FILED
DEC 30 1981
CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

Filed December 30, 1981

GENERAL EQUITIES OF IOWA, INC.,

Plaintiff-Appellant,

vs.

W. A. DUNN, LOLA DUNN, Husband and wife, and HELEN DUNN,

Defendants-Appellees.

1-303
2-65864

Appeal from Hamilton District Court, R. K. Richardson, Judge.

Plaintiff appeals the trial court's determination defendants were not liable, under a contract for the sale of the stock of a corporation, for an undisclosed contingent tax liability. REVERSED FOR DETERMINATION OF THE AMOUNT OF DAMAGES DUE TO PLAINTIFF FROM DEFENDANT CONSISTENT WITH THIS OPINION.

Don W. Burington and N. LeRoy Walters of Laird, Burington, Bovard, Heiny, McManigal & Walters, Mason City, for plaintiff-appellant.

Patrick B. Chambers of Lund & Chambers, Webster City, for defendants-appellees.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

Plaintiff appeals the trial court's determination defendants were not liable, under a contract for the sale of the stock of a corporation, for an undisclosed contingent tax liability. We reverse.

The facts are generally undisputed. Plaintiff General Equities of Iowa, Inc., contracted with defendants, W. A. Dunn, Lola Dunn and Helen Dunn (the Dunns), for the purchase of sixty-seven percent of the voting stock of Dunn, Incorporated. After consummation of the sale, the Internal Revenue Service and the Iowa Department of Revenue disallowed some income tax deductions reported on Dunn, Incorporated's income tax returns filed while defendant, W. A. Dunn, was the president of the corporation. The disallowance of the deductions resulted in a total deficiency assessment of $44,322.22 being levied against Dunn's, Inc. Plaintiff paid the deficiencies and sought indemnification from defendants pursuant to a contract provision dealing with the parties' relative liability for contingent liabilities.

The trial court rejected plaintiff's interpretation of the contract and held defendants were not liable to plaintiff for the additional tax liability. Plaintiff appeals claiming the trial court misconstrued the contract as a matter of law. We agree with plaintiff's contention.

This case was tried as an action at law. Our review is on errors assigned and the court's findings of fact will not be disturbed unless there is no substantial support for them in the record. Iowa R. App. P. 4; Connie's Construction Company, Inc. v. Fireman's Fund Insurance Company, 227 N.W.2d 207, 209 (Iowa 1975). The trial court did not make a factual finding as to the interpretation to be given to the words in the contract. Instead, the court construed the contract as a matter of law and without reliance upon extrinsic facts. Therefore, both the interpretation and construction of the contract present issues reviewed as determinations of law. Id. at 210.

As a general principle, the language used in a contract is to be given its common and ordinary meaning. Pappas v. Bever, 219 N.W.2d 720, 721 (Iowa 1974). Courts must strive to give effect to all the language of a contract. Fashion Fabrics of Iowa, Inc. v. Retail Investors Corporation, 266 N.W.2d 22, 26 (Iowa 1978). Also, courts should read a contract as an integrated whole rather than reading the contract clause by clause. Allen v. Highway Equipment Co., 239 N.W.2d 135, 139 (Iowa 1976). Applying those principles to the stock purchase agreement, we conclude the defendants agreed to assume responsibility for the tax deficiency levied in this case. Our reasoning is as follows.

The relevant portion of the contract provides:

> 5. Indemnification
> . . .
> It is agreed by the parties hereto that any kind of liability including tax liabilities, which should arise against Dunn's by reason of any occurrence prior to December 31, 1973 which can be attributed to the wrongful or improper conduct of Sellers shall be the responsibility of Sellers, and Sellers therefore agree that if any such liability should arise Sellers will indemnify and hold harmless both Dunn's and the Buyer with respect to it.
>
> It is further agreed by the parties hereto that if a liability which may arise by reason of the audit of the Corporate Income Tax Return of Dunn's for any previous year and which may result in a deficiency assessed against the Company shall not be the responsibility of the Buyer.
>
> The parties agree that in the absence of wrongdoing on the part of the Sellers, Sellers shall not be held responsible for liabilities arising in connection with the operation of Dunn's merely by reason of the fact that such liabilities were not known to exist or were not reflected to reserve against on the Statement of Financial Condition of Dunn's as of December 31, 1973. Sellers [sic] not responsible for income tax penalties that have been clearly footnoted in the Company's financial statement.
>
> If any such liability for which Sellers are to indemnify Dunn's or Buyer or both should arise, Sellers agree also to be responsible for any costs expenses incident to any legal action growing out of such liability, including attorney fees according to the statutes of the State of Iowa.

We are of the opinion, unless the first clause of paragraph five quoted above is to be given no effect, that clause places liability for any tax deficiency for years prior to 1974, on the defendants. The trial court found the sellers could not be deemed "heedless, reckless, unfair or unjust," and therefore, "not wrongful." See Black's Law Dictionary at 1788 (4th ed. 1968); 101 C.J.S., Wrongful at 642. After quoting the definition for "improper," the court concluded, without elaboration, that claiming the income tax deduction was not improper. Black's Law Dictionary includes among the definitions of this term," "not suitable, unfit, not suited to the situation, time and place, not fitted to the circumstances." See Black's Law Dictionary at 890 (4th ed. 1968). We conclude that these words describe very well the conduct that resulted in a disallowance of the tax deductions. One cannot argue taking a deduction, even if done with utmost good faith, is proper or correct if the deduction is subsequently disallowed by the IRS. Moreover, the trial court's construction, more than likely, would merely restate a truism, for if defendants acted fraudulently in bringing about a tax deficiency and in

failing to make full disclosure, plaintiffs would need no contractual provision to hold defendants liable for their conduct. As stated in Fashion Fabrics of Iowa, Inc. v. Retail Investors Corp., 266 N.W.2d 22 (Iowa 1978). "Because an agreement is to be interpreted as a whole, it is assumed in the first instance that no part of it is superfluous; an interpretation which gives a reasonable, lawful, and effective meaning to all terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect." Id. at 26.

Our conclusion seems even more obvious when clause two of paragraph five quoted above is read in conjunction with clause one. Clause two clearly states the buyer, plaintiff in this case, shall not be responsible for a liability arising by virtue of an audit of the company's corporate income tax return. Construing the contract as the trial court did would severely limit that clause's otherwise ubiquitous tax liability protection the plaintiff negotiated into the contract. Some inference may be drawn that the deficiency assessed shall be the responsibility of the sellers; otherwise, the reduction of the net worth of Dunn's, Inc., would have the result of being the responsibility (to absorb the loss) of the buyers. And finally, in clause three, the sentence "Seller not [sic] responsible for income tax penalties that have been clearly footnoted in the Company's financial statement" indicates, by application of the familiar maxim "expressio unius est exclusio alterius," (the expression of one thing of a class implies the exclusion of others not expressed) sellers intended to assume liability for tax penalties not made apparent to the buyers. See Maytag Company v. Alward, 112 N.W.2d 654, 656 (Iowa 1962). It would be an unnatural construction of the contract to say the sellers are liable for all unfootnoted tax penalties regardless of the propriety of the sellers' conduct, but are liable for the underlying tax deficiency, which gave rise to the penalty, only when the sellers have acted fraudulently.

Viewing all the contract clauses as a whole, we think the intention of the parties, which is of cardinal importance, see Bjork v. Dairyland Insurance Co., 174 N.W.2d 379, 383 (Iowa 1970), was to place liability for all undisclosed contingent tax liabilities on the sellers and all disclosed contingent tax liabilities on the buyers. The tax liability in question was not disclosed to the buyer and sellers assumed the risk of that tax contingency. Presumably, had the buyers been notified of that contingent liability, the sales price for sellers' stock would have been reduced, or at least buyers would have been presented with the opportunity to factor that contingency into their purchase decision. The trial court's decision is reversed.

REVERSED FOR DETERMINATION OF THE AMOUNT OF DAMAGES DUE TO PLAINTIFF FROM DEFENDANT CONSISTENT WITH THIS OPINION.