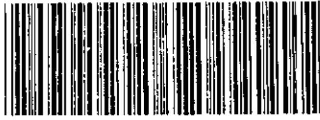
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COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

ROBERT H. MCGRAW,	:	Case No. A1806837
Plaintiff,	:	(Judge Shanahan)
vs.	:	
MICHAEL S. MCGRAW, et al.,	:	**DECISION ON MOTIONS FOR SUMMARY JUDGMENT**
Defendants.	:	

This case is before the Court on cross Motions for Summary Judgment filed by Plaintiff, Robert H. McGraw ("Plaintiff"), and Defendants, Michael S. McGraw, individually and as co-manager of McGraw Property Management, Ltd. and limited partner of McGraw Holding Company, Ltd.; Adele M. Craft, individually and as co-manager of McGraw Property Management, Ltd. and limited partner of McGraw Holding Company, Ltd.; McGraw Property Management, Ltd.; and McGraw Holding Company, Ltd. ("Defendants"). For the reasons that follow, the Motion of Plaintiff is granted and the Motion of Defendants is denied.

I. Standard of Review

Rule 56 of the Ohio Rules of Civil Procedure provides that:

> Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor.

Summary judgment is proper if the evidence shows that there is no genuine issue about any material facts, and thus, the moving party is entitled to judgment as a matter of law. *Dresher v. Burt,* 75 Ohio St.3d 280, 293, 662 N.E.2d 264 (1996). This is particularly true when contracts are involved: "A clear and unambiguous contract can be enforced as a matter of law through summary judgment." *Steubenville v. Jefferson Cty.,* 2005-Ohio-6596 (7th Dist.2005) ¶ 19 (citing *Inland Refuse Transfer Co. v. Brown-Ferris Indus. Of Ohio, Inc.,* 15 Ohio St.3d 321, 322, 474 N.E.2d 271 (1984)). "A court's primary objective in the construction of any written agreement is to ascertain and give effect to the intent of the parties by examining the language that they chose to employ." *O.E. Meyer Co. v. BOC Group, Inc.,* 2000WL 234549 (6th Dist. 2000) at *5 (citing *Foster Heel Enviresponse, Inc. v. Franklin Cty. Convention Facilities Auth.,* 78 Ohio St.3d 353, 361, 678 N.E.2d 519 (1977)). When the language "is clear and unambiguous, then its interpretation is a matter of law and there in no issue of fact to be determined." *Susany v. Guerrieri,* 2006-Ohio-1062, 48 N.E.3d 637 (7th Dist.2016) ¶ 18.

II. Discussion

This case involves the distribution of proceeds derived from the sale of a family farm. The parties agree there is no genuine issue of material fact. They disagree on who is entitled to judgment as a matter of law.

The parties are no strangers to litigation. Disputes have arisen among them with respect to the operation and management of McGraw Holding Company, Ltd., ("Holding Company"), the administration of the Martha H. McGraw Family Trust ("Family Trust"), and alleged breaches of a settlement agreement entered into by the parties effective July 22, 2015 ("2015 Settlement Agreement"). There has been litigation between the parties in Hamilton County Court of Common Pleas, Case No. A1605633 ("the Common Pleas Court litigation") and in the

Hamilton County Probate Court, Case No. 2016001742 ("the Probate Court litigation"). The parties participated in a voluntary mediation on December 23, 2016, which, together with subsequent negotiations, resulted in an agreement to resolve, compromise and settle all outstanding issues between and among them. This agreement is reduced to writing in the Settlement and Release Agreement signed in June 2017 ("2017 Settlement and Release Agreement."). The 2017 Settlement and Release Agreement recited that the parties were desiring to "settle all claims, rights and causes of action by, between and among themselves" and were wishing "to set forth herein all covenants, agreements, and undertakings by, between and among themselves in writing". The parties entered into the 2017 Settlement and Release Agreement "in order to provide for a full settlement and discharge of all claims which have been asserted in the Common Pleas Court litigation, the Probate Court litigation and arising under the 2015 Settlement Agreement." 2017 Settlement and Release Agreement, pp. 2-3.

The issue in the case is how to distribute sale proceeds derived from the sale of a family farm. Are they to be distributed according to the schedule attached to the 2017 Settlement and Release Agreement or are they to be distributed according to the terms of the Limited Partnership Agreement of the Holding Company? If the proceeds are distributed according to the terms of the 2017 Settlement and Release Agreement, Plaintiff will receive roughly $51,541. If the proceeds are distributed according to the terms of the Limited Partnership Agreement, Plaintiff will receive roughly $10,380.

The parties agree that the issue in this case comes down to the interpretation of Section 5 in the 2017 Settlement and Release Agreement, to wit:

> Mike and Adele agree to distribute all assets in the Family Trust, the RG McGraw Trust, and the Holding Company with the exception of a $100,000 holdback to cover reasonable and necessary expenditures of funds by the Managers of the Holding Company related to the Closing of the sale of the Farm. Upon

> satisfactory resolution of all matters necessary in order to facilitate the closing of the sale of the Farm, the Farm closing proceeds along with the holdback, or what remains of it, will be distributed within seven (7) days of the date of Closing to the partners of the Holding Company in their pro-rata shares. Payment will be made to such payees in accord with the instructions set forth in paragraph 6 below. The Holding Company assets, other than life insurance proceeds, shall be distributed in accordance with percentages of ownership and in the approximate amounts set forth in the schedule for distribution prepared by Mellott & Mellott and attached hereto as Exhibit A, less any adjustments made for the receipt of Farm Property as described in Paragraph 3.

Plaintiff submits that this case is simple: the proceeds from the sale of the farm must be distributed according to the schedule for distribution prepared by Mellott & Mellott and attached as Exhibit A to the 2017 Settlement and Release Agreement. Under this scenario, Plaintiff will receive 6.8460% of the sale proceeds, or approximately $51,541.

Defendants counter that the case is not as simple as Plaintiff would have this Court believe. They argue that there are two groups of assets described in Section 5, one of which is to be distributed according to the Mellott & Mellott schedule; the second of which is to be distributed according to the Limited Partnership Agreement. The first group of assets, according to Defendants, is the "Holding Company assets, other than life insurance proceeds." These are to be distributed "in accordance with percentages of ownership and in the approximate amounts set forth in the schedule for distribution prepared by Mellott & Mellott and attached [to the Agreement] as Exhibit A…." The second group of assets, according to Defendants, is comprised of "the Farm closing proceeds along with the holdback, or what remains of it." Those are to be "distributed within seven (7) days of the date of Closing to the partners of the Holding Company in their pro-rata shares." Defendants then seek to fashion an argument that pro-rata shares is defined in a particular way in the Limited Partnership Agreement.

Section 4.2(a) of the Limited Partnership Agreement states: "All distributions of Distributable Net Cash Flow shall be pro rata based upon each Partner's respective Partnership

Interest." "Partnership Interest" is defined as "the percentage interest of the Partners in the totality of the rights and obligations of the Partners in the Partnership." Section 2.1(a), Limited Partnership Agreement. Thus, according to Defendants, as a partner's pro rata distribution of assets reflects the totality of rights and obligations in the partnership, a partner's pro rata distribution must reflect capital account balances. Accordingly, Plaintiff would receive approximately $10,380 from the Farm closing proceeds rather than the $51,541 proposed by Plaintiff.

Plaintiff rejoins that Defendants ask this Court to add language to the 2017 Settlement and Release Agreement. Specifically, Plaintiff argues that Defendants are asking the Court to add the italicized language: "...Farm closing proceeds along with the holdback...will be distributed...to the partners of the Holding Company in their pro-rata shares *in accordance with their Capital Accounts.*" And, "The Holding Company assets, other than life insurance proceeds *and farm proceeds*, shall be distributed in accordance with percentages of ownership...."

The Court agrees with Plaintiff's reading of Section 5 of the 2017 Settlement and Release Agreement. The Farm closing proceeds must be distributed according to the schedule for distribution prepared by Mellott & Mellott and attached as Exhibit A to the 2017 Settlement and Release Agreement.

Additionally, the Court notes that Section 14 of the 2017 Settlement and Release Agreement contains the following merger clause: "This Settlement Agreement contains the entire agreement between the Parties with regard to the matters set forth in it...." And, Section 11 of the 2017 Settlement and Release Agreement reveals that it was the intent of the parties to reach a new agreement on how to wrap up the affairs of the Family Trust and the Holding

Company. Specifically, Section 11 provides as follows:

> Except as specifically provided in this Settlement Agreement, the Parties release, waive and forever discharge one another from all claims and causes of action, whether fixed, liquidated, unliquidated, matured, contingent, disputed, or otherwise, whether in contract, tort, or otherwise, that each Party has or may have based upon events (i) that have occurred prior to the date of this Settlement Agreement, and (ii) that are connected with the administration of the Estate; the validity, construction, and administration of the Family Trust; operation and management of the Holding Company; or performance under the 2015 Settlement Agreement. Nothing in this release shall release any of the obligations of the Parties under this Settlement Agreement.

It was the intent of the parties to reach a new agreement on how to wrap up the affairs of the Family Trust and the Holding Company and that the 2017 Settlement and Release Agreement provides the methodology for doing so. The 2017 Settlement and Release Agreement controls the "matters set forth in it", and those matters include the distribution of the Farm sale proceeds.

There is no genuine issue of material fact. The distribution was intended to be according to the percentages set forth by Mellott & Mellott in the schedule attached to the 2017 Settlement and Release Agreement. A contrary conclusion would be contrary to the language and intent of the 2017 Settlement and Release Agreement.

III. Conclusion

The Court finds that there is no genuine issue of material fact and that Plaintiff is entitled to judgment as a matter of law. Construing the evidence most strongly in Defendants' favor, reasonable minds can come to but one conclusion and that conclusion is adverse to Defendants.

The parties shall submit an Entry pursuant to Hamilton County Local Rule17.

Judge Megan E. Shanahan

ENTERED

MAR 09 2020

Copies to:

Russell S. Sayre
sayre@taftlaw.com

Theresa L. Nelson
tlnelson@strausstroy.com