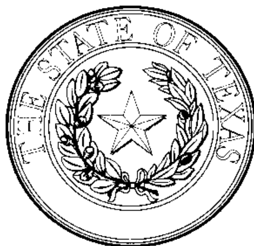
Opinion issued May 19, 2011



In The

Court of Appeals

For The

First District of Texas

NO. 01-09-00856-CV

GARY GRAYSON AS ATTORNEY-IN-FACT FOR LELA GRAYSON, Appellant

V.

RICHARD GRAYSON, Appellee

On Appeal from the 113th District Court
Harris County, Texas
Trial Court Case No. 2008-46633

MEMORANDUM OPINION

This appeal of a take-nothing summary judgment arises out of a December 28, 1999 agreement in which appellant Lela Grayson transferred shares of stock in Grayson Armature, Large Motor Division, Inc. to a family partnership controlled

by her son, appellee Richard Grayson. This transfer gave Richard a majority-ownership interest in the corporation. The agreement was expressly conditioned on Richard becoming the president and chief executive officer (CEO) of the corporation and required that "Leon Huggins shall no longer hold the title of President."

The summary judgment evidence reflects that Huggins was president from 1992 until December 28, 1999, when the corporation's board of directors appointed Richard as president and CEO. After approximately 6 months, Richard moved to San Antonio and appointed Huggins as the president. In his affidavit, Richard states that he informed his mother on several occasions of the change in management.

In August 2008, Gary Grayson, in his capacity as Lela Grayson's attorney-in-fact, sued Richard for breach of contract and fraud. In his petition, Gary alleged that Richard breached the contract "by not changing his title to President and CEO" of the corporation and further breached the contract "by allowing Leon Huggins to serve as President of the corporation, a position he held at the time the Stock Transfer Agreement was signed by Lela Grayson, and the position he still holds today." Gary alleged that Richard committed fraud because he "made a representation to Lela Grayson that was material; the representation was false; at the time the representation was made to Lela Grayson [Richard] knew

the representation was false; [Richard] made the representation with the intent that Lela Grayson act on it; Lela Grayson relied on the representation and was damaged thereby."

Richard filed a motion for summary judgment on the following independent grounds: (1) he did not breach the agreement or commit fraud because he removed Huggins from the position of president and appointed himself as president and CEO; (2) the breach-of-contract and fraud claims are barred by the four-year statute of limitations; and (3) a portion of the agreement, which Gary argues requires the indefinite removal of Huggins as president, violates public policy. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 16.004 (West 2002), § 16.051 (West 2008); TEX. R. CIV. P. 166a(c). Gary filed a response to the motion, which in part (1) disputed whether Richard ever became president and replaced Huggins and (2) claimed that Lela did not learn that Huggins was the president until June 2007. Richard filed a reply in which he suggested that the true motivation behind the lawsuit was the desire of his brothers Gary Grayson and Dale Grayson to undo the 1999 stock transfer from their mother to him. Richard further noted that Gary's response to the motion for summary judgment contained no evidence controverting Richard's December 28, 1999 appointment as president and CEO.

The trial court granted the motion for summary judgment and rendered a final take-nothing judgment. The summary judgment did not specify the grounds

on which it was based. On appeal, Gary challenges all three grounds for summary judgment, contending the trial court erred if it (1) held that Richard did not breach the agreement with Lela, (2) held the claims were barred by limitations, or (3) held that the agreement was unenforceable as it violated public policy.

The standard of review for a traditional summary judgment is well established: (1) the movant for summary judgment has the burden of showing that no genuine issue of material fact exists and that it is therefore entitled to summary judgment as a matter of law; (2) in deciding whether there is a disputed material fact issue precluding summary judgment, evidence favorable to the nonmovant will be taken as true; and (3) every reasonable inference must be indulged in favor of the nonmovant and any doubts resolved in the nonmovant's favor. *See, e.g.*, *Nixon v. Mr. Property Mgmt. Co.*, 690 S.W.2d 546, 548–49 (Tex. 1985). If, as here, the trial court's summary judgment does not specify the ground on which the court relied, the summary judgment must be affirmed if any of the grounds are meritorious. *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 242 (Tex. 2001) (quoting *Carr v. Brasher*, 776 S.W.2d 567, 569 (Tex. 1989)).

In his first issue, Gary contends the trial court erred if it held that Richard did not breach the agreement with Lela. On appeal, Gary does not challenge that Richard was appointed as president and CEO on December 28, 1999. Instead, Gary argues that the agreement was breached when Richard reappointed Huggins

as president, because Gary contends the agreement precluded Huggins from ever returning to serve as president:

> This interpretation is supported by the plain language of the Agreement, which prohibits Huggins' reappointment by providing he "shall no longer hold the title of President." . . . Giving the phrase its plain meaning, the provision that Huggins "no longer hold" the office of president should be found to mean just what it says — Huggins cannot be the president of Grayson Armature, ever.

The construction of an unambiguous contract is a question of law for the court to determine. *MCI Telecomms. Corp. v. Tex. Util. Elec. Co.*, 995 S.W.2d 647, 650 (Tex. 1999). An unambiguous contract will be enforced as written, and parol evidence will not be received for the purpose of creating an ambiguity or to give the contract a meaning different from that which its language imports. *David J. Sacks, P.C. v. Haden*, 266 S.W.3d 447, 450 (Tex. 2008) (citing *Universal C.I.T. Credit Corp. v. Daniel*, 243 S.W.2d 154, 157 (Tex. 1951)). Only where a contract is ambiguous may a court consider the parties' interpretation and admit extraneous evidence to determine the true meaning of the instrument. *Haden*, 266 S.W.3d at 450 (citing *Nat'l Union Fire Ins. Co. v. CBI Indus., Inc.*, 907 S.W.2d 517, 520 (Tex.1995)).

Neither Gary nor Richard contends that the agreement is ambiguous. Gary instead cites six cases from other jurisdictions for the proposition that "the phrase

'no longer' means something like 'not anymore, now or in the future.'"[1] He therefore argues that the plain meaning of the agreement is that Huggins could never again serve as president.

None of the cases Gary cites speaks to an interpretation of the phrase "no longer" as having the specific meaning of prohibiting some specified action both for the present and in the future. Instead, each cited case interprets a contractual or statutory provision in which the phrase "no longer" occurs. Gary also argues it is perfectly proper for a contract in which one party has performed all its obligations not to have a termination date. *See Mobil Exploration & Producing U.S., Inc. v. Dover Energy Exploration, L.L.C.*, 56 S.W.3d 772, 778 (Tex. App.—Houston

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[1] *McDaniel v. Miss. Baptist Med. Ctr.*, 877 F. Supp. 321, 326–28 (S.D. Miss. 1994) (interpreting statutory phrase "is no longer engaging in such [illegal drug] use"), *aff'd*, 74 F.3d 1238 (5th Cir. 1995); *Am. Freight Sys., Inc. v. Interstate Commerce Comm'n* (*In re Am. Freight Sys., Inc.*), 174 B.R. 604, 608–09 (Bankr. D. Kan. 1994) (interpreting statutory phrase "is no longer transporting property"); *CF & I Steel Corp. v. Conners* (*In re CF & I Fabricators, Inc.*), 163 B.R. 858, 864–865, 875 (Bankr. D. Utah 1994) (discussing contract provision specifically defining phrase "no longer in business" to mean that company has "ceased all mining operations and ceased employing persons under this Labor agreement, with no reasonable expectation that such operations will start up again"); *Heist v. Cnty. of Colusa*, 213 Cal. Rptr. 278, 284 (Cal. Ct. App. 1984) (interpreting sufficiency of administrative finding that road was "no longer necessary for public road purposes); *DiPasquale v. Bd. of Review*, 669 A.2d 275, 277 (N.J. Super. Ct. App. Div. 1996) (interpreting statutory phrase "is no longer available"); *In re Erie Golf Course*, 963 A.2d 605, 613 (Pa. Commw. Ct. 2009) (interpreting statutory phrase "is no longer practicable or possible"), *vacated*, 992 A.2d 75 (Pa. 2010).

[14th Dist.] 2001, no pet.) (citing *Kennedy v. McMullen*, 39 S.W.2d 168, 174 (Tex. Civ. App.—Beaumont 1931, writ ref'd)). We do not disagree with that statement of law, but it merely begs the question whether Richard had already performed all his obligations under the agreement.

The complete contractual provision at issue is the following:

> IT IS FURTHER AGREED that Richard L. Grayson shall take whatever action is necessary to change his title to "President and C.E.O." of the Corporation, and that Leon Huggins shall no longer hold the title of President.

While the agreement could have explicitly prohibited Richard from ever allowing Huggins to serve as president again, it was not so drafted. We hold that the plain meaning of this provision of the agreement required Richard to become the corporation's president and CEO, replacing Huggins. The summary judgment evidence, which Gary does not contest on appeal, demonstrates that Richard complied with the requirements of this provision.

Because we hold that Richard did not breach the agreement, we overrule issue one. Having determined that one of Richard's grounds for summary judgment is meritorious, we affirm the trial court's judgment without reaching issues two and three. *See Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 242 (Tex. 2001) (quoting *Carr v. Brasher*, 776 S.W.2d 567, 569 (Tex. 1989)).

Jim Sharp
Justice

Panel consists of Justices Keyes, Sharp, and Massengale.