Kim v. Han

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Court of Appeals Division II

State of Washington

Opinion Information Sheet

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Title of Case: Joo H. Kim, Respondent v. Tae C. Han & Sue N. Han, Appellants

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JUDGES

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JOO H. KIM, No. 31660-9-II

Respondent,

v.

TAE C. HAN and SU N. HAN, UNPUBLISHED OPINION

Appellants.

ARMSTRONG, P.J. -- Tae C. Han and Su N. Han appeal a summary judgment in favor of Joo H. Kim. Kim purchased a deli and gas station from the Hans, who warranted that the equipment on the property would be in good working condition at closing. After closing, Kim discovered that although the pumps worked, he could not legally operate them because they did not comply

with air quality rules and regulations. Kim paid to bring the pumps into compliance, and then sued the Hans for breach of contract; both parties moved for summary judgment. The trial court construed the good working condition provision to mean not just that the pumps worked, but that they complied with all legal regulations. Because the pumps did not, the trial court granted Kim summary judgment for the cost of repairs. We hold that an issue of material fact exists as to what the parties intended by 'in good working conditions'; accordingly, we reverse and remand.

FACTS

In February 1995, Tae C. Han and Su N. Han purchased the Four Corners Grocery and Deli, which included a gas station. The Hans hired contractors to convert the station to a Chevron station. They assumed that the contractors would upgrade the system in compliance with all government regulations. Tae also admits that when he originally purchased the gas station, he expected that the gasoline equipment would comply with the law.

On September 5, 1996, the Hans agreed to sell the property to Joo H. Kim for $1,400,000, plus inventory. The purchase and sale agreement contains certain warranties and an addendum with 12 contingencies. The warranties state:

Seller warrants that (a) to the best of seller's knowledge, any improvements on the property meet all applicable building and zoning regulations; (b) Seller has received no claim or notice of any building or zoning violations; and (c) to the best of seller's knowledge, there are no material defects in any improvements on the property, or in the property subsurface, with the exception of the following: none.

Clerk's Papers (CP) at 6. The contingencies paragraph states, '{t}his agreement is conditioned upon . . . Addendum #1.' CP at 6. Addendum #1 states, 'THE OFFER IS CONTINGENT UNTIL THE FOLLOWING ITEMS ARE SATISFACTORILY MET PRIOR TO CLOSING.' CP at 7. Included in Addendum #1 are the following:

5. COMPLETE INSPECTION AND APPROVAL OF SAID PROPERTY OF PURCHASER'S CHOICE.

6. SELLER WILL HOLD ANY HARMLESS FOR PURCHASER FROM ANY CONTAMINATION WORK OR ANY LAW SUIT FROM ANY LIABILITY ON CONTAMINATION WORK REQUIRED BY ANY/ALL GOV. AGENCIES.

. . .

9. ALL EQUIPMENTS HAVE TO BE IN GOOD WORKING CONDITIONS AT THE CLOSING.

CP at 7.

Before the sale closed, an inspector from Puget Sound Clean Air Agency (PSCAA),1 Stephen Fry, issued the Hans a notice of violation because the station was not registered with PSCAA, as required by law. Tae signed the notice. Fry found the station had not been registered and noted several defects in the pumps.

On May 6, 1997, Jay Willenberg, senior engineer2 at PSCAA, wrote the Hans that the station was violating an agency regulation because they had three gasoline tanks with unapproved equipment. Willenberg's letter notified the Hans that if they did not file a notice of construction and application for approval of their system within 30 days, they would be in

violation of the law.

Tae sent his application to PSCAA, but Larry Vaughn, a PSCAA engineer, denied it. Vaughn explained that the Hans' equipment was not certified as the agency regulations required and that their vapor recovery equipment should be installed with a 'dual point Stage 1, not coaxial.' CP at 92.

Vaughn also explained that until the corrections were made:

{PSCAA}'s policy . . . is to allow the station to continue to operate the system provided: 1) it passes the required compliance tests, 2) the owner must also agree to install dual point Stage 1 system within 6 months of {PSCAA}'s Notice of Construction approval, and 3) we may also need a legal document, an Assurance of Discontinuance, drafted and signed by {PSCAA} and you to resolve compliance issues. This document requires you to install the dual point Stage 1 system prior to an agreed upon date within the six months.

CP at 92 (emphasis added). The letter directed the Hans to submit a new notice of construction application or an amended notice within 10 working days. Accordingly, Tae contacted Vaughn to correct his application so that it met agency standards.

On May 30, 1997, the sale from the Hans to Kim closed. The Hans did not tell Kim about their communications with PSCAA or that the pumps did not conform to PSCAA regulatory standards. Kim never inspected the premises before closing.

After taking possession of the property, the PSCAA notified Kim that the Hans had been given notice to install equipment necessary for the proper functioning of the gasoline station and had failed to make the

necessary changes. Kim installed the agency-required equipment at a cost of $59,491.31. He then sued the Hans to recover these costs. He claimed that the real estate purchase and sale agreement required 'all equipments to be in good working conditions at the closing,' and that the equipment was not in good working condition because it was unlawful to operate. CP at 1, 4.

Kim moved for summary judgment. In his affidavit, he explained that the pumps did not comply with the law, that the Hans never told him about the agency contact, and that he intended the phrase 'in good working conditions' to mean that 'when Defendants turned the business over to me I could immediately begin legally selling gasoline to the public without having to modify the equipment.' CP at 30.

The Hans also moved for summary judgment. They submitted an affidavit from expert witness, Barry Evans, who opined that the phrase 'in good working order' meant only that the pumps could pump gas, not that they complied with all legal regulations. The trial court ruled that Evans was not qualified as an expert in the sale of gas stations and struck his affidavit.

The court then granted Kim's motion for summary judgment, issuing findings of fact and conclusions of law. The court found there were no disputed issues of material fact about the contract and the Hans' breach. Specifically, the court held:

{T}he parties signed a real estate contract for the sale of a grocery store and gasoline station in which Defendants explicitly warranted that all equipment was in good working condition. However, the gasoline system was

not in good working condition as of the date of sale. By prior order of the PSCAA, it was illegal to pump gas at the Four Corners Grocery and Deli without replacing the vapor recovery system. Accordingly, Defendants were in breach of their contract with Plaintiff.

CP at 253.3

The court also found no dispute about how much Kim spent to cure the breach. In its judgment, the court ordered the Hans to pay Kim $59,491.31 for breach of contract and $28,832.27 in prejudgment interest for a total of $88,323.58. The court also taxed the Hans for Kim's statutory costs and attorney fees.

ANALYSIS

I. Summary Judgment

We review a summary judgment de novo. See Ret. Pub. Employees Council of Wash. v. Charles, 148 Wn.2d 602, 612, 62 P.3d 470 (2003). Because of this, we give no deference to the trial court's findings of fact. See Hubbard v. Spokane County, 146 Wn.2d 699, 706 n.14, 50 P.3d 602 (2002) (citing Duckworth v. City of Bonney Lake, 91 Wn.2d 19, 21-22, 586 P.2d 860 (1978)).

Summary judgment is appropriate only if the pleadings, affidavits, depositions, and admissions demonstrate the absence of any genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. CR 56(c); Charles, 148 Wn.2d at 612. We consider the facts and all reasonable inferences from them in the light most favorable to the nonmoving party. Wilson v. Steinbach, 98 Wn.2d 434, 437, 656 P.2d 1030

(1982). The motion may be granted only if reasonable persons could reach but one conclusion. Go2Net, Inc. v. CI Host, Inc., 115 Wn. App. 73, 83, 60 P.3d 1245 (2003).

II. Summary Judgment on Contracts

We construe contracts to ascertain the parties' intent. See Corbray v. Stevenson, 98 Wn.2d 410, 415, 656 P.2d 473 (1982) (citing Ames v. Baker, 68 Wn.2d 713, 717, 415 P.2d 74 (1966)); see also, In re Estates of Wahl, 99 Wn.2d 828, 831, 664 P.2d 1250 (1983). As part of this effort, we read the contract as a whole and we will not read an ambiguity into a contract that is otherwise unambiguous. Mayer v. Pierce County Med. Bureau, Inc., 80 Wn. App. 416, 420, 909 P.2d 1323 (1995) (citing Felton v. Menan Starch Co., 66 Wn.2d 792, 797, 405 P.2d 585 (1965)); see also, Corbray, 98 Wn.2d at 415.

If a contract is unambiguous, or its words in context have but one reasonable meaning, a court may grant summary judgment. BNC Mortgage, Inc. v. Tax Pros, Inc., 111 Wn. App. 238, 250, 46 P.3d 812 (2002) (citation omitted). This is so even if the parties dispute the legal effect of a term or provision. Mayer, 80 Wn. App. at 420; see also, Go2Net, 115 Wn. App. at 85-86. Summary judgment is not appropriate when a contract is ambiguous or it has two or more reasonable but competing meanings. Go2Net, 115 Wn. App. at 83 (citing Hall v. Custom Craft Fixtures, Inc., 87 Wn. App. 1, 9, 937 P.2d 1143 (1997)); Tanner Elec. Co-op v. Puget Sound Power & Light Co., 128 Wn.2d 656, 674, 911 P.2d 1301 (1996) (holding that '{i}nterpretation of a contract provision is a question of law only when (1) the interpretation does not depend on the use of extrinsic evidence, or (2) only one reasonable inference can be drawn from the extrinsic

evidence'). The finder of fact must resolve any ambiguity in a contract. BNC Mortgage, 111 Wn. App. at 250-51.

A. The Plain Language

The Hans state that the agreement does not define 'in good working condition,' and neither do legal or standard dictionaries. But Webster's Third New International Dictionary defines 'working order' as 'a condition of a machine in which it functions according to its nature and purpose.' Webster's Third, at 2635 (1969) (emphasis added). The Hans argue that 'order' and 'condition' are synonymous. Indeed, one of the various definitions of 'condition' is 'a mode or state of being,' and includes 'good condition' as 'the state of being fit.' Webster's Third, at 473 (1969). But these definitions do not help the Hans make their case that the phrase 'in good working conditions' is unambiguous and warranted only that the pumps worked. It could just as easily mean that they were fit for their purpose the commercial sale of gas to customers and the legal operation of a gas station. Both interpretations are reasonable; thus, the dictionary definitions do not lead us to only one reasonable interpretation.

Further, the contract read as a whole does not assist in understanding the scope of 'in good working conditions.' The Hans argue that because the good working condition language is not in the warranty section of the purchase and sale agreement, the parties did not intend it to be a warranty; rather, the good working condition language was a contingency of Kim's offer, to be satisfied before closing. We agree that the placement of the disputed language has some relevance to the parties' intent, but it

is not conclusive. In another provision of the addendum, the Hans agreed not to compete against Kim for five years and within five miles. In yet another 'contingency,' the Hans agreed to hold Kim harmless from 'any contamination work or any law suit from any liability on contamination work required by any/all Gov. agencies.' CP at 7. It is unlikely the parties intended this to cover only claims made against Kim before he became the owner. In short, the provisions of Addendum #1 appear to be a mix of contingencies to be satisfied before closing and promises the parties intended to continue after closing. On its face, Addendum #1 does not demonstrate only one reasonable interpretation of good working conditions.

B. Other Legal Authority

The parties cite and discuss analogous cases that are not helpful. None establishes a legal meaning of the disputed language or whether the language implies compliance with all laws and regulations. See W. Farquhar Mach. Co. v. Pierce, 108 Wash. 621, 624, 185 P. 570 (1919) (addressing whether written contract warranted that a sawmill engine was 'in fair condition and good working order,' but not addressing whether legality of use would affect analysis); Pagliaro v. Maples, 75 Wn.2d 580, 582, 452 P.2d 727 (1969) (addressing verbal warranty that the fireplaces were in 'good working order,' but not answering whether 'good working order' reasonably encompasses compliance with the laws); Lacey Plywood Co. v. Wienker, 42 Wn.2d 719, 724-25, 258 P.2d 477 (1953) (deciding whether a plywood press was in 'good working order' where parts of the press were defective and the machine 'might possibly operate but it wouldn't operate satisfactorily,' but not ruling out whether the condition includes compliance with the laws

and regulations); Stryken v. Panell, 66 Wn. App. 566, 568, 832 P.2d 890 (1992) (regarding an express warranty that the septic tank (1) was in good working condition; and (2) met all applicable governmental, health, construction and other standards).

C. The Context Rule

Under the context rule, courts may consider extrinsic evidence to resolve an ambiguity in a contract. Berg v. Hudesman, 115 Wn.2d 657, 667, 801 P.2d 222 (1990); Safeco Ins. Co. of Illinois v. Auto. Club Ins. Co., 108 Wn. App. 468, 478, 31 P.3d 52 (2001).

'Admissible extrinsic evidence does not include (1) evidence of a party's unilateral or subjective intent as to the meaning of a contract word or term, (2) evidence that would show an intention independent of the contract, or (3) evidence that varies, contradicts or modifies the written language of the contract.' Go2Net, 115 Wn. App. at 84 (citations omitted). Further, ''mutual intent may be established directly or by inference--but any inference must be based exclusively on the parties' objective manifestations.'' Go2Net, 115 Wn. App. at 85 (quoting Hall, 87 Wn. App. at 9).

Here, neither party has submitted adequate or acceptable affidavits establishing the meaning of 'in good working conditions' as they intended it. The Hans assert only that the phrase had 'one reasonable, unambiguous meaning: that the gas pumps pumped gas when the sale closed'; they offer no objective manifestation evidence of the parties' intent.4 Br. of Appellant at 13.5 Instead, they emphasize that Kim should have inspected the premises before buying. And Kim submitted an affidavit attesting only to

his general, unilateral intent when he signed the contract. The parties have submitted no evidence of their negotiations, discussions, or correspondence about what they thought 'in good working conditions' meant; and they do not direct us to any 'objective' manifestations of their intent regarding that phrase.

''Interpretation of a contract provision is a question of law only when (1) the interpretation does not depend on the use of extrinsic evidence or (2) only one reasonable inference can be drawn from the extrinsic evidence.'' Go2Net, 115 Wn. App. at 85 (quoting Tanner, 128 Wn.2d at 674). Here, the language and context of the agreement do not lead to only one reasonable interpretation of the disputed language; and neither party has offered extrinsic evidence that leads inexorably to only one interpretation. Accordingly, neither party is entitled to summary judgment. Go2Net, 115 Wn. App. at 85 (citing Hall, 87 Wn. App. at 9).

D. Public Policy

Finally, the lower court was satisfied that by reading the language in light of public policy, it had to include compliance with statutes and regulations. Generally, where a contract is fairly open to two constructions, one of which would make the contract lawful and the other unlawful, the court will adopt the lawful interpretation. 17A Am. Jur. 2d Contracts sec. 340 (2004); 11 Williston on Contracts sec. 32:11 (4th ed. 1999). Where a contract is potentially void as against public policy because it conflicts with a statute, we construe the contract to harmonize with the statute if reasonably possible. 17A Am. Jur. 2d Contracts sec. 340 (2nd ed. 2004); 11 Williston on Contracts sec. 32:18 (4th ed. 1999 &

Supp. 2004) (citing Cruz v. State Farm Mut. Auto. Ins. Co., 466 Mich. 588, 599, 648 N.W.2d 591 (2002)). Further, agreements should be construed in a way consistent with promoting the general welfare. See generally, 11 Williston on Contracts sec. 32:18 (4th ed. 1999 & Supp. 2004) (regarding contracts between public entities and private parties).

As Kim points out, the Washington Legislature has clearly declared a commitment to clean air for the protection of the public.

It is declared to be the public policy to preserve, protect, and enhance the air quality for current and future generations. Air is an essential resource that must be protected from harmful levels of pollution. Improving air quality is a matter of statewide concern and is in the public interest.

RCW 70.94.011.

But reading the contract in the Hans' favor, i.e., holding that 'in good working conditions' means only that the pumps 'worked,' does not necessarily conflict with these policies. It is not illegal to sell a gas station with pumps that need to be brought into compliance with government regulations. And the contract did not attempt to relieve anyone of compliance with the law. Regardless of what the phrase 'in good working conditions' means, the pumps had to be, and have been brought into compliance with the regulations. The real issues are: (1) what did the parties intend by the phrase 'in good working conditions' and, therefore, (2) who should pay for compliance with the law now that compliance has been achieved?6 The fact finder must decide what the parties intended.

Reversed and remanded.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Armstrong, P.J.

We concur:

Hunt, J.

Van Deren, J.

1 At the time the inspector first visited the Chevron station, PSCAA was called the 'Puget Sound Air Pollution Control Agency.' For clarity, we refer to the agency as PSCAA throughout this opinion.

2 Senior Permit Engineer at the time of the inspection.

3 The court also reasoned:

In contract law in the State of Washington, there's a provision that courts have to take public policy into consideration when more than one determination is possible and a contract should be construed in favor of the public interest. Thus, if one of the potential interpretations is beneficial to the public, the court should give effect to that interpretation.

CP at 324.

4 They did offer an affidavit from Barry Evans, a real estate broker whose firm had handled three gas station sales in eleven years; but the court struck his affidavit, finding him unqualified. Under either discretionary

or de novo review, we agree.

5 But, as the lower court observed, '{T}he seller's behavior after notification of the violation indicates an understanding that he also understood that these pumps should be in compliance with the regulations.' CP at 260.

6 As counsel for the Hans state at the summary judgment hearing:

What we're talking about is who pays for it. . . . Does the person pay for it who bargained for it. . . .we're not going to have anybody breathing bad air if we can help it. But it's only between these two guys and they decided who is going to pay. . . . We're only talking about who has to pay for it.

CP at 325-26.