2015 IL App (3d) 140073-U

Order filed March 25, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

MICHAEL MANNER,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellee,	)	Will County, Illinois,
	)	
v.	)	Appeal No. 3-14-0073
	)	Circuit No. 12-AR-859
MICHAEL A. SCROGGINS and	)	
SCROGGINS FINANCIAL SERVICES, LLC,	)	Honorable
	)	John Anderson,
Defendants-Appellants.	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Carter and Lytton concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in finding the contract at issue ambiguous.

¶ 2 Plaintiff, Michael Manner, filed a complaint for money damages against defendants, Michael Scroggins (Scroggins) and Scroggins Financial Services, LLC. Defendants filed a motion to dismiss plaintiff's complaint pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2012)), which was denied. The matter proceeded to bench trial, and the circuit court entered judgment in favor of plaintiff. Defendants appeal, arguing

that: (1) the circuit court erred in denying their section 2-615 motion to dismiss; and (2) the circuit court's judgment following trial was against the manifest weight of the evidence. We reverse.

¶ 3 FACTS

¶ 4 Manner-Scroggins Financial Services, LLC, (Manner-Scroggins) was a limited liability company formed by Scroggins and John Manner that provided financial advice to individuals and corporations. Manner-Scroggins was one of multiple companies which provided retirement plans for employees of the City of Joliet. Manner-Scroggins was dissolved in 2007 due to disagreements between Scroggins and John.

¶ 5 Thomas Carey, an attorney, drafted a general dissolution agreement for Manner-Scroggins. Carey also drafted a separate agreement regarding the City of Joliet account (Agreement). The Agreement was dated July 10, 2007, and was signed by John, Scroggins, and plaintiff. The Agreement stated that Manner-Scroggins serviced a 457 investment account for the City of Joliet through a John Hancock 457 Contract No. 25613 (Contract). Pursuant to the Agreement, upon dissolution of Manner-Scroggins, Scroggins was to receive 51% of the earnings and fees from the Contract; plaintiff, John Manner's son, was to receive 49% of earnings and fees. Scroggins was to supervise the servicing of all current participants and the enrollment of new employees. Plaintiff was responsible for new enrollment meetings for four years from the date of the Agreement.

¶ 6 Paragraph 4 of the Agreement stated that the parties agreed not to compete during the term of the Agreement and for two years "following the termination of participation of any party to this Agreement or the Contract." Paragraph 5 of the Agreement stated:

"In the event that Michael Scroggins terminates his participation in the Account and transfers the same to Michael Manner, Scroggins shall be paid revenues from the Contract in the same amount as prior to termination for a four (4) year period from the date of termination, so long as the City of Joliet maintains the Contract with Michael Manner or his assigns."

¶ 7 Paragraph 6 of the Agreement stated:

"If Michael Manner should terminate from the Contract, he shall be paid revenues in the following formula:

Using April 1, 2007 as the starting date, Michael Manner shall be paid no revenues in the event he terminates on or before April 1, 2008, and if he continues, but terminates in the next year, then he will be paid revenues for a one (1) year period on the same basis as prior years. If he continues through April 1, 2009, and then terminates during the next year, he shall be paid for two (2) years; and if he continues through April 1, 2010, and terminates during the next year, he shall be paid for three (3) years; and if he continues through April 1, 2011, and terminates any time thereafter, he shall be paid such revenues for four (4) years from termination, so long as the City of Joliet maintains the Contract with Michael Scroggins or his assigns."

¶ 8 Plaintiff worked on the City of Joliet account until February 27, 2012, when he received a letter from the City of Joliet stating that plaintiff was terminated from the account and that the City of Joliet wished to work with Scroggins as its sole agent on the account. Plaintiff demanded payment from Scroggins pursuant to the Agreement, but Scroggins refused to pay.

¶ 9 Plaintiff filed a complaint for money damages against defendants, alleging that he was

owed revenues under the Agreement for four years from the date that he was terminated by the City of Joliet. Plaintiff attached both the Agreement and the termination letter from the City of Joliet to his complaint and incorporated said documents by reference.

¶ 10 Defendants filed a motion to dismiss plaintiff's complaint pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)), alleging that plaintiff failed to state a cause of action; the plain language of the Agreement provided that plaintiff was entitled to no compensation since he was involuntarily terminated *by* the City of Joliet and did not initiate the terminating action himself. Defendants argued that plaintiff was entitled to certain revenues under paragraph 6 of the Agreement only if he voluntarily withdrew from the Contract; the Agreement did not contemplate payment to plaintiff if he was fired by the client. The circuit court denied defendants' section 2-615 motion, finding that the language in paragraph 6 of the Agreement was ambiguous. A bench trial was held on December 12, 2013.

¶ 11 At trial, Carey testified that he drafted the Agreement regarding the City of Joliet account when Manner-Scroggins dissolved. John had been a client of Carey's prior to the formation of Manner-Scroggins, but Scroggins had not. Scroggins, John, and Carey discussed the terms of the Agreement during several meetings. Scroggins often typed up notes regarding discussions he had with John about the dissolution and e-mailed them to John and Carey. Carey stated that, at the time the Agreement was drafted, both John and Scroggins were concerned that they could be cut out of the City of Joliet account due to the political connections of the other.

¶ 12 Carey believed that the word "termination" used in paragraphs 5 and 6 of the Agreement contemplated termination from any source, including involuntary termination. Carey stated that the parties intended to give better treatment regarding termination to Scroggins in paragraph 5 of the Agreement than plaintiff in paragraph 6 because Scroggins had been working on the account

longer. Scroggins could terminate immediately and get full credit for four years, whereas plaintiff had to work for a certain number of years before he received a payout. The circuit court stated to Carey that it seemed that "for paragraph five to apply, Mr. Scroggins has to do the termination, whereas to paragraph six *** your testimony suggests it could be anybody, not just *** Mr. Manner himself." Carey replied that his intention in drafting paragraphs 5 and 6 was "to make it a level playing field" for plaintiff and Scroggins such that "the same type of terminations would trigger the rights under either one of [the] paragraphs."

¶ 13 Carey testified that, before he drafted the final Agreement, he received an e-mail from Scroggins with notes from a meeting on May 14, 2007, between John and Scroggins regarding the City of Joliet account. The notes said that "should Mike Manner decided [*sic*] to get out in first four years, account stays with Mike Scroggins alone" and "should Mike Scroggins decide to get out, the buyout formula will be continue to split revenue for four years." Carey believed that he took subsequent discussions with John and Scroggins, as well as the notes, into account when preparing paragraphs 5 and 6 of the Agreement.

¶ 14 Plaintiff testified that he began working full-time for Manner-Scroggins in late March or early April in 2007. Manner-Scroggins dissolved a few weeks later. John and Scroggins were able to split up all the Manner-Scroggins accounts except the City of Joliet account. Scroggins and John decided to continue to work the City of Joliet account together. Plaintiff would be the one actually servicing the account, since he had the proper licenses and John did not. Plaintiff was not involved in the drafting of the Agreement. Scroggins had been servicing the City of Joliet account for years before plaintiff became involved, and Scroggins had many more contacts at the City of Joliet than plaintiff did. Plaintiff worked on the City of Joliet account until he was terminated by the City of Joliet on February 27, 2012.

¶ 15 Under the Agreement, plaintiff was to hold enrollment meetings for City of Joliet employees. During the time the Agreement was in effect, plaintiff held most meetings alone, and Scroggins accompanied him to a few meetings. There were four meetings held in 2008, one meeting in 2009, zero meetings in 2010, and one meeting in 2011. Plaintiff held one meeting in early 2012 before being taken off the account. Scroggins was plaintiff's supervisor on the City of Joliet account. Scroggins never told plaintiff that he was not performing under the Agreement. Scroggins did send plaintiff an e-mail saying that they needed to service the City of Joliet accounts. Plaintiff replied, stating that he agreed that the City of Joliet account needed to be serviced and that he had not been in a rush to go to city hall because of some bad publicity concerning his father's health insurance company.

¶ 16 Scroggins testified that Manner-Scroggins had been one of three providers of retirement benefits for employees of the City of Joliet. Manner-Scroggins began working with the City of Joliet in 2003 or 2004. At that time, it was Scroggins's duty to meet with City of Joliet employees to discuss switching to the plans offered by Manner-Scroggins. By 2007, over 200 employees had become participants in Manner-Scroggins plans.

¶ 17 When Manner-Scroggins dissolved in 2007, the City of Joliet wanted to continue working with both John and Scroggins. John and Scroggins agreed that Carey would draft an Agreement concerning that account. Pursuant to the Agreement, plaintiff was to hold quarterly meetings to enroll new participants and service existing participants. Scroggins was to attend some meetings and service some of the existing participants. In 2007 and 2008, Scroggins had plaintiff come to the enrollment meetings with him, introduced plaintiff to various department heads, and taught him how to conduct the meetings. After 2008, Scroggins believed plaintiff was competent to conduct enrollment meetings alone and stopped accompanying plaintiff.

¶ 18 Scroggins believed that, after 2008, plaintiff did not provide the City of Joliet with the same level of service that Scroggins had in previous years because he did not hold enrollment meetings every quarter and was not signing up many new participants. Scroggins sent plaintiff e-mails inquiring about what his plans were to service the City of Joliet account. Scroggins did not believe that many new employees were hired by the City of Joliet between 2009 and 2011, but he believed that there were many potential new participants, as there were two competing companies also offering policies to City of Joliet employees. Participants in competitor policies could have been encouraged to switch over to the Manner-Scroggins policy if quarterly meetings were held. Scroggins and plaintiff lost participants to the competitors between 2009 and 2011.

¶ 19 Scroggins had no input regarding the termination letter that plaintiff received from the City of Joliet. Scroggins did know that plaintiff was going to be terminated from the City of Joliet account because he knew that there was dissatisfaction with the level of service being provided to the City of Joliet.

¶ 20 Scroggins testified that the intention behind paragraphs 5 and 6 of the Agreement was to provide for a buyout; if one party decided to terminate, they would get paid by the other party for transferring that business to the other party. Scroggins stated that it was usual and customary in the industry that when one is terminated by a client, he has no right to fees and commissions.

¶ 21 The circuit court entered judgment for plaintiff. The court reasoned that the phrase "[i]f Michael Manner should terminate from the Contract" in paragraph 6 of the Agreement was ambiguous. After observing Carey's demeanor and gauging his credibility, the court found Carey more credible than the other witnesses regarding the operation of and intent behind paragraph 6. The court shared Carey's interpretation that if plaintiff was terminated for any reason, whether voluntarily or involuntarily, the payout provisions of paragraph 6 would apply.

¶ 22 However, the court found that the language in paragraph 5 "clearly establishes that payment obligations shall become due upon Mr. Scroggins' own affirmative act of terminating his participation." The court found that the wording of paragraph 6 was "open to debate" and that it was not clear that termination had to be effectuated by plaintiff. The court stated that if the parties wanted to make it clear that paragraph 6 had to be triggered by plaintiff's own affirmative conduct, they could have used language more similar to that in paragraph 5. The court further reasoned that its interpretation of the Agreement was supported by commonsense because if plaintiff had voluntarily quit before he was terminated, he would be entitled to a full payout. The court found that plaintiff substantially and sufficiently performed under the contract and found him credible on that issue. The court concluded that the payout obligations set forth in paragraph 6 of the Agreement were triggered when the City of Joliet terminated plaintiff on February 27, 2012.

¶ 23 Defendants appeal.

¶ 24 ANALYSIS

¶ 25 Initially, defendants argue that the circuit court erred in denying their motion to dismiss plaintiff's complaint for failure to state a claim upon which relief can be granted pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)). A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based on defects apparent on its face. *Bell v. Hutsell*, 2011 IL 110724, ¶ 9. As a circuit court's ruling on a section 2-615 motion to dismiss presents a question of law, our review is *de novo. Robinson v. Toyota Motor Credit Corp.*, 201 Ill. 2d 403, 418-19 (2002). In reviewing the sufficiency of plaintiff's complaint, we construe the allegations of the complaint in the light most favorable to the plaintiff, and we accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts. *Bell*, 2011

IL 110724, ¶ 9.

¶ 26 Defendants contend that plaintiff's complaint failed to state a claim upon which relief can be granted because plaintiff alleged that he was terminated by the City of Joliet and sought to collect money damages under paragraph 6 of the Agreement. However, defendants argue, under the plain language of the Agreement, plaintiff was entitled to payment only if he quit. The Agreement did not provide for payment in the event that plaintiff was involuntarily terminated by the City of Joliet. The issue before us is one of contract construction.

¶ 27 "In construing a contract, the primary objective is to give effect to the intention of the parties." *Thompson v. Gordon*, 241 Ill. 2d 428, 441 (2011). We first look to the language of the contract itself to determine the parties' intent. *Id.* "[B]ecause words derive their meaning from the context in which they are used, a contract must be construed as a whole, viewing each part in light of the others." *Gallagher v. Lenart*, 226 Ill. 2d 208, 233 (2007). The intent of the parties is not determined by considering detached portions of the contract or by viewing a clause or provision in isolation. *Id.* If the contract language is clear and unambiguous, the words in the contract must be given their plain, ordinary, and popular meaning. *Thompson*, 241 Ill. 2d at 441. The language of a contract is ambiguous if it is susceptible to more than one meaning. *Id.* Courts may consider extrinsic evidence to determine the parties' intent only when the contract language is ambiguous. *Id.*

¶ 28 We find that the language paragraph 6 of the Agreement is unambiguous. Paragraph 6 provides that: "If *Michael Manner should terminate* from the Contract, he shall be paid revenues in the following formula ***." (Emphasis added.) "Michael Manner" is the subject of the sentence and "terminate" is the verb. Thus, under the plain and ordinary meaning of the language in paragraph 6, plaintiff must be the one to effectuate his termination from the contract

in order to be paid revenues. Paragraph 6 goes on to state: "Michael Manner shall be paid no revenues in the event *he terminates* on or before April 1, 2008, and if *he continues*, but *terminates* in the next year, then he will be paid revenues for a one (1) year period." (Emphasis added.) Paragraph 6 continues on, stating that plaintiff will be paid certain amounts if *he terminates* at certain times. When the language of paragraph 6 is given its plain and ordinary meaning, plaintiff must be the one to terminate from the contract in order to trigger the payout provisions of paragraph 6; the payout provisions are not triggered if another person or entity terminates plaintiff.

¶ 29 Moreover, paragraph 6 is immediately preceded by paragraph 5, which states: "In the event that *Michael Scroggins terminates his participation* in the Account and transfers the same to Michael Manner, Scroggins shall be paid revenues ***." (Emphasis added.) It is clear from the plain language of paragraph 5 that Scroggins must be the one to terminate his participation in order to be entitled to payment. Although the language differs slightly, paragraphs 5 and 6 largely parallel one another, stating the amount of payment that will be due to one party if the other party terminates. When the two paragraphs are read together, it is clear that the parties themselves must terminate in order to trigger the payout provisions.

¶ 30 Plaintiff notes that paragraph 4 of the Agreement states that a covenant not to compete would exist for two years "following the termination of participation of any party." Plaintiff notes that paragraph 4 did not specify whether the termination must be voluntary or involuntary. However, the fact that the source of the termination is not specified in paragraph 4 does not change the fact that it is specified in paragraphs 5 and 6. Paragraph 4 deals with the parties' agreement not to compete with each other, not ongoing payments after termination. Under the

plain language of the Agreement, for either Scroggins or plaintiff to be paid under paragraph 5 or 6, he must effectuate his own termination.

¶ 31 In its order entering judgment for plaintiff, the circuit court stated that its finding was supported by commonsense because plaintiff would have been entitled to a full payout if he had quit before he was terminated by the City of Joliet. The circuit court reasoned that, despite evidence that it is customary in the industry that an account servicer no longer receives payment when a client leaves, industry customs do not override signed agreements. Likewise, neither does commonsense. The parties are bound by the unambiguous language of the signed Agreement. The court erred in considering parole evidence to construe an unambiguous contract.

¶ 32 Because we find that paragraph 6 of the Agreement unambiguously required plaintiff to voluntarily terminate from the Contract in order to trigger payment obligations under the Agreement, plaintiff's complaint—which alleges that plaintiff was terminated by the City of Joliet—fails on its face to state a claim upon which relief can be granted. Likewise, the evidence at trial established that the City of Joliet, not plaintiff, terminated his employment with respect to the Contract. Consequently, the circuit court's judgment in favor of plaintiff is against the manifest weight of the evidence.

¶ 33 CONCLUSION

¶ 34 For the foregoing reasons, the judgment of the circuit court of Will County is reversed.

¶ 35 Reversed.