2017 IL App (1st) 161483-U

FOURTH DIVISION
March 23, 2017

No. 1-16-1483

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MASIS SARKISIAN,	)	Appeal from
	)	the Circuit Court
Plaintiff-Appellant,	)	of Cook County
	)	
v.	)	
	)	
GUS BAHRAMIS, RIVER PLAZA CONDOMINIUM ASSOCIATION, CLASSIC CAR CLUB OF AMERICA, INC., and ADVANTE HOLDINGS, LLC,	)	2014 CH 16334
	)	
Defendants,	)	
	)	
(GUS BAHRAMIS,	)	Honorable
	)	Kathleen M. Pantle,
Defendant-Appellee).	)	Judge Presiding

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Ellis and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held*: Where the relevant contractual language governing the parties' dispute was clear and unambiguous, the trial court correctly granted and denied the cross-motions for summary judgment of defendant and plaintiff, respectively. A provision referring to "the Unit Owner whose Unit has less square feet area" unambiguously applied to the square footage of individual units, not the combined square footage of all units belonging to a single owner.

¶ 2 Plaintiff, Masis Sarkisian, and defendant, Gus Bahramis, own condominium units in the River Plaza Office Condominium, located at 1645 South River Road in Des Plaines. This appeal arises out of a dispute between plaintiff and defendant as to who possesses a superior right to acquire certain units which became available for purchase in April 2014.

¶ 3 The record shows that the River Plaza Office Condominium is comprised of 23 commercial units, and is governed by a Declaration of Condominium Ownership and of Easements, Restrictions and Covenant (Declaration). A sale of a unit within the River Plaza Office Condominium is specifically governed by Article XVI of the Declaration, which provides, in relevant part:

> "Any Unit Owner other than the Trustee who wishes to sell his Unit Ownership shall give to the Board not less than thirty (30) days prior written notice of his intent to sell and subsequently the terms of any contract to sell, entered into subject to the other Unit Owners['] options as related below, and the Board's option as set forth hereinafter, together with a copy of such contract, the name, address and financial and character references of the proposed purchaser and such other information concerning the proposed purchaser as the Board may reasonably require. The Unit Owner contiguous to the Unit to be sold shall at all times have the first right and option for a ten-day period to purchase such Unit Ownership, and if there are two Unit Owners contiguous to the Unit to be sold, the Unit Owner whose Unit has less square feet area shall have the first right and option to purchase for a ten-day period, and the larger Unit Owner shall have the Second right and option to purchase for a ten-day period[.]"

¶ 4 In April 2014, the Association Board of Managers (Board) received notice from Classic Car Club of America, Inc. (Classic Car), the owner of Units 6 and 7, of its intention to sell those units to Advante Holdings, LLC. On April 23, 2014, the Board treasurer sent a document (the election form) to the owners of the units contiguous to Units 6 and 7, including plaintiff and defendant, to determine whether those owners intended to exercise their rights of first refusal to purchase those units. Plaintiff, as owner of Unit 8—which was contiguous to Unit 7—timely returned the election form, indicating to the Board his intent to purchase Units 6 and 7. Defendant, the owner of Units 15 and 17, also timely returned the election form. Defendant indicated to the Board his intent to purchase the units, as the owner of Unit 17, which was contiguous to both Unit 6 and 7.

¶ 5 Thereafter, plaintiff and defendant could not agree on which of them, as owners of contiguous units, possessed the superior right of first refusal concerning Units 6 and 7. They agreed that Article XVI of the Declaration was the provision applicable to their dispute, which provided that the superior right belonged to "the Unit Owner whose Unit has less square feet area[.]" The parties also agreed that defendant's Unit 17 had less square footage than plaintiff's Unit 8; however, plaintiff alleged that he possessed the superior right because his Unit 8 occupied less square footage than the combined total square footage of defendant's Units 15 and 17. Defendant maintained that his right was superior because his Unit 17 had less square footage than plaintiff's Unit 8.

¶ 6 On October 21, 2014, plaintiff filed a declaratory judgment action against defendant, as well as River Plaza Condominium Association, Classic Car Club of America, Inc. (Classic Car), and Advante Holdings, LLC, which are not parties to this appeal. After a series of answers, amended complaints and amended answers, defendant and plaintiff filed separate motions for

summary judgment on February 17 and 19, 2016 respectively. Plaintiff and defendant requested that the court find that each held the superior right to acquire Units 6 and 7.

¶ 7 On April 25, 2016, the trial court granted the motion of defendant and denied the motion of plaintiff. The trial court concluded that the contract was clear that it applied to the unit owner whose contiguous unit has lesser square footage. It further found that the term "unit"—meaning " '[a] single thing of any kind.' *Black's Law Dictionary*, 1533 (6th ed. 1991)"—was unambiguous, and must be given its plain and ordinary meaning. The trial court rejected plaintiff's request to combine the square footage of defendant's units for purposes of analysis, finding that plaintiff was "essentially ask[ing] this Court to supply missing terms from the Declaration, *i.e.*, that when a Unit Owner owns multiple units, the square footage of the multiple units is to be aggregated in determining who holds the first right." The court found that defendant's Unit 17 had less square footage than plaintiff's Unit 8, and therefore, defendant had the superior right to purchase Units 6 and 7. The trial court also explained that plaintiff had "no right of first refusal with regard to Unit 6 as he owns no unit contiguous to Unit 6." It further found that this result was "not unfair" because any right plaintiff had to that Unit would "arise only because of the fortuitous circumstance that Classic Car is interested in selling both Units 6 and 7 as part of one transaction to one buyer." This appeal followed.

¶ 8 On appeal, plaintiff contends that the trial court erred in granting defendant's motion for summary judgment, and denying his own motion for summary judgment. He contends that he established a superior right to acquire Units 6 and 7, and that the trial court erred in concluding otherwise.

¶ 9 Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and

that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2012); *Alshwaiyat v. American Service Insurance Co.*, 2013 IL App (1st) 123222, ¶ 19. Where, as here, the parties file cross-motions for summary judgment, they concede there are no genuine issues of material fact and invite the court to decide the questions presented as a matter of law. *Spencer v. Di Cola*, 2014 IL App (1st) 121585, ¶ 19; *Alshwaiyat*, 2013 IL App (1st) 123222, ¶ 19. We review a circuit court's summary judgment decision *de novo*. *Valfer v. Evanston Northwestern Healthcare*, 2016 IL 119220, ¶ 19.

¶ 10 The Declaration is the contract between the Board and the unit owners governing the operation of the condominium property (see *Palm v. 2800 Lake Shore Drive Condo. Ass'n*, 2014 IL App (1st) 111290, ¶ 75), and, in addressing the parties' arguments on appeal, we must interpret this contract. The primary goal of contract interpretation is to give effect to the intent of the parties, as shown by the language in the contract. *Lease Management Equipment Corp. v. DFO Partnership*, 392 Ill. App. 3d 678, 685 (2009). In determining the intent of the parties, a court must consider the document as a whole and not focus on isolated portions. *Premier Title Co. v. Donahue*, 328 Ill. App. 3d 161, 164 (2002). If the language of a contract is clear and unambiguous, the intent of the parties must be determined solely from the language of the contract itself. *Virginia Surety Co. v. Northern Insurance Co. of New York*, 224 Ill. 2d 550, 556 (2007). That language should be given its plain and ordinary meaning, and the contract enforced as written. *Virginia Surety Co.*, 224 Ill. 2d at 556. The interpretation of a contract is a question of law and may, therefore, be decided on a motion for summary judgment. *Premier Title Co.*, 328 Ill. App. 3d at 164.

¶ 11 As an initial matter, we find that plaintiff's claim must fail for a reason other than those advanced by defendant. See *Metro. Prop. & Casualty Insurance Co. v. Stranczek*, 2012 IL App

(1st) 103760, ¶ 20 ("as a court of review, we are not bound by a party's concessions (citation) and, as a reminder, we review the granting of summary judgment under a *de novo* standard of review (citation)."). It is undisputed that the Declaration provides that the first right and option to purchase an available unit goes only to the owners of contiguous units ("The Unit Owner contiguous to the Unit to be sold shall at all times have the first right and option for a ten-day period to purchase such Unit Ownership"). It is also undisputed that defendant's Unit 17 was contiguous to both units for sale, while plaintiff's Unit 8 was contiguous only to one—Unit 7. Pursuant to the plain language of the Declaration, plaintiff has no first right and option to purchase Unit 6, because he does not own a contiguous unit. The Declaration provides no basis to allow plaintiff to bootstrap his rights to Unit 7, to create a new right to purchase Unit 6. Because plaintiff had no first right to purchase Unit 6, we must necessarily find that defendant has the superior first right to purchase that unit. This conclusion, however, does not end our inquiry since we must also determine which party has the first right to purchase Unit 7, which is contiguous to units owned by both plaintiff and defendant.

¶ 12 The question we are asked to resolve in this appeal is relatively straightforward: whether the rule articulated in Article XVI of the Declaration applies to the square footage of a unit individually, or the combined square footage of all contiguous units belonging to a single owner. In other words, does plaintiff possess the superior right of first refusal because his unit is smaller than the total size of defendant’s combined units, or is defendant’s right superior because one of his units is smaller than the one owned by plaintiff?

¶ 13 As discussed above, the relevant language we are tasked to interpret is the following:

> “if there are two Unit Owners contiguous to the Unit to be sold, the Unit Owner whose Unit has less square feet area shall have the first right and option to

> purchase for a ten-day period, and the larger Unit Owner shall have the Second right and option to purchase for a ten-day period[.]"

¶ 14 The above language is clear, and assigns the first right and option to the owner of the contiguous "unit" with the least square footage. The provision specifically uses the singular word "unit" (see Black's Law Dictionary 1533 (6th Ed. 1991) (defining "unit" as "[a] single thing of any kind")), and does not contain any language which would support plaintiff's contention that the square footage of multiple units should be combined. Under the clear and unambiguous language of the Declaration, defendant, as "the Unit Owner whose Unit has less square feet area," is entitled to the first right and option to purchase Units 6 and 7.

¶ 15 Plaintiff, however, disagrees with this interpretation. In support of his contention that the intent of this provision was to combine the total square footage belonging to a single owner, plaintiff argues that the trial court ignored that the Declaration "became effective in 1980, when none of the Units would have yet been owned or occupied." He describes this dispute as "a case of first impression in the affairs and management of the Association." Presumably, plaintiff is arguing that the drafters of the Declaration intended for the provision to apply to the total square footage of multiple units belonging to the same owner, but merely failed to contemplate the situation in which one person would own multiple units. We find this contention particularly specious because the provision at issue provides a mechanism to allow unit owners to purchase multiple units.

¶ 16 Plaintiff also points out that in the election form circulated to plaintiff and defendant, the Board used wording different than that used in the Declaration. Specifically, the Board substituted the term "adjacent" for the term "contiguous," and the phrase "right of first refusal" for the phrase "first right and option to purchase." Plaintiff thus contends that, "[g]iven the

casual manner in which the Association appears to have dealt with Article XVI option rights, it is not surprising that Article XVI was never amended following its adoption to account for the circumstance in which a Unit Owner who owns multiple units contiguous to those being sold would assert option rights." We fail to see the relevance of the Board's verbiage in the election form, and note that plaintiff himself has used the phrases "right of first refusal" and "first right and option to purchase" interchangeably in his brief.

¶ 17 Plaintiff also faults the trial court for failing to "look beyond Article XVI of the Declaration in construing the drafter's original intent." Plaintiff specifically points to the following provisions in the Declaration regarding voting rights of Unit owners:

> 1. Voting Rights. There shall be one person with respect to each Unit Ownership who shall be entitled to vote at any meeting of the Unit Owners. Such Voting Members shall be the Unit Owner or one of the group composed of all the Unit Owners of a Unit Ownership or may be some person designated by such Unit Owners to act as a proxy on his or their behalf and who need not be a Unit Owner.
>
> * * *
>
> The total number of votes of all Voting Members shall be 100, and each Unit Owner or group of Unit Owners shall be entitled to the number of votes equal to the total of the percentage of ownership of the Common Elements applicable to his or their Unit Ownership[.]"

¶ 18 Plaintiff also points out that the "Majority of Majority of the Unit Owners" is defined as "[t]he owners of more than fifty per cent (50%) of the undivided ownership of the Common Elements. Any specified percentage of Unit Owners means that percentage of undivided

ownership of the common elements." Finally, plaintiff cites another provision, which states the following:

> When thirty per cent (30%) or fewer of the Units, by number, possess over fifty per cent (50%) in the aggregate of the votes in the Association, any percentage vote of members specified in the Condominium Instruments, or the Act, shall require instead the specified percentage by number of Units rather than the percentage of interest in the Common Elements allocated to Units that would otherwise be applicable.

¶ 19 Based on the foregoing, plaintiff maintains that "reasonable persons might conclude that the intent of Article XVI is two-fold: to enable a Unit Owner to conveniently expand his business into an adjacent space, and to reasonably limit any single Unit Owner from accumulating a sufficient concentration of Unit Ownership to effectively dictate the Association's affairs."

¶ 20 Although presumably arguing previously that the drafters of the Declaration merely failed to contemplate the situation in which a Unit Owner would own multiple units, plaintiff now appears to argue that the above provisions recognize that one person may own multiple units, and illustrate the drafter's intent to prevent control from being concentrated in the hands of a few.

¶ 21 In our view, the above provisions cut against plaintiff's proposed interpretation, because they demonstrate that the Association was aware of concerns that a unit owner could acquire multiple units. Despite that awareness, the relevant provision of the Declaration reads that the first right and option to purchase belongs to "the Unit Owner whose *Unit has* less square feet area." (emphasis added). It does not read, "the Unit Owner whose *Units have* less square feet

area." (emphasis added). In these circumstances, we cannot depart from the plain and unambiguous meaning of the provision.

¶ 22 Finally, plaintiff complains that, on his election form, defendant indicated his intention to purchase Units 6 and 7 by circling the relevant paragraph as owner of Unit 17, but he failed to similarly circle the paragraph as the owner of Unit 15. He describes this failure as a "waiver" of defendant's right to purchase, and maintains that defendant cannot both exercise his option, and waive it, at the same time. Plaintiff further describes defendant's failure as an "act of bad faith" which should have "relegated [him] to a subordinate option position" or "deemed [him] to have waived his Unit 17 rights altogether." Plaintiff provides no authority for his contention that defendant's failure to exercise his option to purchase in relation to his larger unit was "bad faith," or that such bad faith could cause defendant to waive his rights. Nonetheless, because defendant exercised his option to purchase the available units as the owner of Unit 17—the unit with the least square footage—we find that it was unnecessary for defendant to exercise his option as to Unit 15 as well.

¶ 23 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 24 Affirmed.