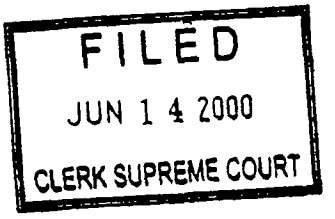
IN THE COURT OF APPEALS OF IOWA

No. 0-153 / 99-0478
Filed June 14, 2000

GERALD E. JOYNT,
Plaintiff-Appellee,

vs.

WILSON TRAILER CO., An Iowa Corporation,
Defendant-Appellant.



Appeal from the Iowa District Court for Woodbury County, Philip S. Dandos, Judge.

Defendant appeals from the district court judgment entered in favor of plaintiff on his breach of contract claim. Defendant contends the court erred by finding plaintiff's actions in working for a competitor did not violate the parties' non-compete agreements following defendant's purchase of plaintiff's business, and that defendant's failure to make a contract payment was an unexcused breach of the parties' agreement. **AFFIRMED.**

Paul W. Deck, Jr. of Deck & Deck Law Offices, Sioux City, for appellant.

Jeffrey A. Neary of Neary & Flannery, Le Mars, for appellee.

Heard by Vogel, P.J., and Mahan and Miller, JJ.

MILLER, J.

Defendant Wilson Trailer Company (Wilson) appeals from a judgment entered by the district court, following nonjury trial, in favor of Plaintiff Gerald E. Joynt. Wilson contends the trial court erred in concluding Joynt's actions as sales manager for Trail King Industries, Inc. (Trail King) were not subject to non-compete agreements contained in a December 1980 "Sale of Certain Assets" agreement and a December 1980 "Hold Harmless Agreement," both between Multech Corporation (Multech) and Wilson. Wilson also contends the trial court erred in concluding an inference cannot be drawn from the agreements between Multech and Wilson that would bar Joynt from selling competing products, and erred in concluding Wilson's withholding from Joynt a certain final contract payment constituted an unexcused breach of an "Independent Contractor Agreement" between Wilson and Joynt. Finding no error by the trial court, we affirm.

In December 1980, Multech, an Iowa corporation whose sole shareholder and officer was Gerald Joynt, sold its "Muv-All" trailer product line to Wilson. The terms of the sale included all aspects of the product line including certain patents, customer lists, work in progress, inventory, raw materials, blueprints and designs. The sale price was $996,000. As part of the "Sale of Certain Assets" agreement between Multech and Wilson, Multech agreed not to engage, directly or indirectly, in the manufacture or sale of trailers/semitrailers similar to the Muv-All product line for five years. In connection with this sale Wilson and Multech also executed a "Hold Harmless Agreement," in which Multech, among other things, covenanted "not to engage, directly or indirectly, in the manufacture and/or sale

of any trailers/semitrailers similar to the 'Muv-All' product line of trailers being sold herein for a period of five years."

Wilson and Joynt also agreed Joynt would receive a portion of the sale price, to be accomplished by a separate Independent Contractor Agreement. That agreement provided Wilson would pay $130,000 of the sales price, in five yearly installments of $26,000, directly to Joynt in return for Joynt's personal agreement to, among other things, "not participate in any work inventing, developing, and creating new ideas for anyone who might be considered as being in direct competition with [Wilson's] pursuit of manufacturing 'Muv-All' product line of trailers."

Multech sought bankruptcy protection in June 1982. Joynt became employed by Trail King, a potential Muv-All competitor and manufacturer located in South Dakota, on August 31, 1983. Wilson contacted Joynt to express concern that Joynt's new employment might violate the non-compete agreements. Joynt assured Wilson his work with Trail King involved only product lines which did not compete with the Muv-All trailer.

In 1985, Wilson became aware Joynt, on behalf of Trail King, had solicited Hertz Equipment Rental Corporation, a former customer of Multech, to sell trailers similar to and in direct competition with the Muv-All trailer line. Wilson then withheld the final $26,000 payment due under the Independent Contractor Agreement. Joynt filed this action in July 1992, contending Wilson breached the Independent Contractor Agreement by not paying the final installment. After numerous continuances, trial was held to the court on December 1, 1998. The trial court held for the Joynt, concluding (1) of the three non-compete

agreements, only two forbade the sale of a line of trailers that competed with the Muv-All trailer, and those agreements only expressly bound Multech, and not Joynt personally; (2), the third non-compete agreement, found in the Independent Contractor Agreement, was not violated by Joynt as it did not forbid Joynt, in his individual capacity, from engaging in sale of a competitive line of trailers; (3) the corporate veil of Multech should not be pierced so as to hold Joynt personally bound to the non-compete agreements between Multech and Wilson, and (4) it would not infer from the circumstances surrounding the sale of the Muv-All trailer product line the parties intended to bind Joynt personally to the more restrictive non-compete agreements found in the Sale of Certain Assets agreement and Hold Harmless Agreement. The court entered judgment in favor of Joynt in the amount of $26,000 plus pre-judgment interest. Wilson appeals.

This breach-of-contract case was pled as a law action and tried to the court. We review for correction of errors of law. Iowa R. App. P. 4. The trial court's findings of fact have the effect of a special verdict and are binding upon us if supported by substantial evidence. Iowa Rs. App. P. 4, 14(f)(1). We view the evidence in a light most favorable to the trial court's judgment. *See Van Oort Construction Co., Inc., v. Nuckoll's Concrete Service, Inc.*, 599 N.W.2d 684, 689 (Iowa 1999). In the sale-related covenant not to compete cases we do not apply a 'strict construction,' but do hold the contract, being in restraint of trade and personal liberty, should not be construed beyond its fair import. *Thomas v. Thomas Truck & Caster Co.*, 228 N.W.2d 52, 55 (Iowa 1975). The parties do not dispute the facts, therefore, we must determine whether the law was correctly applied.

In this breach-of-contract claim, Joynt must prove: (1) the existence of a contract between himself and Wilson; (2) the terms and conditions of the contract; (3) he performed all the terms and conditions required under the contract; (4) Wilson breached the contract in some particular way; and (5) he has suffered damages as a result of the breach. *See Molo Oil Co. v. River City Ford Truck Sales, Inc.*, 578 N.W.2d 222, 224 (Iowa 1999). A party breaches a contract when, without legal excuse, it fails to perform any promise which forms a whole or a part of the contract. *Id.* This case focuses upon the fourth and third elements of a breach-of-contract claim, whether Wilson breached the contract without legal excuse by refusing to make the last $26,000 payment to Joynt, or whether Joynt failed to perform all the terms and conditions required of him under the contract, thus himself breaching the contract and excusing Wilson's refusal to pay.

Wilson first contends the trial court erred in concluding Joynt's action in soliciting sales of a product in direct competition with the Muv-All line was not subject to the non-compete clauses contained in the Sale of Certain Assets agreement and Hold Harmless Agreement. Specifically, Wilson argues the holding of *Tobin v. Cody*, 180 N.E.2d 652 (Mass. 1962) applies by analogy.

In *Tobin*, the Massachusetts Supreme Judicial Court held when sellers of *stock* have been active participants in a corporation and are in a position to control or affect the corporation's goodwill, not only may they validly bind themselves by an express promise not to compete, but in appropriate circumstances such a promise can be implied in the *sale of the stock* itself. *Tobin*, 180 N.E.2d at 656. The *Tobin* court concluded a transfer of goodwill

occurred because the sellers completely divested themselves of their interest in the corporation and transferred that interest to the buyers. *Id.* at 655. Because part of the interest transferred to the buyers was the goodwill of the corporation, then by necessary implication, the sellers bound themselves not to compete with the buyers. *Id.* at 656.

We note we need not decide the question, not previously decided by our courts, whether the complete sale of a product line of a corporation necessarily transfers the goodwill of that product line, and thus by implication precludes the corporation from competing with the buyer in that product line. In this case, Multech and Wilson expressly contracted that Multech would not compete with the product line Wilson purchased. Wilson asks this court to extend the express non-compete covenant to also bind the sole shareholder of the selling corporation, though the agreements do not expressly prohibit him from so competing.

It is well settled that:

> Courts are slow to find implied covenants. The obligation must arise from the language used or it must be indispensable to give effect to the intent of the parties; it must have been so clearly within their contemplation that they deemed it unnecessary to express it. It can be justified only on the ground of legal necessity and can arise only when it can be assumed it would have been made part of the agreement if attention had been called to it.

East Broadway Corp. v. Taco Bell Corp., 542 N.W.2d 816, 819 (Iowa 1996) (quoting *Fashion Fabrics of Iowa, Inc. v. Retail Investors Corp*, 266 N.W.2d 22, 27 (Iowa 1978)).

We do not believe we can imply from the Sale of Certain Assets agreement or Hold Harmless Agreement that Joynt was personally bound not to

sell a competing line of trailers, or that the holding of *Tobin* is applicable to this set of facts. Joynt did not own the Muv-All product line, Multech did. Joynt personally had no goodwill to sell to Wilson. *See Tobin*, 180 N.E.2d at 656 ("While it may be true that the good will of the business belongs to the corporation as an entity and not to the stockholders as such, the value of the good will is reflected in the value of the stock which was the subject of the sale."). Further, Multech sold assets to Wilson, neither Joynt nor Multech sold stock to Wilson, and Multech remained in business after the sale. Under this set of facts we will not infer an agreement by Joynt personally to not sell a competing product line for another entity.

Wilson asks us to look at extrinsic evidence, such as antecedent negations, attendant circumstances, and the objects the parties were striving to obtain, to show the parties intended to bind Joynt personally to the non-compete clauses in the Sale of Certain Assets agreement and Hold Harmless Agreement. However, the law is clear that where the words of a contract are plain and clear, evidence of surrounding circumstances to aid interpretation is not admissible, *Hawkeye Land Co. v. Iowa Power and Light Co.*, 497 N.W.2d 480, 485 (Iowa App. 1993) (citing *Hamilton v. Wosepka*, 261 Iowa 299, 308, 154 N.W.2d 164, 168 (1967)), and outside evidence is admissible to construe the language of a contract only after the language is found to be ambiguous and subject to two different reasonable interpretations, *Uhl v. City of Sioux City*, 490 N.W.2d 69, 73 (Iowa App. 1992). The language in the contracts is quite unambiguous. In no way can "Multech Corporation" be confused with or misunderstood to mean "Gerald Joynt," as it is clear "[a] corporation is an entity separate and distinct

from its stockholders." *Midwest Management Corp. v. Stephens*, 291 N.W.2d 896, 902 (Iowa 1980). We do not turn to any extrinsic evidence to determine the intent of the parties in this case.

Further, we can infer the intent of the parties by comparison of the contracts.[1] When ascertaining the intent of the parties from the contracts, we apply the rule of construction *expressio unius est exclusio alterius*.[2] Had the parties intended to prohibit Joynt from selling a competitive trailer line, the parties certainly knew how to draft contract language to accomplish this. The Sale of Certain Assets agreement and Hold Harmless Agreement stated "[*Multech*] agrees not to engage . . . in the *sale* of any trailers/semitrailers similar to the 'Muv-All' product line. . . ." (Emphasis added). On the other hand, the Independent Contractor Agreement stated "[*Joynt*] will not participate in any work *inventing, developing, and creating* new ideas for anyone . . . in direct competition with the . . . 'Muv-All' product line of trailers." (Emphasis added). We therefore infer from the specific language in the three contracts concerning who was bound by the non-compete clauses, and the extent of those non-compete clauses, the parties did not intend to include Joynt in the non-compete clauses found in the Sale of Certain Assets agreement and Hold Harmless Agreement.

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[1] Joynt asks us to apply the rule of interpretation *contra preferentum*, which states "an ambiguous provision is construed most strongly against the person who selected the language." Black's Law Dictionary 327 (6th ed. 1990). The trial court also relied on the rule, citing *Kerndt v. Rolling Hills Nat'l Bank*, 558 N.W.2d 410, 416 (Iowa 1997). We cannot rely on this rule here, however, because it only applies when the contract language is found to be ambiguous. *See Continental Ins. Co. v. Bones*, 596 N.W.2d 552, 558 (Iowa 1999) ("Unless there are two reasonable meanings from which to choose, however, the rule that a contract is construed against the party who drafted it does not come into play."). Because we have found the language to be unambiguous, as did the trial court, we do not construe the contracts against the drafter, Wilson. Instead, we look to ascertain the intent of the parties as stated within the four corners of the contracts.

[2] "When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation my be inferred." Black's Law Dictionary 581 (6th ed. 1990).

The trial court did not err by concluding Joynt did not breach the agreements, concluding Wilson did breach the Independent Contractor Agreement, and entering judgment for Joynt.

AFFIRMED.