STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL L. KAMPS, Plaintiff-Appellant,	UNPUBLISHED June 16, 2005
v D. JACK HOLWERDA, SR., Defendant-Appellee.	No. 253263 Ottawa Circuit Court LC No. 02-043853-CZ

Before: Hoekstra, P.J., and Jansen and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10). We affirm.

This case arises from the parties' ownership and involvement in the operations of H & H Plumbing and Heating, Inc. (hereinafter "the company"). In July 1992 defendant was the company's sole shareholder. At that time, defendant entered into a stock purchase agreement through which he transferred an equal number of shares to plaintiff and two of his sons, Michael and Jack Holwerda. The agreement restricted the transfer of company stock by providing, among other things, that if plaintiff sought to sell his shares, defendant's third son, Scott Holwerda, as a party to the agreement, would be first given the option to purchase the shares at a price to be determined in accordance with the agreement. The agreement also provided for its termination upon voluntary agreement of the company and "the Shareholders," and required that any modification of the agreement be contained in a writing "signed by all parties" to the agreement. The agreement did not, however, define the term "shareholders" as used therein, but rather simply indicated use of the term as a collective reference to plaintiff, defendant, Michael, and Jack, as parties to the agreement.

In July 1997, defendant entered into a stock redemption agreement pursuant to which the company purchased defendant's remaining shares in exchange for cash and defendant's waiver of "any and all rights he may have pursuant to any stock buy/sell agreement with Company or the other shareholders of Company which concerns the purchase and sale of shares." In June of the following year, plaintiff, Michael, and Jack, each voted to terminate the 1992 stock purchase agreement and subsequently transferred all of their shares of the company to Comfort Systems, Inc. Shortly thereafter, and at the behest of defendant, Scott filed suit against plaintiff in the Kent Circuit Court, claiming that because he had not been given the opportunity to purchase plaintiff's shares as provided in the 1992 stock purchase agreement, he was entitled to plaintiff's share of the proceeds from the transfer of his shares to Comfort Systems, Inc. Relying on defendant's waiver of rights and the subsequent termination of the 1992 stock purchase agreement, plaintiff denied any such obligation. However, the Kent Circuit Court found that, as a "shareholder" within the meaning of the 1992 agreement, defendant's vote was required to terminate or otherwise modify that agreement. The court further found that the 1997 stock redemption agreement did not act to modify that requirement because it was not signed by all parties, as required by the 1992 agreement, and that although, by executing the 1997 stock redemption agreement, defendant validly waived his own rights under the 1992 agreement, Scott, as a party to that agreement, held a separate and distinct right to have defendant vote regarding termination of the agreement. Following issuance of an opinion setting forth the court's findings in this regard, the parties settled the litigation and the case was dismissed.

Plaintiff thereafter initiated the present suit against defendant, asserting claims of breach of contract, fraudulent and innocent misrepresentation, tortious interference with a business relationship, and promissory estoppel. The trial court granted summary disposition in favor of defendant on all counts, and this appeal followed.

On appeal, plaintiff first argues that the trial court erred in failing to find that defendant breached the 1997 stock redemption agreement by asserting the retention of the right to vote concerning termination or modification of the 1992 stock purchase agreement. We disagree. In evaluating a motion for summary disposition under MCR 2.116(C)(10), a trial court considers whether "the proffered evidence fails to establish a genuine issue regarding any material fact, [so that] the moving party is entitled to judgment as a matter of law." *Nastal v Henderson & Assoc Investigations, Inc*, 471 Mich 712, 721; 691 NW2d 1 (2005). We review a trial court's decision to grant or deny summary disposition de novo, as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). The interpretation of a contract, including whether the language of the contract is ambiguous and thus requires resolution by the trier of fact, is also a question of law reviewed de novo on appeal. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463, 469; 663 NW2d 447 (2003). If the language of the contract is clear and unambiguous, the agreement must be enforced as written. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 51-52; 664 NW2d 776 (2003). Here, we find that the trial court properly granted summary disposition to defendant because the applicable provisions of the relevant agreements are unambiguous in nature, and present no genuine issue of material fact with respect to any breach of the 1997 stock redemption agreement by defendant.

The plain language of the 1992 stock purchase agreement requires that any modifications to the agreement be contained in a writing "signed by all parties" to that agreement. As found by the Kent Circuit Court, the 1997 stock redemption agreement failed to act as a valid modification of the 1992 stock purchase agreement despite defendant's waiver of his personal right to enforce or otherwise benefit from that agreement. As explained by the court, under the unambiguous language of the 1992 agreement, Scott, as a party to the 1992 agreement, "had to sign, or at least acquiesce in, any modifications, so that his not joining his father's waiver of rights precludes that waiver from being deemed a modification of the stock purchase agreement." Indeed, "there is a significant difference between [defendant's] waiver of his own rights under the stock purchase agreement and a modification of that agreement which would affect [Scott's] distinct rights." Accordingly, the waiver of defendant's personal rights under the 1992 stock purchase agreement had no effect on Scott's rights under that agreement, which included the right to have defendant vote regarding termination of the agreement and any transfer of stock by plaintiff. As a result, neither the attempt at modification of the 1992 agreement through execution of the 1997 stock redemption agreement nor the remaining shareholders' attempt in 1998 to terminate the 1992 agreement in connection with the sale of the company without defendant's consent were valid. Consequently, because the attempts at modification and termination of the 1992 stock purchase agreement were, under the clear and unambiguous language of the agreements at issue here, invalid, defendant did not breach the 1997 stock redemption agreement by later asserting the right to vote with respect to the transfer of stock under the terms of the earlier agreement and summary disposition of plaintiff's claim for breach of contract was, therefore, appropriate.

In reaching this conclusion, we reject plaintiff's assertion that summary disposition in favor of defendant was improper because the trial court erroneously based its decision in that regard on its mistaken conclusion that defendant did not "cancel or forfeit" his contractual rights under the 1992 stock purchase agreement at the time he executed the 1997 stock redemption agreement. Although plaintiff is correct that the trial court's opinion and order granting summary disposition was in fact based upon that mistaken conclusion, we note that the court acknowledged this error and modified its reasoning (adopting that of the Kent Circuit Court) in its subsequent order denying plaintiff's motion for reconsideration on that very ground. In any event, this Court may uphold a trial court's grant of summary disposition where it has reached the right result, albeit for the wrong reason. *Gleason v Dep't of Transportation*, 256 Mich App 1, 3; 662 NW2d 822 (2003).

We similarly reject plaintiff's claim that summary disposition was improper because the lower courts' interpretation of the agreements at issue here does not effectuate the true intent of the parties, i.e., that upon execution of the 1997 stock redemption agreement neither defendant nor Scott were to retain any rights under the 1992 stock purchase agreement. In support of this argument, plaintiff cites the deposition testimony of both Michael and Jack Holwerda, each of whom testified consistent with plaintiff's purported understanding of the parties' intent. However, it is a well-established rule of contract interpretation that the intent of the parties is to be ascertained and enforced according to the plain language of the contract, *Zurich Ins Co v CCR & Co (On Rehearing)*, 226 Mich App 599, 603-604; 576 NW2d 392 (1997), and that definite and unambiguous contract language must be enforced as written, *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998). Thus, where the language of the agreement at issue is clear and unambiguous, courts may not consider extrinsic evidence to determine the parties' intent. *Id*. As discussed above, the agreements at issue here are not ambiguous. Accordingly, we must enforce those agreements as written despite plaintiff's protestations of a contrary intent.

Summary disposition of plaintiff's claims for promissory estoppel and fraudulent and innocent misrepresentation was also proper. A claim for promissory estoppel requires proof of a promise reasonably expected to, and in fact, inducing action on the part of the plaintiff such that the promise must be enforced to avoid injustice. *Novak v Nationwide Mut Ins Co*, 235 Mich App 675, 686-687; 599 NW2d 546 (1999). As explained above, the premise for this claim, i.e., that defendant's waiver of his rights under the stock purchase agreement and relinquishment of all ownership interest in the company included a waiver and relinquishment of Scott's right to have defendant vote regarding matters covered by that agreement, is not supported by the clear and unambiguous language of the parties' agreements.

Plaintiff's claims for fraudulent and innocent misrepresentation are also based on a factual premise not supported by the plain language of the parties' agreements, i.e., that defendant either knowingly or innocently failed to waive all personal rights stemming from his ownership in the company. As explained above, although the waiver executed by defendant was ineffective as to the rights of Scott, execution of the 1997 stock redemption agreement was nonetheless effective to waive or otherwise divest defendant of all rights and incidents of ownership personally held by him. Summary disposition of plaintiff's claims for fraudulent and innocent misrepresentation was, therefore, appropriate.

Plaintiff also argues that the trial court erred when it granted summary disposition of his claim for tortious interference with a business relationship. Again, we disagree. "'The elements of tortious interference with a business relationship are the existence of a valid business relationship or expectancy, knowledge of the relationship or expectancy on the part of the defendant, an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and resultant damage to the plaintiff.'" *Mino v Clio School Dist*, 255 Mich App 60, 78; 661 NW2d 586 (2003), quoting *BPS Clinical Laboratories v Blue Cross & Blue Shield of Michigan (On Remand)*, 217 Mich App 687, 698-699; 552 NW2d 919 (1996).

Tortious interference with a contractual or business relationship requires the intentional doing of a per se wrongful act or the doing of a lawful act with malice and unjustified in law for the purpose of invading the contractual rights or business relationship of another. *Derderian v Genesys Health Care Systems*, 263 Mich App 364, 382; 689 NW2d 145 (2004) "A 'per se wrongful act' is an act that is inherently wrongful or one that is never justified under any circumstances." *Formall, Inc v Community Nat'l Bank*, 166 Mich App 772, 780; 421 NW2d 289 (1988). "To establish that a lawful act was done with malice and without justification, the plaintiff must demonstrate, with specificity, affirmative acts by the defendant that corroborate the improper motive of the interference." *BPS Clinical Laboratories*, *supra* at 699. However, a person is not liable for tortious interference with a contract if he or she is motivated by legitimate personal or business interests. *Woods v Herndon & Herndon Investigations, Inc*, 186 Mich App 495, 500; 465 NW2d 5 (1990).

Plaintiff argues that defendant interfered with a contractual or business relationship by instructing his sons not to contribute to plaintiff's litigation expenses. Plaintiff alleges that he, Michael, and Jack entered into an oral agreement under which each would contribute one-third of his litigation expenses in the prior litigation with Scott. Both brothers denied the existence of such an agreement, but admitted that defendant had indicated that he did not want them involved in the litigation between plaintiff and Scott. Although the record contains some indications of such an agreement, we find that, because the record also indicates that the resulting contributions were gratuitously made for personal, rather than business reasons, the agreement does not constitute a valid business relationship or expectancy for purposes of the instant claim.

Additionally, the record does not support a finding that defendant committed a per se wrongful act, or committed a lawful act with malice or without justification. Rather, the record again indicates that defendant had personal reasons for not wanting his sons to contribute to plaintiff's legal fees. As noted above, defendants motivated by legitimate personal and business reasons are shielded from liability against this cause of action. *Id*.; see also *Formall, Inc*, *supra* at 780. Accordingly, the trial court did not err in granting summary disposition of plaintiff's claim for tortious interference with a business relationship.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly