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2011 IL App (4th) 110159-U

Filed 11/29/11

NO. 4-11-0159

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

SUSAN IRWIN,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
SHANNON C. SHYMANSKY,	)	No. 10MR77
Defendant-Appellee,	)	
and	)	Honorable
JUANITA J. WILLIAMS,	)	Leo J. Zappa, Jr.,
Third-Party Defendant.	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Knecht concurred in the judgment.
Justice Appleton specially concurred in part and dissented in part.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's grant of summary judgment in the defendant's favor, concluding that based on the plain, unambiguous meaning of the language used, the residential agreement the plaintiff entered into with the defendant was a lease with option to purchase instead of a contract for deed, as the plaintiff claimed. The appellate court also affirmed the court's award of $20,000 in attorney fees to the defendant, concluding that (1) the parties' contractual fee-shifting provision applied and (2) the court's award was not excessive.

¶ 2 On February 8, 2010, plaintiff, Susan Irwin, sued defendant, Shannon C. Shymansky, seeking a declaratory judgment that the written agreement she entered into with Shymansky was a contract for deed instead of a lease with an option to purchase as Shymansky claimed. That same day, Irwin recorded a mortgage against the property at issue in favor of third-party defendant, Juanita J. Williams, to secure a $5,000 promissory note. In March 2010, Shymansky filed a motion for summary judgment, which she later supplemented.

¶ 3 Following a May 2010 hearing on Shymansky's motion for summary judgment, the trial court entered a written order (1) finding that based on the plain, unambiguous meaning of the contractual language, Irwin and Shymansky entered into a lease agreement with an option to purchase that had expired on September 15, 2009; (2) invalidating Williams' mortgage because she had no equitable interest in the property; (3) mandating that Irwin return possession of the property to Shymansky; (4) ordering Irwin to pay Shymansky $1,325 for past-due rent; and (5) reserving its ruling on Shymansky's request for attorney fees.

¶ 4 After an October 2010 hearing, the trial court awarded Shymansky $7,000 in attorney fees. In November 2010, Shymansky filed a motion to reconsider the court's attorney-fee award. Following a December 2010 hearing on that motion, the court increased its attorney-fee award to $20,000.

¶ 5 Irwin appeals, arguing that the trial court erred by (1) granting summary judgment in Shymansky's favor and (2) awarding Shymansky attorney fees. Alternatively, Irwin argues that the court's award of $20,000 in attorney fees was excessive. We disagree and affirm.

¶ 6 I. BACKGROUND

¶ 7 On August 30, 2006, Irwin and Shymansky entered into a contract prepared by Shymansky. The pertinent portions of their agreement provide, as follows:

"RESIDENTIAL CONTRACT FOR DEED AGREEMENT/LEASE:

Agreement to lease residential property

AGREEMENT TO LEASE

* * *

SUBJECT OF LEASE

Prospective lessor [(Shymansky)] shall enter into a written lease agreement with prospective lessee [(Irwin)] on or before September 15th 2006 ***, by which [Shymansky] shall lease to [Irwin] the residential property owned by [Shymansky] located at *** Whisperglen Lane ***.

TERM OF LEASE

The premises shall be leased to [Irwin] for *** Three (3) *** years from September 15th, 2006 ***. [Irwin] shall have the option to buy the condominium at *** Whisperglen Lane on or before September 15th, 2009.

DEFAULT BY LESSEE

If [Irwin] fails to perform the agreements of this contract within the time set forth herein, [Shymansky] may retain the initial deposit, all installment payments, and any damages to Property above and beyond the condition of Property at time of this agreement. The Lease will be immediately terminated when an installment becomes 30 days past due. If [Irwin] does not obtain financing to purchase the condominium by September 15, 2009, [Shymansky] shall have the rights to take possession of the Condominium. [Shymansky] will provide written notice to [Irwin] of termination of contract and 30 day eviction notice.

* * *

MONTHLY LEASE–PRORATED TAXES, INSURANCE, & INSTALLMENT PAYMENTS

[Irwin] will pay [Shymansky] a down payment of $10,000 on or before September 6th, 2006. The down payment is non-refundable.

[Shymansky] agrees to pay the mortgage ***, *** tax bill, and association fee. [Irwin] agrees to pay [Shymansky] monthly installments for said Property until payoff or refinance of outside lender in the following manner on or before September 15th, 2009. The remaining balance of $74,000 together with an interest rate of 8.75% per annum on the principal balance shall be due on the 10th and 25th of each and every month in the amount of $432.08 (bi-monthly). The annual tax bill *** will be paid monthly and will be included in monthly installment payment.

***

* * *

ATTORNEY FEES

In the event that any action is filed in relation to this agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorney fees.

ENTIRE AGREEMENT

This *** shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated in this agreement.

PARAGRAPH HEADINGS

The titles to the paragraphs of this agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this agreement." (Emphasis omitted.)

¶ 8 Irwin did not pay off the balance owed on the property or obtain financing for that purpose by September 15, 2009. Thereafter, Irwin and Shymansky attempted unsuccessfully to negotiate a new agreement. On January 8, 2010, Shymansky provided Irwin written notice of the termination of the contract. Three days later, Shymansky served Irwin with an eviction notice.

¶ 9 On February 8, 2010, Irwin filed a complaint for declaratory judgment, requesting that the trial court find that the August 2006 written agreement she entered into with Shymansky was a contract for deed–that is, a contract to sell residential real estate–instead of a lease with an option to purchase, as Shymansky claimed. That same day, Irwin recorded a mortgage against the property in favor of her mother, Williams, who Irwin claimed had loaned her $5,000.

¶ 10 In March 2010, Shymansky filed a motion for summary judgment. In that motion, Shymansky requested that the trial court find (1) the contractual agreement was a lease with an option to purchase that had since been terminated; (2) Irwin was not entitled to possession of the property; (3) the $5,000 mortgage Irwin filed against the property was invalid; and (4) Irwin was obligated to reimburse her for her attorney fees. In May 2005, Shymansky filed a supplement to her motion for summary judgment, requesting that the court order Irwin to pay past due rent.

¶ 11 Following a May 2010 hearing, the trial court granted summary judgment in Shymansky's favor. In so doing, the court entered a written order (1) finding that based on the plain, unambiguous meaning of the contractual language, Irwin and Shymansky entered into a lease agreement with an option to purchase that had expired on September 15, 2009; (2) invalidating Irwin's mortgage because she had no equitable interest in the property; (3) mandating that Irwin return possession of the property to Shymansky; and (4) requiring Irwin to pay Shymansky $1,325 for past-due rent. In addition, the court, noting the attorney fee-shifting provision in the agreement, reserved ruling on Shymansky's request for attorney fees.

¶ 12 In August 2010, Irwin filed, in part, a motion for ruling on attorney fees. In September 2010, Shymansky filed a petition for attorney fees, requesting that the trial court enter an order requiring Irwin to pay $26,645. Following an October 2010 hearing, the court awarded Shymansky $7,000 in attorney fees. In November 2010, Shymansky filed a motion to reconsider the court's attorney-fee award.

¶ 13 Following a December 2010 hearing on that motion, the trial court entered a written order, acknowledging that the court was remiss by not providing an explanation as to why it departed downward from Shymanski original request for $26,645 in attorney fees. Noting that it would correct the omission in its order on Shymansky's motion to reconsider, the court wrote the following:

> "This Court having scrutinized the records of attorney fees and making a reasonable assessment, considering all factors set forth in [*Richardson v. Haddon*, 375 Ill. App. 3d 312, 314-15, 873 N.E.2d 570, 573 (2007)], grants the Motion to Reconsider in part and awards [Shymansky] $20,000 total in attorney fees.
>
> Based upon the Court's review, the attorneys of record made no more than three to four court appearances reflected in the bills. The amount requested for this type of declaratory action was not complex. This Court, based upon the experience of the attorneys of record, the lack of complexity, the customary charges in the community that the fees requested were excessive; thus, this Court has taken a downward departure from the fees requested."

¶ 14 This appeal followed.

¶ 15 II ANALYSIS

¶ 16 Irwin argues that the trial court erred by (1) granting summary judgment in Shymansky's favor and (2) awarding Shymansky attorney fees. Alternatively, Irwin argues that the court's award of $20,000 in attorney fees in Shymanky's favor was excessive. We address Irwin's arguments in turn.

¶ 17 A. The Trial Court's Grant of Summary Judgment

¶ 18 1. *Summary Judgment and the Standard of Review*

¶ 19 "Summary judgment is appropriate where the pleadings, affidavits, depositions, and admissions on file, when viewed in the light most favorable to the nonmoving party, demonstrate that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." *West Bend Mutual Insurance v. Norton*, 406 Ill. App. 3d 741, 744, 940 N.E.2d 1176, 1179 (2010). We review *de novo* a trial court's ruling on a motion for summary judgment. *Benson v. Stafford*, 407 Ill. App. 3d 902, 911, 941 N.E.2d 386, 397 (2010). In determining whether the trial court reached the proper result, we need not confine ourselves to the court's rationale but may instead affirm the grant of summary judgment on any basis supported by the record. *Berglind v. Paintball Business Ass'n*, 402 Ill. App. 3d 76, 85, 930 N.E.2d 1036, 1043 (2010).

¶ 20 2. *Irwin's Summary-Judgment Claim*

¶ 21 Irwin argues that the trial court erred by granting summary judgment in Shymansky's favor. Specifically, Irwin contends that the language of the contract at issue is ambiguous in that the agreement (1) has the title "residential contract for deed/lease," (2) referred to Irwin as a "prospective lessee," (3) required a down payment of $10,000 with "monthly installments *** until payoff or refinance," (4) identified a "remaining balance of $74,000," to bear interest at 8.75% per annum on the principal balance "each and every month," and (5) included real estate taxes in the "monthly installment payment." We disagree.

¶ 22 "The principal objective in construing a contract is to determine and give effect to the intention of the parties at the time they entered into the contract." *Bright Horizons Children's Centers, LLC v. Riverway Midwest II, LLC*, 403 Ill. App. 3d 234, 247, 931 N.E.2d 780, 791 (2010). In determining the intent of the parties, a trial court must consider the entire contract and not focus on isolated sections of the instrument. *Richard W. McCarthy Trust Dated September 2, 2004 v. Illinois Casualty Co.*, 408 Ill. App. 3d 526, 535, 946 N.E.2d 895, 903 (2011). "If the language of the contract is clear and unambiguous, the intent of the parties must be determined solely from the language of the contract document itself, which should be given its plain and ordinary meaning, and the contract should be enforced as written." *Id*.

¶ 23 When the parties to an agreement dispute the meaning of a contractual provision, the threshold issue is whether the contract is ambiguous. *Bright Horizons Children's Centers, LLC*, 403 Ill. App. 3d at 247, 931 N.E.2d at 792. An ambiguity exists when the contractual language is susceptible to more than one meaning or is obscure in meaning because of an indefiniteness of expression. *Id*. "If a court determines that a contract is ambiguous, extrinsic evidence may be considered by the trier of fact in determining the intent of the parties." *Richard W. McCarthy Trust Dated September 2, 2004*, 408 Ill. App. 3d at 535, 946 N.E.2d at 903. An ambiguity does not exist, however, when the parties merely disagree about the interpretation of the contractual provision. *Bright Horizons Children's Centers, LLC*, 403 Ill. App. 3d at 247, 931 N.E.2d at 792.

¶ 24 As previously stated, the controversy between Irwin and Shymansky concerns whether the August 2006 contractual agreement they entered into was a contract for deed or a lease with option to purchase. Before reaching the merits of Irwin's argument, we first define the two types of agreements at issue.

¶ 25 In *Terraces of Sunset Park, LLC v. Chamberlin*, 399 Ill. App. 3d 1090, 1093-94, 929 N.E.2d 1161, 1165 (2010), the Second District defined an option contract, as follows:

> "An option contract is an agreement in which one party (the

> optionor), based upon consideration given to him by the optionee, binds himself to perform a certain act, at the sole power and discretion of the optionee to accept upon terms specified, at which time it is converted from a bilateral to a unilateral contract and cannot be withdrawn by the optionor during the option period. [Citations.] The owner does not then sell or agree to sell his property or any interest in it, but he sells the right or privilege to buy at the option of the other party. [Citation.] The other party does not receive the property or an interest therein or an agreement that he will receive the property; he receives the right to call for and receive the property if he so decides. [Citation.] An option contract has two elements: (1) an offer to do something, or to forbear, which does not become a contract until accepted; and (2) an agreement to leave the offer open for a specified time."

¶ 26 Alternatively, a contract for deed is as a "conditional sales contract for the sale of real property" which is also referred to as a installment land contract. Black's Law Dictionary 320 (7th ed. 1999). "[U]nder a typical contract-for-deed arrangement, an agreement is reached that the property may be bought if the intended buyer first makes all the payments and complies with all other contractual obligations." *Sieron & Associates, Inc. v. Department of Insurance*, 368 Ill. App. 3d 181, 185, 857 N.E.2d 805, 811 (2006).

¶ 27 In this case, the underlying controversy between Irwin and Shymansky pertains to ownership of the property at issue. Thus, as we have previously stated, this controversy–as framed by the parties–concerns whether their agreement was a contract for deed or a lease with an option to purchase. In this regard, Irwin, relying on the aforementioned sections of the August 2006 agreement, claims that an ambiguity exists, which she asserts creates a genuine issue of material fact. We conclude, however, based upon our review of the plain language of the entire written instrument, that the agreement between Irwin and Shymansky is a lease with option to purchase–that has since expired–instead of a contract for deed because Irwin (1) did not receive any equitable right or interest in the real estate located at Whisperglen Lane and (2) was not bound to purchase the property but instead, had discretion to opt out of that purchase by failing to obtain the appropriate financing before September 15, 2009. See *Terraces of Sunset Park, LLC*, 399 Ill. App. 3d at 1093, 929 N.E.2d at 1164-65 (concluding that the written agreement between the parties was not a contract for the sale of property because (1) no equitable right or property interest was transferred and (2) the plaintiff could have "walked away" from the deal by failing to comply with any one of three different criteria).

¶ 28 Here, the plain, unambiguous language of the August 2006 agreement showed that in exchange for $10,000 consideration and an agreement to make certain other nonrefundable monthly payments, Shymansky provided Irwin the option to purchase the residential property Shymansky owned. In so doing, Shymansky agreed to forego selling the property to another purchaser by leasing the property to Irwin for a three-year period at which time Irwin could have (1) exercised her option to purchase the property or (2) allowed that option to expire, as occurred in this case.

¶ 29 Accordingly, we reject Irwin's argument that the trial court erred by granting summary judgment in Shymansky's favor.

¶ 30 B. The Trial Court's Award of Attorney Fees

¶ 31 Irwin next argues that the trial court erred by awarding Shymansky attorney fees. We disagree.

¶ 32 "Ordinarily, the losing party in a lawsuit cannot be required to pay attorney fees to the winning party." *Bright Horizons Children Centers, LLC v. Riverway Midwest II, LLC,* 403 Ill. App. 3d at 254, 931 N.E.2d at 798. An exception to this rule arises when parties agree to a contractual fee-shifting provision for an award of attorney fees. *Id*. In such instances, a reviewing court is required to strictly construe a contractual provision for attorney fees to mean nothing more, but also nothing less, than the plain language of the provision. *Bright Horizons Children Centers, LLC*, 403 Ill. App. 3d at 254-55, 931 N.E.2d at 798.

¶ 33 As previously noted, the contractual agreement between Irwin and Shymansky contained the following fee-shifting provision for the award of attorney fees:

> "In the event that any action is filed in relation to this agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorney fees."

¶ 34 In support of her argument, Irwin contends that (1) the term "filed in relation to this agreement" is vague, (2) this court can conclude that no successful or prevailing party exists, (3) her motion for declaratory judgment was necessitated by Shymansky's poor draftsmanship of their agreement, and (4) a fee-shifting provision for the award of attorney fees should not be enforced because the trial court was merely interpreting the agreement. See *Helland v. Helland*, 214 Ill. App. 3d 275, 278, 573 N.E.2d 357, 359 (1991) ("A provision for attorney fees in a note does not generally entitle a party to fees generated in interpreting the note, but rather only those incurred in enforcing the note"). We are not persuaded.

¶ 35 Here, the record shows that Irwin entered into a contractual agreement with Shymansky, which contained the aforementioned fee-shifting provision pertaining to attorney fees. The plain, unambiguous language of that provision permitted the prevailing party–namely, Shymansky–to recoup her reasonable attorney fees from Irwin, the unsuccessful party, for *any* action filed in connection with that agreement. Further, we do not agree with Irwin's contention that the trial court was merely interpreting the contract. In this regard, the court's grant of summary judgment in Shymansky's favor enforced Shymanshy's right to possession of the property, subject to a clear title, as well as past due rent owed by Irwin. We thus reject Irwin's argument that the court erred by awarding Shymansky attorney fees.

¶ 36 In so concluding, we also reject Irwin's alternative argument that the trial court's award of $20,000 in attorney fees was excessive.

¶ 37 A trial court has broad discretionary powers in awarding attorney fees, the exercise of which this court will not reverse unless the court has abused its discretion. *Richardson*, 375 Ill. App. 3d at 314, 873 N.E.2d at 573.

¶ 38 Here–as reflected in the trial court's written order–the court scrutinized the detailed time records provided by Shymansky and applied the appropriate factors. In so doing, the court found that $20,000 in attorney fees, which was a reversal of its original $7,000 award and a downward departure from Shymansky's original request, was a reasonable amount. Given this record, and contrary to Irwin's claim, we conclude that the court did not abuse its discretion by ordering Irwin to pay $20,000 toward Shemansky's attorney fees.

¶ 39 III. CONCLUSION

¶ 40 For the reasons stated, we affirm the trial court's judgment.

¶ 41 Affirmed.

¶ 42 JUSTICE APPLETON, specially concurring in part and dissenting in part:

¶ 43 I agree that summary judgment for defendant was proper. I dissent from the majority's decision with regard to attorney fees. I note that for a mere fraction of the attorney fees spent in this case, an easily construed contract for a lease with an option to purchase could have been created, which would have obviated the need for this litigation and the fees accrued by both parties.

¶ 44 As the litigation was necessitated by defendant's poor drafting of the agreement, I would have considered that fact in the award of attorney fees.