



attorney, was appended to the complaint. Pursuant to the agreement, Jeanette agreed to sell her real estate company, Branson Realty, Inc., to the defendant for \$30,000, and go to work for the defendant for three years. In particular, Jeanette agreed to cease operating Branson Realty, Inc., to transfer all listings set forth in Exhibit A to the defendant,<sup>1</sup> to work diligently for the defendant, to refrain from divulging the defendant's trade secrets, and not to compete with the defendant for two years after any cessation of her employment with the defendant. The defendant agreed to assist Jeanette with her work, to allow her to use its facilities, to pay license transfer fees, and to provide her an office, business cards, and name tags. The defendant further agreed to give Jeanette \$30,000, payable as follows: \$5,000 on or before June 1, 2007, and \$1,000 per month for 25 consecutive months, beginning July 1, 2007. Moreover, the defendant agreed to pay Jeanette sales commissions and recruiting bonuses. The agreement was effective for a three-year term. The record reflects that Jeanette passed away on September 8, 2009. The complaint alleged that the defendant breached the agreement when it failed to pay Jeanette 17 monthly payments of \$1,000 as they came due after her death, for a total of \$17,000.

¶ 5 A bench trial commenced on December 7, 2011, but ended in a directed verdict in favor of the defendant because the plaintiff failed to produce evidence that he was, in fact, a trustee. On January 5, 2012, the plaintiff filed a motion to reconsider. A hearing on the motion was held on February 27, 2012. At the conclusion of the hearing, the circuit court granted the motion to reconsider, finding that the burden of pleading and proving standing is on the defendant, and that lack of standing is an affirmative defense which was waived by the defendant for not asserting the defense within the time for pleading. The circuit court additionally found that the plaintiff's statement of standing was the claim of being a

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<sup>1</sup>The listings of Branson Realty, Inc., which had current sales transactions pending were excluded from transfer to the defendant.

successor-in-interest. Accordingly, the circuit court set aside the directed verdict and reinstated the case for trial.

¶ 6 The reinstated bench trial was conducted on September 24, 2012. There, counsel elicited opinions about the meaning of the language of the agreement. The plaintiff testified that he was not familiar with the terms of the contract. The defendant's representative, Mark Frierdich, testified that he was involved in the negotiations of the agreement. Frierdich testified that, pursuant to the agreement, Jeanette Branson was to work for the defendant for a period of three years beginning June 1, 2007, but only did so until the spring of 2008, due to multiple health issues.

¶ 7 The agreement was admitted into evidence. The particular provision of the agreement in dispute is contained in paragraph 5 and provides as follows: "Branson shall receive the sum of \$30,000 which shall be payable as follows: (a) \$5,000 on or before June 1, 2007; (b) \$1,000 per month for twenty-five (25) consecutive months beginning July 1, 2007." At issue is whether the \$30,000 is consideration for Jeanette closing her business and transferring her listings to the defendant or whether it is a salary which is contingent upon Jeanette's completion of three years of employment with the defendant.

¶ 8 The circuit court took the matter under advisement and subsequently entered an order on October 9, 2012, finding in favor of the plaintiff and against the defendant. Although the circuit court found the agreement ambiguous, in considering parol evidence to construe the intent of the parties, the court found that Jeanette agreed to work for the defendant for a three-year period, earning commissions on sales, and bonuses for recruiting new sales associates. The court further found that the defendant received the benefit of Branson Realty, Inc., in addition to Jeanette's not competing with the defendant. Moreover, the defendant was to receive sales commissions on properties sold by Jeanette, less her commission, and the revenue produced by sales associates recruited by Jeanette. The court found that Jeanette

performed all of her obligations under the agreement, and her illness and death did not amount to a breach of her covenant to work diligently and to employ her best efforts. The court noted that the defendant had paid \$13,000 of the \$30,000, pursuant to paragraph 5 of the agreement, and held the defendant in breach of contract for failure to pay the plaintiff, as Jeanette's successor-in-interest, the remaining \$17,000. Accordingly, judgment was entered for the plaintiff and against the defendant in the amount of \$17,000, plus court costs. Subsequently, on January 8, 2013, in ruling on the defendant's motion to reconsider and by agreement of the parties, the circuit court entered an order reducing the judgment from \$17,000 to \$12,100. The motion to reconsider was denied in all other respects. The defendant filed a timely notice of appeal.

¶ 9

#### ANALYSIS

¶ 10 On appeal, we must construe the meaning of the agreement. The defendant argues that the circuit court's judgment is contrary to the rules of construction of contracts and is against the manifest weight of the evidence. However, we need not defer to the circuit court in this matter because issues of contract interpretation are reviewed *de novo*. See *Asset Recovery Contracting, LLC v. Walsh Construction Co. of Illinois*, 2012 IL App (1st) 101226, ¶ 77. Moreover, because we find the agreement unambiguous, we pay no heed to the parol evidence presented at the trial. See *Owens v. McDermott, Will & Emery*, 316 Ill. App. 3d 340, 349 (2000) (where terms of contract are unambiguous, parol evidence may not be considered to vary the meaning).

¶ 11 "The cardinal rule [of contract interpretation] is to give effect to the parties' intent, which is to be discerned from the contract language." *Virginia Surety Co. v. Northern Insurance Co. of New York*, 224 Ill. 2d 550, 556 (2007). "If the contract language is unambiguous, it should be given its plain and ordinary meaning." *Id.* "A contract should be construed as a whole, and such construction should be a natural and reasonable one."

*Suburban Auto Rebuilders, Inc. v. Associated Tile Dealers Warehouse, Inc.*, 388 Ill. App. 3d 81, 92 (2009). "In addition, contracts are interpreted objectively and must be construed in accordance with the ordinary expectations of reasonable people." *Id.* "Courts will construe a contract reasonably to avoid absurd results." *Id.*

¶ 12 In this case, the agreement clearly states that "Branson *shall* receive the sum of \$30,000 which *shall* be payable as follows: (a) \$5,000 on or before June 1, 2007; (b) \$1,000 per month for twenty-five (25) consecutive months beginning July 1, 2007." (Emphasis added.) There are no stipulations accompanying these provisions. Had the \$30,000 been for Jeanette's salary in exchange for three years of employment, the agreement would have stated such, as it did in a subsequent provision which directly addressed Jeanette's pay. That particular provision provides: "During the term of this agreement or an extension thereof, with respect to commissions to receive by [the defendant] from customers assigned to Branson, [the defendant] and Branson agree that Branson should be paid commission based upon an amount of production \*\*\*." To interpret the agreement as the defendant suggests, that Jeanette agreed to sell out her business and transfer all of her listings to the defendant, in addition to not competing with the defendant, for no consideration, would be an absurd and unreasonable interpretation of the agreement. See *Suburban Auto Rebuilders, Inc.*, 388 Ill. App. 3d at 92. In addition, the ordinary expectation of any reasonable person would be to receive compensation for selling one's business. See *id.* We further note that the installments of the \$30,000 are extended over 25 months, which is incongruent with an interpretation that the installments are meant to be a salary for Jeanette's 36 months of employment. The defendant's suggested interpretation to the contrary defies logic and common sense. Accordingly, we find that the \$30,000 was consideration in exchange for Jeanette's closing her business and transferring her listings to the defendant, and not a salary for three years of employment as posited by the defendant.

¶ 13 Even assuming, *arguendo*, that the agreement is ambiguous, evidence in the record supports our finding. The defendant's representative conceded at the trial that no other sales employees of the defendant receive a salary, but work solely for commissions on homes they sell. Moreover, the plaintiff's Exhibit 2 is a ledger reflecting, *inter alia*, all payments made by the defendant to Jeanette pursuant to the agreement. The initial \$5,000 paid is dated 6/1/2007 and described on the memo as "June 2007 pmt." Each subsequent payment on the ledger, pursuant to the agreement, is designated as "payment" and two in particular are designated as "Note Payment." We find such entries inconsistent with the argument that the installments are for Jeanette's salary.

¶ 14 CONCLUSION

¶ 15 For the foregoing reasons, we affirm the October 9, 2012, order of the circuit court of Monroe County and the judgment for damages in the amount of \$12,100.

¶ 16 Affirmed.