2017 IL App (1st) 162328-U

SIXTH DIVISION
August 11, 2017

Nos. 1-16-2328, 1-17-0080 cons.

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SALUJA & SALUJA, LLC, an Illinois corporation, Plaintiff-Appellant, v. PARK 1500 LOFTS CONDOMINIUM ASSOCIATION, an Illinois corporation, Defendant-Appellee.	))))))))))	Appeal from the Circuit Court of Cook County. No. 15 CH 17943 Honorable Franklin U. Valderrama, Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶ 1 ***Held:*** We affirm the circuit court's dismissal of the plaintiff's complaint for declaratory judgment, finding that the claim was barred by the underlying contract's 120-day limitation period.

¶ 2 Plaintiff Saluja & Saluja, LLC ("Saluja"), owns ground-floor commercial space (the "commercial property") in a ten-story building located at 1501 West Madison Street in Chicago. An agreement executed and recorded in 2001 establishes the respective rights and obligations of the owner of the commercial property and of defendant Park 1500 Lofts Condominium

Association ("the association"), an entity responsible for the remaining nine floors of the building (the "condominium property"). Saluja's principal demanded that the association add Saluja as an additional insured on the association's insurance policy. After the association refused Saluja's request, Saluja filed a complaint seeking a declaratory judgment that the association was obliged to add it as an additional insured. The circuit court dismissed the complaint as time-barred. We affirm.

¶ 3 Saluja's complaint alleges the following facts. Saluja bought the commercial property on February 10, 2015. Two days later, Saluja's principal sent a letter to the association's property manager demanding that the association add Saluja as an additional insured on the association's casualty insurance policy, in exchange for payment of 1% of the total premium. Saluja's demand was based on section 6.1 of the agreement, which addresses how the owner of the commercial property can demand to be added as an additional insured on the condominium association's insurance policy. Section 6.1 states:

> "The Owner of the Condominium Property and the Owner of the Commercial Property shall procure and maintain insurance on their respective properties to cover loss or damage by fire and such other risks, casualties and hazards * * *. At the option of the Owner of the Commercial Property, if the insurance procured by the Owner of the Condominium Property will cover the Commercial Property for loss or damage by fire and such other risks, casualties and hazards, the Owner of the Commercial Property (and any mortgagee) shall be [a] named insured on the

> policy and the Owner of the Commercial Property shall pay one (1%) percent of the cost of insurance."

¶ 4 On February 27, an attorney for the association sent Saluja a letter refusing the demand and stating, in part, "At this time, the insurance that has been taken out by the Association does not cover the Commercial Property for loss or damage by fire, and other risks, casualties and hazards." The letter, which is attached as an exhibit to the complaint, asserted that section 6.1 of the agreement only requires the association to acquiesce in a demand to add the commercial property owner as an additional insured *if* the association's insurer would allow such an amendment. The letter further states: "[a]t this time, the insurance that has been taken out by the Association does not cover the Commercial Property for loss or damage by fire and other risks, casualties and hazards. Accordingly, you, as the owner of the Commercial Property, cannot exercise the option for coverage under the Association's policy."

¶ 5 The complaint also alleged, on information and belief, that the association's insurer would provide coverage for the commercial property in exchange for the additional 1% premium. On November 3, 2015, Saluja's attorney sent a second letter demanding that the association provide the insurance coverage required by section 6.1 of the agreement. The letter asserted that the additional insured rider was "commonly provided," and that "it should be feasible to add" the commercial property to the association's policy. The letter concluded with a "demand[ ] that such coverage be obtained." The record contains no answer to that letter .

¶ 6 With these facts establishing the background, the complaint sets forth a single central allegation disputing the association's claim that section 6.1 "gives it the unilateral power whether to name the Commercial Property Owner as an insured under the Association's policy." The complaint seeks a declaratory judgment that under section 6.1 of the agreement, Saluja has a

"right to be named as an insured under the Association's casualty insurance policy in exchange for payment of 1% of the total Association premium * * *."

¶ 7 The association moved to dismiss the complaint pursuant to section 2-619(a)(5) of the Illinois Code of Civil Procedure (Code), 735 ILCS 5/2-619(a)(5). The association contended that Saluja's declaratory judgment claim was time-barred by a 120-day limitation period set forth in section 8.5 of the agreement. That section provides: "Actions to enforce any right, claim following the or lien under this Declaration shall be commenced within one hundred twenty (120) days immediately date the cause of action accrued, or such other shorter period as may be provided by law or statute."[1] After briefing and argument, the circuit court agreed and dismissed the complaint with prejudice.

¶ 8 On August 12, Saluja filed a "Motion to Modify, Rehear, Reconsider, Vacate the Judgment or for Other Relief" (motion to reconsider), but then, on August 24, it filed a notice of appeal of the August 2 order (appeal no. 1-16-2328). The circuit court denied the motion to reconsider on January 10, 2017. In its written opinion on the motion to reconsider, the court specifically rejected Saluja's contention that the association's denial of each request for insurance coverage constituted a separate claim, thus restarting the limitations period. The court explained that the actual complaint only asserted a claim for a declaratory judgment as to the respective rights of the parties under section 6.1 of the agreement, a claim that accrued when the association sent its first denial letter on February 27, 2015. The court found that the complaint did not assert any independent claim relating to the second, November 3, 2015, letter. On January 11, 2017, Saluja filed a second notice of appeal from the January 10, 2017, order

[1] We have quoted this provision exactly as it reads in the recorded agreement. It contains two ungrammatical phrases: "following the or lien under this" and "days immediately date the cause of action".

denying the motion to reconsider (appeal no. 1-17-0080). This court consolidated the two appeals.

¶ 9 On appeal, Saluja argues that the circuit court erred when it dismissed the case because: (1) its claim is subject to the standard 10-year limitation period for written contracts, rather than the 120-day period set forth in the agreement; and (2) the agreement is a "continuing contract" such that each denial of insurance coverage establishes a fresh claim.

¶ 10 When ruling on a motion to dismiss under section 2–619, a court must accept all well-pleaded facts in the complaint as true and draw all reasonable inferences from those facts in favor of the nonmoving party. *Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶ 24. As a result, a motion to dismiss pursuant to section 2-619 should not be granted unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery. *Snyder v. Heidelberger*, 2011 IL 111052, ¶ 8. We review *de novo* the circuit court's decision on motions to dismiss brought under section 2–619. *Coghlan*, 2013 IL App (1st) 120891, ¶ 24. Finally, we review the judgment, not the reasoning, of the circuit court, and we may affirm on any ground in the record, regardless of whether the court relied on those grounds or whether the court's reasoning was correct. *Leonardi v. Loyola University of Chicago*, 168 Ill. 2d 83, 97 (1995).

¶ 11 Saluja's first contention of error is based on its interpretation of section 8.5 of the agreement. Specially, Saluja argues that section 8.5 "applies only to actions to enforce rights or claims related to a party's Section 8 lien." Since the insurance dispute has nothing to do with liens, Saluja concludes that the 120-day period is inapplicable, and that the normal 10-year limitation period in section 13-206 of the Code applies. See 735 ILCS 5/13-206 (West 2014). We disagree.

¶ 12 "The primary goal of contract interpretation is to give effect to the parties' intent by interpreting the contract as a whole and applying the plain and ordinary meaning to unambiguous terms." *Joyce v. DLA Piper Rudnick Gray Cary LLP*, 382 Ill. App. 3d 632, 636-37 (2008); see also *Gallagher v. Lenart*, 226 Ill. 2d 208, 233 (2007) ("A court must initially look to the language of a contract alone, as the language, given its plain and ordinary meaning, is the best indication of the parties' intent."). A contract must be construed as a whole, viewing each part in light of the others. *Id.* (citing *Board of Trade of the City of Chicago v. Dow Jones & Co.*, 98 Ill. 2d 109, 122–23 (1983)).

¶ 13 Article VIII of the agreement is entitled "LIENS, RIGHTS AND REMEDIES," and it is incorrect to characterize it as only applying to liens. The first two sections, sections 8.1 and 8.2, do address liens. They provide that a "Creditor Owner"[2] may assert a lien against "any Owner" who fails to pay money due under the agreement to the Creditor Owner. These sections also provide that the liens may be recorded and enforced in the usual manner, and that interest shall accrue on the amount owed. The remaining sections, however, concern rights and remedies generally, not merely the remedy of a lien. Section 8.3 broadly states that the rights of an Owner established anywhere in the entire agreement are cumulative and not exclusive to other available remedies. Section 8.4 provides that every claim brought by an Owner is separate and distinct and cannot be offset by the enforcement of any other claim. Section 8.6 requires defaulting Owners to pay a Creditor Owner's attorney fees and court costs if the Creditor Owner successfully enforces its rights against the defaulting owner under the agreement. Section 8.6 also provides that those fees and costs may be added to "any applicable lien." Finally, section 8.7 states that if a Creditor Owner consists of one or more Unit Owners, the condominium

[2] The agreement defines the capitalized term "Owner" to include either the owner of the commercial property or the owner of the condominium property, "as the context may require."

association of which the Creditor Owner is a member shall have the sole right to act on behalf of, and bind, the Creditor Owner. Reading the 120-day limitation period in section 8.5 in context with the other sections in Article VIII, it is clear that Saluja's claim that the 120-day limitation period only applies to liens is without merit.

¶ 14 In so holding, we also reject Saluja's claim that the phrase "claim following the or lien under this Declaration" in section 8.5 itself limits that section to lien-related disputes. Although the section suffers from scrivener's errors, we have no need to divine the specific words originally intended. Regardless of the phrase "claim following the or lien," the section clearly establishes a 120-day limitation period for "[a]ctions to enforce *any* right" [emphasis added] under the agreement.

¶ 15 Saluja also contends that, even assuming the 120-day period applies, its complaint was timely filed on December 10, 2015, a date which was within 120 days of its November 3, 2015, second demand letter. But Saluja's complaint mentions the November 3, 2015, demand letter only in a "throwaway" allegation at the very end. The complaint clearly encompasses only a claim related to the first, February 12, 2015, letter. The complaint frames the dispute as follows. The condominium association contends that it is obligated to add the commercial property to the insurance policy only if its own insurer would allow such an amendment. Saluja, on the other hand, rejects the "insurer permission" trigger interpretation, and instead contends that association simply must add it as an additional insured if Saluja pays 1% of the premium. We find that dispute accrued when the association sent its February 27 letter. Under section 8.5, any claim regarding that letter would have to be filed within 120 days of the association's February 27 response, or by June 27, 2015. Whether the association again refused Saluja's demand in

November (by silence) is of no relevance to the declaratory judgment claim set forth in the complaint.

¶ 16 Saluja maintains that the association's failure to provide insurance coverage is a continuing violation, but that doctrine is inapplicable to claims for breach of contract unless the contract involves continuous performance, such as a money obligation payable in installments. See *Hassebrock v. Ceja Corp.*, 2015 IL App (5th) 140037, ¶ 33, 35 Saluja's one-count declaratory judgment complaint asserts no claim for breach of a contract involving continuous performance, and nothing in the record shows that Saluja ever requested leave to amend the complaint to add a claim regarding the November 3 letter or any new insurance policy issued after it filed the original complaint.

¶ 17 Additionally, Saluja presented the "continuing violation" theory only in its briefs and motions, and not in its complaint. Saluja presented copies of the association's insurance policies to bolster its argument that the insurer would, in fact, allow the commercial property to piggy-back onto the association's policy. But Saluja did so too late—it presented the policies as part of its reply in support of its motion for reconsideration, thus thwarting the association's ability to meaningfully respond. And as the association correctly notes, the controversy does not turn on differences between the languages in the insurance policies issued for various successive years, but rather on the parties' varying interpretations of the their obligations under section 6.1 of the agreement.

¶ 18 For these reasons, we affirm the judgment of the circuit court dismissing the complaint as time-barred.

¶ 19 Affirmed.