2014 IL App (1st) 131518-U

Third Division
February 5, 2014

No. 1-13-1518



IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|---|---|---|
| JOSE LOPEZ, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County. |
| | ) | |
| v. | ) | No. 11 M1 124097 |
| | ) | |
| JESUS QUINTANA, | ) | Honorable |
| | ) | Sheryl A. Pethers, |
| Defendant-Appellant. | ) | Judge Presiding. |

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Hyman and Justice Mason concurred in the judgment.

**ORDER**

¶ 1 *Held*: Where an unambiguous agreement to settle a loan provides for full payment of the loan by the defendant if there is a default and a default occurs, the defendant is bound by the terms of the agreement and becomes liable for the balance of the loan.

¶ 2 Plaintiff, Jose Lopez, filed a breach of contract complaint against the defendant, Jesus Quintana. The parties entered into an "Agreed Order To Dismiss With Leave To Reinstate" (agreed order) in which Lopez agreed to accept half of the amount he loaned to Quintana to

settle the debt. The agreed order required Quintana to pay the agreed amount in twelve monthly installments, but if Quintana failed to comply with the terms of the agreement, Lopez retained the right to request full payment of the original debt. After a number of late and missed payments, Lopez filed a motion to vacate the agreed order and requested that the trial court enter judgment against Quintana for the balance owed on the loan. The trial court granted the motion.

¶ 3 On appeal, Quintana argues that the trial court erred when it entered an order vacating the agreed order and entered judgment against him for the balance owed on the loan because Lopez failed to establish the elements necessary to warrant rescission of the agreed order. We find that Quintana breached the agreed order when he failed to tender payments in a timely manner and is, therefore, responsible for the balance owed on the loan.

¶ 4 Background

¶ 5 On April 5, 2011, Lopez filed a complaint against Quintana and alleged that around November 1, 2006, he entered into an oral contract with Quintana and loaned Quintana $20,570 for the purpose of purchasing a car. Quintana agreed to repay the loan by making monthly payments to Lopez. The complaint alleged that Quintana defaulted on the loan in November 2009.

¶ 6 Quintana responded to Lopez's complaint by filing a section 2-619 motion to dismiss (735 ILCS 5/2-619 (West 2010)) and argued that Lopez's complaint was barred by the statute of frauds because Lopez sought to recover on an oral agreement to repay a debt but the payments on the debt were not to be completed within a year from the date of the agreement.

Quintana attached his affidavit to the section 2-619 motion and denied that he borrowed money from Lopez to purchase a car.

¶ 7 Before the court could rule on Quintana's section 2-619 motion, the parties entered into an agreed order. On April 11, 2012, the trial judge approved the parties' agreed order that states as follows:

> IT IS HEREBY ORDERED that this cause be dismissed subject to an installment payment plan, wherein the Defendant agrees to pay the Plaintiff $10,285.00 in twelve (12) monthly installments of $857.08 commencing on 4-1-12.
>
> IT IS FURTHER ORDERED that should Defendant default on the payment plan, upon Notice of Motion, the Plaintiff shall have leave to move the Court to reinstate the cause and to enter judgment against the Defendant for the balance of the full amount sued which was $20,570.00
>
> IT IS FURTHER AGREED that if Defendant is late fifteen (15) days or more in any given month, judgment will be entered on the balance of the $20,570 not paid. ***

¶ 8 On February 1, 2013, Lopez filed a motion to vacate the agreed order and requested that a judgment be entered against Quintana for $13,682– the unpaid balance from the original loan. Lopez alleged that Quintana had repeatedly made late payments in excess of fifteen days, and the late payments constituted a breach of the agreed order. Lopez attached to his motion to vacate copies of the checks he received from Quintana for repayment of the loan.

Quintana paid $6,888 in eight installments: April 4, 2012, $850; April 30, 2012, $868; June 1, 2012, $870; July 16, 2012, $860; August 11, 2012, $860; September 18, 2012, $860; November 21, 2012, $200; December 28, 2012, $1,520.

¶ 9 At the February 15, 2013, hearing on Lopez's motion to vacate, Quintana's counsel presented the trial judge with a copy of *Solar v. Weinberg*, 274 Ill. App. 3d 726 (1995), for the judge to review before ruling on Lopez's motion. After reviewing *Solar* and listening to the parties' arguments, the trial court entered an order granting Lopez's motion to vacate the agreed order and entered judgment against Quintana for the sum of $11,966.

¶ 10 Quintana filed a motion to reconsider and argued, *inter alia,* that the trial court erred when it vacated the settlement agreement because Lopez failed to allege substantial non-performance or that he was prejudiced by the late payments, and because Lopez had repeatedly accepted late payments from Quintana, he waived any right he may have had to object to a payment being late. Quintana stated that at the February 15, 2013, hearing, his counsel offered Lopez's counsel a cashier's check in the amount of $1,681 to cover the outstanding balance, but Lopez's counsel refused to accept the check.

¶ 11 On May 2, 2013, the trial court held a hearing on Quintana's motion to reconsider. The court disagreed with Quintana's counsel's argument that the case involved the rescission of a contract. Instead, the court found that Lopez was requesting enforcement of the agreed order, an unambiguous contract. The court noted that Quintana, by signing the agreed order, had agreed to allow Lopez to demand full payment of the loan in the event that Quintana made a payment fifteen or more days late. Therefore, the court found that Quintana had breached

the settlement agreement, and denied Quintana's motion to reconsider.

¶ 12 Analysis

¶ 13 We note that an agreed order is a recitation of an agreement between the parties and the agreement is subject to the rules of contract interpretation. *In re Marriage of Tutor*, 2011 IL App (2d) 100187, ¶ 13. The construction or interpretation of a contract and its legal effect presents a question of law which we review *de novo*. *Avery v. State Farm Mutual Auto Insurance Co.*, 216 Ill. 2d 100, 129 (2005). When construing a contract, the primary objective is to give effect to the intent of the parties. *Gallagher v. Lenart*, 226 Ill. 2d 208, 232 (2007). The plain and ordinary meaning of the language of the contract is the best indication of the intent of the parties. *Gallagher*, 226 Ill. 2d at 233. The terms of an agreement, if unambiguous, should generally be enforced as they appear and those terms will control the rights of the parties. *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 479 (1998). Therefore, when the language in a contract is clear and unambiguous, it must be applied as written without resort to aids or tools of construction. *Board of Education of Waukegan Community Unit School District No. 60 v. Orbach*, 2013 IL App (2d) 120504, ¶ 13 (citing *Deluna v. Burciaga*, 223 Ill. 2d 49, 59 (2006)).

¶ 14 Here, the parties entered into an agreed order which required Quintana to repay $10,285 of the $20,570 he borrowed from Lopez. The payments commenced on April 1, 2012, and there were to be 12 payments of $857.08. The agreed order also stated that if a payment was fifteen or more days late in any given month, a judgment would be entered against Quintana

for the unpaid balance of the entire $20,570.

¶ 15 We find no ambiguity in the language of the agreed order and we will, therefore, enforce the agreed order the parties entered into as written. The record shows that four of the eight payments Quintana made were 15 or more days late, and that he failed to make payments in October of 2012 and January of 2013. Applying the unambiguous language of the agreed order to the facts of this case, we find that Quintana breached the agreed order by making four payments fifteen or more days late and by failing to make a payment in October of 2012 and January of 2013. Based on the unambiguous terms of the agreed order, Quintana breached the contract, and Lopez was entitled to the balance of the $20,570 he loaned Quintana.

¶ 16 Quintana argues that Lopez's request that the court vacate the agreed order and enter a judgment for the balance of the loan was a request to rescind the settlement agreement. Based on the holding of *Solar* and *Swiatek v. Azran*, 359 Ill. App. 3d 500 (2005), Quintana argues that Lopez was not entitled to rescission because he did not allege substantial non-performance or a breach of the agreed order by Quintana nor did Lopez allege that he was prejudiced by Quintana's late payments.

¶ 17 We find that Quintana's reliance on *Solar* and *Swiatek* is misplaced. Rescission of a contract refers to cancellation of the contract with restitution. *Kirchhoff v. Rosen*, 227 Ill. App. 3d 870, 877 (1992). Generally, a contract may be rescinded only where the court is able to restore the parties to the status *quo ante*, the status quo before the contract. See *Martin v. Heinold Commodities, Inc.*, 163 Ill. 2d 33, 58 (1994); *Chicago Limousine Service, Inc. v.*

*Hartigan Cadillac, Inc.*, 139 Ill. 2d 216, 227 (1990). Restoring each side to the status quo prior to the contract would require each party to return to the other the value of the benefits received under the rescinded contract. *Newton v. Aitken*, 260 Ill. App. 3d 717, 720 (1994).

¶ 18 Lopez filed a motion to vacate the agreed order and requested that a judgment be entered against Quintana for the unpaid balance on the original loan. Although Lopez's motion was labeled as a motion to vacate, we must abide by our supreme court's long-standing admonition that motions should be resolved based on their substance rather than what it is called. *In re Haley D.*, 2011 IL 110886, ¶ 67 (the court stated that "we have emphasized that the character of the pleading should be determined from its content, not its label. Accordingly, when analyzing a party's request for relief, courts should look to what the pleading contains, not what it is called.")

¶ 19 Looking at the content and substance of Lopez's motion (a request for a judgment for the unpaid balance of the loan), rather than its label (motion to vacate agreed order), it is clear that Lopez was seeking to enforce the provisions of the agreed order by demanding that Quintana pay the balance owed on the loan as provided for in the agreed order. A rescission of the agreed order would require Lopez to return the $6,888 that he received from Quintana in order to restore the parties to the status quo before the agreed order was entered into by the parties. The trial court stated at the hearing on Quintana's motion to reconsider that Lopez's motion was not an attempt to rescind the agreed order but to enforce it as written. We find that Lopez did not want to return the $6,888 he received from Quintana or rescind the agreed order when he filed the motion to vacate. Therefore, the trial court did not err

when it found that Lopez's motion was not intended to vacate or rescind the agreed order but to enforce its terms.

¶ 20 Finally, Quintana argues that Lopez waived his right to complain about Quintana's breach of the agreed order because Lopez repeatedly accepted Quintana's late payments without any objection. Quintana has not cited any authority to support his waiver argument. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). We note that case law indicates where an important right is at issue, "an explicit manifestation of intent is required before the right in question can be deemed waived." *Gallagher*, 226 Ill. 2d 239. In this case, where the parties' agreed order did not contain any language which mentioned that Lopez would lose his right to repayment if he accepted late payments, we find no explicit waiver of Lopez's right to demand the balance owed on the loan when he accepted late payments from Quintana without an objection. Accordingly, we see no reason to impute to Lopez an intent to waive his right to the balance owed on the loan.

¶ 21 Conclusion

¶ 22 We find that the agreed order was unambiguous and that Quintana breached the agreement when he failed to make his payments in a timely manner as outlined in the agreed order. Accordingly, we affirm the order of the trial court that entered judgment in favor of Lopez for the unpaid balance of the original loan.

¶ 23 Affirmed.