NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

FIRST CITIZENS NATIONAL BANK, Appellee v. FORKSVILLE LUMBER & VENEER, LLC, Appellant	: : : : : : : : :	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1128 MDA 2013

Appeal from the Judgment entered on May 6, 2013
in the Court of Common Pleas of Sullivan County,
Civil Division, No. 2011-CV-203

BEFORE: BENDER, P.J., PANELLA and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.: **FILED APRIL 25, 2014**

In this mortgage foreclosure action, Forksville Lumber & Veneer, LLC ("Forksville" or "Defendant"), appeals from the Judgment entered against it and in favor of First Citizens National Bank ("First Citizens" or "Plaintiff"). We affirm.

The trial court set forth the relevant facts underlying this appeal as follows:

> [O]n or about February 17, 2009[,] Plaintiff extended a loan to Defendant … in the principal sum of one million seven hundred ninety[-]five thousand dollars ($1,795,000.00)[,] which Defendant agreed to repay, with interest at a variable rate, adjusted not more often than every sixty (60) months, over a term of twelve (12) years and six (6) months, until August 17, 2021[,] when the entire remaining unpaid principal balance, plus accrued interest, would be due and payable. In consideration for said loan and as security for the performance of the obligations of Defendant under the terms of the Promissory Note, Defendant

granted to Plaintiff a mortgage against its real estate.[1] The Mortgage is recorded in the proper office in Sullivan County, Pennsylvania.

Plaintiff asserts that on or about October 17, 2010, Defendant defaulted in its obligations under the [Promissory] Note and Mortgage by failing to pay the monthly payment due and by failing to make timely payment of the monthly installments of principal and interest due thereafter. As a result, Plaintiff [] instituted the instant mortgage foreclosure action. [In response, Defendant filed an Answer, New Matter and Counterclaim.]

Defendant's Counterclaims describe [Forksville as] a family business, owned by the Tanfield family [collectively "the Tanfields",] that was in existence for over a century[,] that specialized in the production and sale of veneer lumber. Defendant had financing in place for years in the form of an open-ended line of credit[FN 1] with Pennstar Bank ["Pennstar"].

[FN 1] Defendant borrowed money to pay for up-front costs of logging projects and would pay off the line [of credit] when the lumber was eventually sold.

In or around May of 2008, the Tanfields signed a contract with Baumunk [Lumber ("Baumunk")] to purchase Baumunk[, located] in Forksville, Sullivan County, Pennsylvania, in an effort to compete in the veneer market. Because the Baumunk property was not within Pennstar's geographic area, the Tanfields sought a new lender. Originally, the Tanfields chose Ag Choice Farm Credit ["Ag Choice"] and a closing date was set for

[1] The parties' loan agreement was comprised of five separate written documents (collectively "the loan documents"), including a Commitment Letter, Mortgage Agreement, Business Loan Agreement, and a Promissory Note. Forksville was represented by legal counsel during the execution of the loan documents, and, at the closing on February 17, 2009, representatives of Forksville signed the Promissory Note, Mortgage Agreement, and Business Loan Agreement. Importantly, the Business Loan Agreement contains an integration clause, providing that the loan documents represented a final and complete expression of the parties' agreement.

October 3, 2008. However, upon learning that Ag Choice … proposed lending on a "borrowing base",[FN 2] the Tanfields declined the loan.

[FN 2] A borrowing base is comprised of assets, generally inventory and/or accounts receivable, which are available to use as collateral to secure a revolving line of credit. The size of the borrowing base varies with changes in amounts of the borrower's current assets.

As Defendant's own Counterclaim reads in paragraph 54[,] "[The] Tanfield[s were] acutely aware that due to the nature of [their] business[, they] could not finance through a credit facility that required a borrowing base, *i.e.*[,] existing accounts receivable or inventory." [Defendant's Counterclaim, 9/9/11, at] ¶ 54.

As a result, the Tanfields then negotiated with Plaintiff.[2] Defendant's Counterclaim asserts that Plaintiff and its loan officers were aware that Defendant [was] seeking a loan with terms "like Pennstar's". [***Id.*** at] ¶ 58. Defendant further alleges that the bankers at Plaintiff['']s bank were aware that the Tanfields had not closed with Ag Choice for the sole reason that the financing was on an unacceptable borrowing base. [***Id.*** at] ¶ 60.

Defendant's Counterclaims allege that the parties agreed that Plaintiff would make available funding to Defendant[] on terms equivalent to those made available by Defendant's prior lender[, *i.e.*, Pennstar], that is, funding timber project costs up front. Because the Commitment Letter, Promissory Note and the Business Loan Agreement all have language regarding borrowing base certificates, argues Defendant, Plaintiff breached its agreement to lend, breached its fiduciary duty, made fraudulent

[2] Although the Tanfields rejected the Ag Choice contract because of the borrowing base requirement, regarding [Defendant's] contract with Plaintiff, the Commitment Letter, Business Loan Agreement, and Promissory Note each contained express language requiring that Defendant provide Plaintiff with a borrowing base and monthly "borrowing base certificates."

> and negligent misrepresentations and breached its duty of good faith and fair dealing.

Trial Court Opinion, 6/13/12, at 3-4 (some footnotes added; footnotes in original).

In April 2012, First Citizens filed a Motion for Partial Judgment on the Pleadings. On June 13, 2012, the trial court entered an Order granting First Citizens' Motion, and dismissing Forksville's Counterclaims against First Citizens with prejudice.

Forksville filed a Notice of Appeal from the June 13, 2012 Order. In response, this Court entered an Order quashing the appeal, stating that the trial court's Order was interlocutory and not appealable because it did not dispose of all of the claims presented in the parties' pleadings.

In April 2013, the parties entered into a Stipulation, agreeing that all of the issues raised in the pleadings had been ruled upon by the trial court, the matter was ripe for appeal, and requesting that the trial court enter judgment against Forksville. Pursuant to the Stipulation, the trial court filed an Order on May 6, 2013, entering Judgment in favor of First Citizens in the amount of $1,862,883.25. Forksville timely filed a Notice of Appeal.

On appeal, Forksville presents the following issues for our review:

> 1. Whether the lower court erred by failing to address whether the parol evidence rule barred extrinsic evidence without having first determined whether the loan documents were fully integrated?
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> 2. Whether Forksville ple[]d fraud in the execution, as Forksville alleged that the loan documents did not contain the terms,

understandings and agreements that [First Citizens'] bankers represented the loan documents would contain?

3. Whether the lower court erred in failing to consider the relative sophistication of Forksville as a borrower in applying the parol evidence rule and in further concluding that Forksville was represented by "able" counsel?

4. Whether the lower court committed error in granting [First Citizens'] Partial Motion for Judgment on the Pleadings by dismissing all [of Forksville's] Counterclaims, with prejudice, despite the fact that the [C]ounterclaims are directed to events which occurred after closing, during [First Citizens'] workout of the loans, during which time [First Citizens] had complete control over Forksville's financial affairs?

Brief for Appellant at 5-6 (footnote, emphasis and capitalization omitted).

In its first issue, Forksville argues that the trial court erred by determining that the parol evidence rule applied to this case and barred Forksville from introducing extrinsic evidence to alter or supplement the terms of the parties' written contract. ***Id.*** at 15. According to Forksville, prior to the execution of the loan documents, the parties agreed that their loan agreement would operate "like Pennstar's," *i.e.*, in that First Citizens purportedly would not require Forksville to provide a borrowing base as part of the loan agreement, but this term was omitted from the loan documents. ***Id.*** at 14, 20.

Pennsylvania law defines the parol evidence rule as follows:

> Where the parties, without any fraud or mistake, have deliberately put their engagements in writing, the law declares the writing to be not only the best, but the only, evidence of their agreement. All preliminary negotiations, conversations and verbal agreements are merged in and superseded by the subsequent written contract and unless fraud, accident or

> mistake be averred, the writing constitutes the agreement between the parties, and its terms and agreements cannot be added to nor subtracted from by parol evidence.

DeArmitt v. New York Life Ins. Co., 73 A.3d 578, 589 (Pa. Super. 2013) (ellipses omitted) (quoting ***Yocca v. Pittsburgh Steelers Sports, Inc.***, 854 A.2d 425, 436 (Pa. 2004)).

> The parol evidence rule seeks to preserve the integrity of a written agreement by barring the contracting parties from trying to alter the meaning of their agreement through use of contemporaneous oral declarations. For the parol evidence rule to apply, there must be a writing that represents the entire contract between the parties. *An integration clause stating the parties intend the writing to represent their entire agreement is a clear sign the writing expresses all of the parties' negotiations, conversations and agreements made prior to its execution.*

DeArmitt, 73 A.3d at 589-90 (emphasis added; citations, quotation marks and brackets omitted).

Here, according to Forksville, "[t]he terms of the writing in this case, taken together, do not support the [trial c]ourt's legal conclusion that they were integrated." Brief for Appellant at 17. However, Forksville concedes that the Business Loan Agreement contains an integration clause.[3] ***Id.*** at 16, 17.

The integration clause in the Business Loan Agreement provides as follows:

> This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No

[3] Forksville complains that the integration clause is "in tiny print," and "buried deep in boilerplate." Brief for Appellant at 16, 17.

> alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Business Loan Agreement, 2/17/09, at 4; ***see also id.*** at 5 (defining the term "Related Documents" as "all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Loan."). Furthermore, although Forksville argues that the integration clause was in boilerplate form and in small print, by signing the Business Loan Agreement, Forksville's representatives (the Tanfields) expressly "acknowledge[d] having read all the provisions of this Business Loan Agreement and [that Forksville] agree[d] to its terms." ***Id.*** at 5 (capitalization omitted). Accordingly, there is no merit to Forksville's accusation that the trial court erred in determining that the parties' agreement was integrated. ***See DeArmitt, supra*** (stating that where the parties' written contract contains an integration clause providing that the parties intend the writing to represent their entire agreement, this is a "clear sign" the writing is integrated and expresses all of the parties' negotiations, conversations and agreements made prior to its execution).

Forksville next contends that even if the trial court properly determined that the parties' contract was integrated, Forksville is entitled to

relief because it pled an exception to the application of the parol evidence rule. Brief for Appellant at 20. Specifically, Forksville argues that it pled in its Counterclaim that First Citizens had committed "fraud in the execution" of the contract by omitting from the loan documents provisions providing that the loan would operate like Forksville's separate loan with Pennstar (that did not require a borrowing base from Forksville). ***Id.***

Our Pennsylvania Supreme Court has stated as follows regarding the fraud in the execution exception:

> Once a writing is determined to be the parties' entire contract, the parol evidence rule applies and evidence of any previous oral or written negotiations or agreements involving the same subject matter as the contract is almost always inadmissible to explain or vary the terms of the contract. One exception to this general rule is that parol evidence may be introduced to vary a writing meant to be the parties' entire contract where a party avers that a term was omitted from the contract because of fraud, accident, or mistake. Notably, while parol evidence may be introduced based on a party's claim that there was a fraud in the execution of the contract, *i.e.*, that a term was fraudulently omitted from the contract, parol evidence may not be admitted based on a claim that there was fraud in the inducement of the contract, *i.e.*, that an opposing party made false representations that induced the complaining party to agree to the contract.

Yocca, 854 A.2d at 436-37 (citations and footnote omitted).

As stated above, Forksville was represented by legal counsel during the execution of all of the loan documents, and Forksville's representatives acknowledged that they had read and agreed to all of the language in the loan documents, none of which contained any language referring to Pennstar or Forksville's loan agreement with Pennstar. Furthermore, three of the loan

documents contained express language requiring that Forksville provide First Citizens with a borrowing base and monthly borrowing base certificates as part of the parties' loan agreement.

Regarding Forksville's instant claim, the trial court stated as follows in its Opinion:

> [Prior to executing the loan documents with First Citizens, Forksville] refused to enter into a contract with Ag Choice … because of [the] borrowing base language [contained in the Ag Choice contract]. As such, [Forksville] certainly should have known, upon reading [First Citizens'] Business Loan Agreement, that said agreement contained similar language reflecting that the loan would be upon a borrowing base. [Forksville argues that] "the crux of this case is that the Tanfields signed a long list of loan documents believing they contained terms agreed upon in discussions. They are loggers, not bankers." Although this may be true, the Tanfields, on behalf of [Forksville], declined the loan with Ag Choice … based upon the borrowing base language. To now argue that [Forksville] did not know to avoid similar language with its agreement with [First Citizens] is disingenuous.

Trial Court Opinion, 6/13/12, at 7-8 (citation omitted). We agree with the trial court's rationale and conclude that Forksville failed to meet the fraud in the execution exception to the parol evidence rule.[4]

In Forksville's third issue, it argues that the trial court improperly failed to adequately consider that the Tanfields were laypersons and not sophisticated in legal or banking matters. Brief for Appellant at 21-22. This

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[4] To the extent that Forksville pled fraud in its Counterclaim, such claim actually averred that First Citizens had committed fraud by *inducing* Forksville to enter into the contract, which is not an exception to the parol evidence rule. ***See Yocca***, 854 A.2d at 437; ***see also*** Brief for Appellant at 22 (arguing that "[i]f [First Citizens] promised to loan 'like Pennstar' without an intention to perform in such a fashion, that is deceit ….").

claim lacks merit. Not only were the Tanfields represented by legal counsel during the execution of the loan documents, but it is also well-established law that "[c]ontracting parties are normally bound by their agreements, without regard to whether the terms thereof were read and fully understood and irrespective of whether the agreements embodied reasonable or good bargains." ***De Lage Landen Fin. Servs. v. M.B. Mgmt. Co.***, 888 A.2d 895, 899 (Pa. Super. 2005) (citation omitted).

Finally, Forksville argues that the trial court erred by dismissing all of Forksville's Counterclaims with prejudice. ***See*** Brief for Appellant at 21-29. We disagree.

After reviewing Forksville's brief, we observe that Forksville advances scant relevant argument, and, where it does, it fails to cite to any evidence in the record in support of its bald claims of trial court error, First Citizens' purported fraud, and First Citizens' breach of its duties to Forksville.[5] Accordingly, we could deem that Forksville waived this claim. ***See*** Pa.R.A.P. 2119(c) (mandating that an appellant develop an argument with citation to the record if reference is made to the evidence, pleadings or any other matter appearing in the record). Nevertheless, there is no merit to Forksville's claim. We have already determined that the contract between

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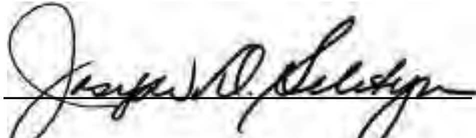
[5] Essentially, Forksville's claims merely reiterate its argument, which we have already addressed above, that First Citizens had promised that the parties' loan agreement would operate "like Pennstar," and that First Citizens was in a disproportionate position of power and sophistication as compared to Forksville. ***See*** Brief for Appellant at 21-29.

the parties was enforceable and a complete and final expression of the parties' agreement. Moreover, the trial court found that there was no fraud on behalf of First Citizens, ***see*** Trial Court Opinion, 6/13/12, at 7-8, and this finding is amply supported by the record.

Judgment affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/25/2014