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2011 IL App (3d) 100796-U

Order filed August 19, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

VINTAGE ERA HOMES, LLC,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellant,)	Will County, Illinois,
)	
v.)	
)	Appeal No. 3-10-0796
POWER OF CHOICE HOLDING CO.,)	Circuit No. 09-L-1107
LTD., d/b/a POWER OF CHOICE)	
HOLDINGS, INC., and BISHOP ROBERT T.)	
SANDERS,)	Honorable
)	Barbara Petrunaro,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* Where two or more parties are liable under a contract to a third entity and the contract does not relieve either party from liability, both parties are jointly and severally liable and any agreement between the parties, not in the contract, is irrelevant.

¶ 2 This cause arises out of a contract dispute between plaintiff, Vintage Era Homes, LLC, and defendants, Power of Choice Holding Co., LTD, d/b/a Power of Choice

Holdings, Inc., and Bishop Robert T. Sanders. Following the trial court's denial of plaintiff's motion for judgment on the pleadings and its motion to reconsider, the trial court certified the following question pursuant to Illinois Supreme Court Rule 308 (eff. Feb. 26, 2010):

"Whether a defendant who admits that he signed a written contract for the purchase of real estate without any financing clause or provision excusing him from the obligation to pay for the subject property at closing raises an issue of material fact sufficient to defeat judgment on the pleadings by asserting, in his answer, that his fellow buyer and co-defendant was supposed to have provided cash at closing."

¶ 3 Our answer to the certified question is no. Initially, we note that our answer is based solely on the language of the certified question, as a record of the proceedings below was not provided to the court. Where the terms of a contract are clear and unambiguous, they must be given their plain, ordinary, and popular meaning. *Lease Management Equipment Corp. v. DFO Partnership*, 392 Ill. App. 3d 678 (2009). The cardinal rule in contract interpretation is to give effect to the parties' intent, which is to be discerned from the contract language. *Virginia Surety Co., Inc. v. Northern Insurance Co. of New York*, 224 Ill. 2d 550 (2007). Under Illinois law, generally, all joint obligations and covenants shall be taken and held to be joint and several obligations and covenants. 765 ILCS 1005/3 (West 2010). If two or more parties to a contract owe a joint and several duty of performance to another party, and the duty is not performed, each may be liable for the entire damages resulting from the failure to perform. *Brokerage Resources, Inc. v. Jordan*, 80 Ill. App. 3d 605 (1980). Any agreement between

joint and several obligors not in the contract is irrelevant as to their obligation to pay; and extrinsic evidence is not admissible to prove such an agreement exists absent an ambiguity in the contract. *Pritchett v. Asbestos Claims Management Corp.*, 332 Ill. App. 3d 890 (2002).

¶ 4 Applying the foregoing principles, we conclude that defendant would not raise an issue of material fact. Under the terms of the question, defendant signed a contract for the purchase of real estate. There was no contract provision excusing him from performance, nor was there any indication of an ambiguity in the contract warranting the introduction of extrinsic evidence. Under these conditions, defendant is not excused from liability. Consequently, we answer the certified question in the negative.

¶ 5 Certified question answered.