

STATE OF MICHIGAN
COURT OF APPEALS

AMY P. BEAUCHAMP and SAMUEL
BEAUCHAMP,

UNPUBLISHED
September 23, 2014

Plaintiffs-Appellants,

v

No. 313377
Marquette Circuit Court
LC No. 10-048212-CK

JESSE C. SCHRAMM, LAURA SCHRAMM, and
301 GARFIELD STREET, INC.,

Defendants-Appellees.

Before: RIORDAN, P.J., and MARKEY and K. F. KELLY, JJ.

Riordan, P.J. (*dissenting*)

I respectfully dissent. The trial court properly granted judgment in favor of plaintiffs against defendant 301 Garfield Street, Incorporated (Garfield) and in favor of defendants Jesse and Laura Schramm in their individual capacities.

The contract for the sale of the vacant land provided that, generally, “Buyer shall not assign, sell, or convey all or any portion of Buyer’s interest in the Premises or in this Agreement without Seller’s prior written consent.” However, paragraph 10 of the contract contained the following exception to the consent requirement:

The consent requirement above does not apply in certain limited relationships. Buyer, with or without Seller’s consent, may assign, sell, or convey all or any portion of Buyer’s interest in the Premises and the Personal Property or under this Agreement to

a. a partnership, corporation, or other business entity in which Buyer, at the time of transfer and at all times after, has a controlling interest, or a trust of which Buyer is the trustee;

b. a partnership, corporation, or other business entity in which a close relative of Buyer, at the time of transfer and at all times later, has a controlling interest.

On October 1, 2010, Garfield filed incorporation documents with the Michigan Department of Energy, Labor & Economic Growth that identified defendant Jesse Schramm as

the registered agent and sole incorporator. Jesse Schramm testified that he has been Garfield's sole director and shareholder since its incorporation. In a quit claim deed dated October 1, 2010, defendants conveyed their interest in the subject property to Garfield. The deed was recorded by the Marquette County Register of Deeds on October 5, 2010. While the land contract may have been in default at the time of the transfer, there was no contractual provision between the parties which prohibited the transfer of the property to Garfield in the event the Schramms were in default. Further, there is no evidence in the record indicating that the transfer was made for the purpose of defrauding plaintiffs.

If a land contract is unambiguous, we must enforce its terms as written. See *Greenville Lafayette, LLC v Elgin State Bank*, 296 Mich App 284, 291; 818 NW2d 460 (2012).¹ The express terms of the land contract at issue required plaintiffs' consent for certain assignments and not for others. The contract expressly allowed defendants to assign their interest, without plaintiffs' consent, to a corporation of which the property buyer or close relative had a controlling interest. There was no contractual limitation on whether such a transfer was made before or after a default on the contract. Because we must enforce the clear and unambiguous language of the contract as the parties wrote it and mutually assented to, I would find that the Schramms committed no breach by assigning their property interest to Garfield.

In order for plaintiffs to prevail in this case, we must find that the parties had an implied covenant restricting assignment to only solvent entities, as was found in the contract at issue in *Cinderella Theatre v United Detroit Theatres Corp*, 367 Mich 424; 116 NW2d 825 (1962). However, if a land contract is unambiguous, we must enforce its terms as written, and not find an implied covenant. See *Greenville Lafayette*, 296 Mich App at 291. While the drafting of contracts may sometimes be imperfect, it often may be the case that the imperfection is the

¹ Courts must read contracts as a whole and "accord their terms their plain and ordinary meaning." *Scott v Farmers Ins Exchange*, 266 Mich App 557, 561; 702 NW2d 681 (2005). "[C]ourts must also give effect to every word, phrase, and clause in a contract and avoid an interpretation that would render any part of the contract surplusage or nugatory." *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 468; 663 NW 2d 447 (2003). A clear and unambiguous contractual provision is to be enforced as written. *Coates v Bastian Bros, Inc*, 276 Mich App 498, 503; 741 NW2d 539 (2007). "Clear and unambiguous language may not be rewritten under the guise of interpretation," *South Macomb Disposal Auth v American Ins Co (On Remand)*, 225 Mich App 635, 653; 572 NW2d 686 (1997), and "[c]ourts must be careful not to read an ambiguity into a policy where none exists." *Auto-Owners Ins Co v Harvey*, 219 Mich App 466, 519; 556 NW2d 517 (1996). An ambiguity exists when two provisions irreconcilably conflict, or when a term is equally susceptible to more than one meaning. *Coates*, 276 Mich App at 503. "However, if a contract, even an inartfully worded or clumsily arranged contract, fairly admits of but one interpretation, it may not be said to be ambiguous or fatally unclear." *Michigan Twp Participating Plan v Pavolich*, 232 Mich App 378, 382; 591 NW2d 325 (1998).

consequence of a compromise between the parties. As such, it is not the function of courts to disregard the words adopted by the parties to a contract.

The land contract at issue expressly allowed the defendants to assign, sell, or convey their interest in the parcel, with or without plaintiffs' consent, to a corporation in which defendants had a controlling interest, or in which a "close relative" of defendants had a controlling interest. It is undisputed that Jesse Schramm had, at all relevant times, the controlling interest in Garfield and, as Jesse's wife, Laura Schramm was a "close relative" of Garfield's sole owner. Unlike *Cinderella Theatre*, there is no evidence in the record that Garfield was formed for a fraudulent purpose.² Further, unlike *Cinderella Theatre*, the assignors of the land contract in this case did not continue to use the real property as an on-going, commercial entity with the purpose of the transfer to a subsidiary being solely to obtain relief for a related business operating on the premises.

Contrary to plaintiffs' assertion, the terms of the land contract do not provide that an assignee corporation be solvent or properly capitalized. Nor does the land contract make the Schramms personally liable on the debt. Such provisions could have been included had the parties so intended. However, the parties chose not to. It is not the role of the Court to speculate as to the reasons the provisions were not included. Our role is to review the plain language of the contract. We simply should not now conclude that the parties intended language absent from the land contract to be included. By the terms of the land contract, at worst, the plaintiffs are back in the position they occupied before entering the agreement, they own and are in possession of the vacant parcel known as Garfield. They also are entitled to keep all payments that the Schramms made to them prior to the transfer of the property to 301 Garfield Street.

Plaintiffs next contend that the trial court should have considered the contract negotiations, i.e., parol evidence, which, in their view, may present material questions of fact. As discussed above, the land contract was unambiguous. Therefore, the trial court did not err in failing to look beyond its plain language in granting summary disposition in favor of defendants. See *In re Kramek Estate*, 268 Mich App 565, 573; 710 NW2d 753 (2005).

While it may be tempting to invoke Uniform Fraudulent Transfers Act (UFTA), MCL 566.31 *et seq.*, I would not do so since there was no fraudulent transaction here. We are left to speculation as to why the plaintiffs did not insist that paragraph 10 of the land contract be inoperational in the event of the Schramms' default. But, the plaintiffs agreed to the contract as it was written. We cannot now use the UFTA to re-write it.

² Also, unlike in *Cinderella Theatre*, the plaintiffs/appellants here have not raised an argument concerning piercing the corporate veil.

Therefore, I would affirm the trial court.

/s/ Michael J. Riordan