

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Young Living Essential Oils,)	MEMORANDUM DECISION
LC,)	(Not For Official Publication)
)	
Plaintiff and Appellee,)	Case No. 20080624-CA
)	
v.)	F I L E D
)	(September 24, 2009)
Carlos Marin,)	
)	
Defendant and Appellant.)	2009 UT App 272

Fourth District, Provo Department, 060402237
The Honorable Samuel D. McVey

Attorneys: Scott B. Mitchell, Salt Lake City, for Appellant
Barnard N. Madsen and Scott D. Preston, Provo, for
Appellee

Before Judges Thorne, Orme, and McHugh.

McHUGH, Judge:

Carlos Marin appeals from the trial court's order granting partial summary judgment in favor of Young Living Essential Oils, LC (Young Living). Marin had defaulted on the parties' contract by failing to meet certain "performance guarantees" detailed in the agreement. On appeal, Marin argues that the trial court erred by granting summary judgment in favor of Young Living. Marin also contests the trial court's award of attorney fees and costs to Young Living. We affirm.

"An appellate court reviews a trial court's legal conclusions and ultimate grant or denial of summary judgment for correctness, and views the facts and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party." Orvis v. Johnson, 2008 UT 2, ¶ 6, 177 P.3d 600 (citation and internal quotation marks omitted).

On appeal, Marin does not deny that he failed to meet the performance guarantees contained in the contract. Rather, Marin claims that the trial court erred in granting summary judgment because there was a material issue of fact relating to whether Young Living breached its obligation of good faith and fair

dealing. See generally Utah R. Civ. P. 56(c) (stating that a grant of summary judgment is proper where "there is no genuine issue as to any material fact"). In support of this claim, Marin relies on an affidavit he submitted in opposition to Young Living's Motion for Partial Summary Judgment. In his affidavit, Marin avers that Young Living failed "to provide him with the marketing tools [that] were necessary for him to satisfy his performance guarantees." Young Living counters that Marin's affidavit cannot raise a material issue of fact because it constitutes parol evidence offered to insert additional terms into the parties' written agreement.

The parol evidence rule "operates, in the absence of fraud or other invalidating causes, to exclude evidence of contemporaneous conversations, representations, or statements offered for the purpose of varying or adding to the terms of an integrated contract." Tangren Family Trust v. Tangren, 2008 UT 20, ¶ 11, 182 P.3d 326 (emphasis and internal quotation marks omitted). "Thus, if a contract is integrated, parol evidence is admissible only to clarify ambiguous terms" Id. In determining the admissibility of parol evidence the court must begin by "determin[ing] whether the agreement is integrated." Id. (internal quotation marks omitted).

An integrated agreement is "a writing . . . constituting a final expression of one or more terms of an agreement." Id. ¶ 12 (internal quotation marks omitted). "[W]hen parties have reduced to writing what appears to be a complete and certain agreement, it will be conclusively presumed, in the absence of fraud, that the writing contains the whole of the agreement between the parties." Id. (internal quotation marks omitted). The Utah Supreme Court has stated that "we will not allow extrinsic evidence of a separate agreement to be considered on the question of integration in the face of a clear integration clause." Id. ¶ 16.

Here, the agreement signed by the parties includes a provision titled "Entire Agreement," which reads, in part,

This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the Parties, and there are no representations, warranties, or other agreements between the Parties in connection with the subject matter hereof except as specifically set forth herein.

Thus, Marin's agreement with Young Living was integrated because the parties signed a written contract including a clear integration clause. See id. Furthermore, Marin makes no claim that the language of the agreement was ambiguous. Therefore, the parol evidence rule prohibits the use of extrinsic evidence to vary or add terms to the parties' integrated agreement. See id. ¶ 18.

Marin argues that the parol evidence rule does not prohibit the introduction of evidence that Young Living breached the implied covenant of good faith and fair dealing. Marin reasons that "[b]ecause the covenant was already part of the contract at issue[,] . . . [his] testimony in support of his claim for breach of the covenant was not 'offered for the purpose of varying or adding to the terms of' the contract." "While a covenant of good faith and fair dealing inheres in almost every contract, . . . this covenant cannot be read to establish new, independent rights or duties to which the parties did not agree ex ante." Oakwood Vill. LLC v. Albertsons, Inc., 2004 UT 101, ¶ 45, 104 P.3d 1226. Rather, the covenant is "implied in contracts to protect the express covenants and promises of the contract." Seare v. University of Utah Sch. of Med., 882 P.2d 673, 678 (Utah Ct. App. 1994) (internal quotation marks omitted).

Marin reasons that Young Living breached the covenant of good faith and fair dealing because it failed to provide him promised marketing tools, but no obligation regarding marketing tools was made part of the written agreement. Therefore, we reject Marin's argument that the implied covenant of good faith and fair dealing can be used to incorporate extrinsic evidence of a contemporaneous oral agreement, where the parties' agreement was integrated and the alleged oral agreement was not part of "the express covenants and promises of the contract." Id.

Finally, Marin contests the trial court's award of attorney fees and costs to Young Living. Young Living counters that Marin waived his arguments on attorney fees and costs on appeal because his objection was not timely filed in the trial court. "To preserve an issue for appeal, the appellant must have raised a timely and specific objection before the trial court. We will not address an issue if it is not preserved or if the appellant has not established other grounds for seeking review." H.U.F. v. W.P.W., 2009 UT 10, ¶ 25, 203 P.3d 943 (citation and internal quotation marks omitted).

Rule 7(f)(2) of the Utah Rules of Civil Procedure instructs that "[o]bjections to [a] proposed order shall be filed within five days after service." Utah R. Civ. P. 7(f)(2). Young Living served its Proposed Final Judgment and Affidavit of Attorney[] Fees and Costs on May 27, 2008. Marin then had five days as

provided by rule 7(f)(2), see id., along with an additional three days following service by mail, see id. R. 6(e), to file his objection. Marin's objection was not filed until June 11, 2008, making it untimely, and his arguments, therefore, are waived on appeal.¹

Accordingly, we affirm.

Carolyn B. McHugh, Judge

WE CONCUR:

William A. Thorne Jr.,
Associate Presiding Judge

Gregory K. Orme, Judge

¹Marin argues that exceptional circumstances warrant our consideration of his arguments as to attorney fees and costs because during the course of the litigation Young Living also failed to comply with filing deadlines. However, Young Living's failings do not excuse Marin's untimely filing.