therein, followed by such discussion and *citation of authorities* as are deemed pertinent" for each issue raised on appeal. PA.R.APP.P. 2119(a) (emphasis added). In ***Commonwealth v. Johnson***, the Supreme Court of Pennsylvania held that "where an appellate brief fails to provide any discussion of a claim with citation to relevant authority or fails to develop the issue in any other meaningful fashion capable of review, that claim is waived." ***Johnson***, 604 Pa. 176, 191, 985 A.2d 915, 924 (2009), *cert. denied sub nom. Johnson v. Pennsylvania*, 131 S. Ct. 250 (2010) (citing ***Commonwealth v. Walter***, 600 Pa. 392, 402, 966 A.2d 560, 566 (2009), *cert. denied sub nom. Walter v. Pennsylvania*, 130 S. Ct. 743 (2009)).

Blessing's brief does not meaningfully develop any argument challenging the trial court's grant of judgment on the pleadings on Blessing's claims for abuse of process or wrongful use of civil proceedings. Instead, his argument focuses on the issue of collateral estoppel and its applicability to his counterclaim for breach of contract. Accordingly, we conclude that any

argument on Blessing's claims for abuse of process or wrongful use of civil proceedings has been waived.

Turning to Blessing's argument against the trial court's grant of judgment on the pleadings against Blessing's claim for breach of contract, we note that the trial court concluded that collateral estoppel bars Blessing's claim. Collateral estoppel applies if four elements are present:

(1) An issue decided in a prior action is identical to the one presented in a later action; (2) The prior action resulted in a final judgment on the merits; (3) The party against whom collateral estoppel is asserted was a party to the prior action; and (4) The party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior action.

Columbia Medical Group, Inc. v. Herring & Roll P.C., 829 A.2d 1184, 1190 (Pa.Super. 2003).

In the present case, the trial court held that at the conclusion of the bench trial on Blessing's previous action for ejectment, the trial judge found that there had been no breach of the installment sales agreement. **See** Trial Court Opinion, 10/26/2009, at 8-9. In contrast, Blessing argues that the trial judge found that there had been a breach of the contract. **See** Appellant's Brief, at 19. Our independent review leads us to conclude that both the trial court and Blessing are mistaken; the trial judge in the ejectment action found that Blessing had failed to prove that any breach by Foster of the installment sales contract was material. **See** Trial Court

Opinion, 10/26/2009, at 8-9 (quoting Trial Court Opinion, 11/26/2007, at 7-8). The trial judge's opinion states, in relevant part:

[A]ssuming that Foster breached the installment sales agreement ... we find that the breach is not material ... under these circumstances we find that any breach of the agreement by Foster regarding insurance is not material, that the minor financial loss caused by Blessing can possibly be recovered as damages, and that the non material breach does not warrant a forfeiture under paragraph 11 of the installment sales agreement.

Id.

We therefore conclude that the issue of whether Foster indeed breached the installment sales agreement was not decided in the prior action. What has been decided is that any such breach was not material, and does not entitle Blessing to equitable relief or specific performance. Blessing's remedy, should he be able to establish that Foster breached the installment sales agreement, is limited to such monetary damages that he is able to prove. Accordingly, we vacate the trial court's order with regard to Blessing's counterclaim for breach of contract and remand for further proceedings consistent with this memorandum.

Order affirmed in part and vacated in part. Case remanded for further proceedings consistent with this memorandum. Jurisdiction relinquished.