2018 WL 7502215 (Fla.Cir.Ct.) (Trial Order)
Circuit Court of Florida.
Eleventh Judicial Circuit
Miami-Dade County

Alfred S. HELTMAN, Plaintiff,
v.
Civita LITTMANN, Defendant.

No. 2014-CA-021158.
June 30, 2018.

Findings of Fact, Conclusions of Law, and Final Judgment in Favor of Defendant

Miguel M. de la O, Judge.

***1** GENERAL JURISDICTION DIVISION

On April 24, 2018, the Court presided over a bench trial concerning Count IV of Plaintiff, Alfred S. Heltman's ("Heltman"), Amended/Supplemental Complaint. Specifically, the bench trial addressed Plaintiff's claim that Defendant, Civita Littmann ("Littman"), materially breached the Americas Property Management Corporation Stock Purchase Agreement and the APMC Construction Corp. Stock Purchase Agreement when she failed to make required monthly payments in and after October 2014. [1] Having considered the evidence and arguments by the parties, the Court finds and concludes as follows.

FINDINGS OF FACT

1. Heltman and Littmann each owned 50% of the stock in two corporations, Americas Property Management Corporation ("Americas Property") and APMC Construction Corporation ("APMC"). [Statement of the Case ¶¶ 3-5]

2. Americas Property managed about five-million square feet for one of its major clients, and that client informed Heltman and Littmann that it would no longer provide new business. [Trial Tr. at 41:5-25] Heltman and Littmann relied on the major client's repeat business and feared that Americas Property was going to wind down. [Trial Tr. at 42:1-6]

3. Consequently, Littmann and Heltman negotiated two agreements through which Littmann would buy out Heltman's interest in Americas Property and APMC. [Trial Tr. at 42:7-15]

4. On June 14, 2013, Heltman and Littmann executed the two agreements. In the Americas Property Management Corporation Stock Purchase Agreement, Heltman agreed to sell his shares in Americas Property to Littmann and agreed to continue to consult (for a set fee) with Americas Property. [Statement of the Case ¶ 8; Americas Property Stock Purchase Agreement, Ex. A §§ 1, 2(b)]

5. In the APMC Construction Corporation Stock Purchase Agreement, Heltman agreed to sell his shares in APMC to Littmann and agreed to participate in client meetings on APMC's behalf. [Statement of the Case ¶ 8; APMC Stock Purchase Agreement, Ex. B § 5(g)]

6. The Americas Property Stock Purchase Agreement sets for the purchase price as follows:

> 2. *Purchase Price and Other Compensation for Sale*. (a) Buyer shall pay the Purchase Price to Seller only from net profits generated from the Company's business. The total Purchase Price (the "Purchase Price") paid to Seller for the Stock will be One Hundred and Four Thousand and 00/100 Dollars ($104,000), subject to certain adjustments ("Purchase Price") and payable on a monthly basis over a four year period starting from the Effective Date (the "Pay-Out Period") in accordance with the installment payments set forth in the attached Schedule A, which is incorporated by reference and made a part hereof. Seller agrees and understands that the Purchase Price will be adjusted down and reduced to account for loss of properties in the Company's property management portfolio. As the Company loses a property for whatever reason including, without limitation, due to a property being sold or reassigned, the Purchase Price owed to Seller will be reduced by a percentage amount equal to the percentage amount that the loss of the property represents to the Company's overall income due to the loss of such property. By way of illustration and not by limitation, if Miami Dade Portfolio is no longer part of the Company's property management portfolio and such property represented 10.17% of the Company's overall income, then the remaining balance of the purchase price owed and payable to Seller will be reduced by an equal 10.17% amount. Schedule A also represents the current clients of the Company as of the Effective Date. [Ex. A § 2(a)]

***2** 7. The Americas Property Stock Purchase Agreement contains a "Schedule A," which outlines payments over four years, from June 15, 2013 to May 2017. [Ex. A Schedule A]

8. The Americas Property Stock Purchase Agreement sets forth Heltman's consultant compensation.

> (b) *Consultant Compensation*. As consideration for providing his licenses to the Company and for continuing to participate in client meetings as requested by the Buyer or Company, the Company shall retain Seller as a paid consultant on a 1099, independent-contractor basis. Seller shall receive a bi-weekly compensation equal to $500.00 for a total of $26,000.000 (the "Consulting Fee") running from the period of June 15, 2013 through July 31, 2015 (the "Consulting Period"). As long as the Company remains in business and solvent, the Consulting Fee will not be changed throughout the Consulting Period. Irrespective of the Pay-Out period, Seller acknowledges and understands that neither Company nor Buyer shall be obligated to pay any consulting compensation or other fees to Seller beyond the $26,000 Consulting Fee, which is the maximum amount of consulting compensation that Seller may receive thereunder. Seller further acknowledges and agrees that his engagement as a Consultant will cease upon the expiration of the Consulting Period, unless otherwise extended by the Company and Buyer. [Ex. A § 2(b)]

9. The Americas Property Stock Purchase Agreement outlines other forms of compensation that Heltman could receive—namely, additional compensation if Americas Property's business under its previous clients increased and a referral fee for any business Heltman sent to Americas Property. [Ex. A § 2(c)-(d)]

10. The APMC Stock Purchase Agreement contains much of the same language as the Americas Property Stock Purchase Agreement; the language concerning the purchase price Littmann would pay Heltman is similar.

> 2. *Purchase Price and Other Compensation for Sale*. (a) Buyer shall pay the Purchase Price to Seller only from net profits generated from the Company's business. The total Purchase Price (the "Purchase Price") paid to Seller for the Stock will be Seventy Thousand and 00/100 Dollars ($70,000), subject to certain adjustments (the "Purchase Price") and payable on a monthly basis over a period of thirty-five (35) months starting from the Effective Date (the "Pay-Out Period") in accordance with the installment payments set forth in the attached Schedule A, which is incorporated by reference and made a part hereof. Seller agrees and understands that the Purchase Price will be adjusted down and reduced to account for

> loss of clients. Schedule A also represents the current clients of the Company as of the Effective Date. [Ex. B § 2(a)]

11. The APMC Stock Purchase Agreement has a "Schedule A" as well, which lists payments to be made from June 15, 2013 until April 15, 2016. [Ex. B Schedule A]

12. Both agreements contain provisions entitling the prevailing party to recover costs, including attorney's fees, in any litigation to enforce their terms. [Ex. A § 14; Ex. B § 14]

13. Neither the Americas Property Stock Purchase Agreement nor the APMC Stock Purchase Agreement define the phrase "net profits generated from the Company's business."

***3** 14. Unhappy with the tax consequences of the transactions, in July of 2014, Heltman threatened to sue Littmann unless she gave him more money. [Trial Tr. at 54:1-20]

15. In August of 2014, Americas Property stopped managing properties after Littmann sold Americas Property's assets.

16. On August 13, 2014, Heltman sued Littmann for breach of the two Stock Purchase Agreements. [Statement of the Case ¶¶ 10, 13; Trial Tr. at 51:7-52:6]

17. Heltman's Complaint alleged that Littmann breached the Stock Purchase Agreements' covenant of good faith and fair dealing by failing to notify him about changes in Americas Property and APMC's "accounting practices" despite "agreeing to provide" Heltman with K-1 forms. [Compl., Ex. C ¶ 26] The Complaint also alleged that Littmann breached the Stock Purchase Agreements by refusing "to indemnify and hold" Heltman "harmless from … losses and damages arising from" Littmann's "secret dealings, acts and/or omissions relative to her accounting practices." [Ex. C ¶ 30]

18. Heltman attached the Stock Purchase Agreements to the Complaint, thus revealing the Stock Purchase Agreements on the public docket. [Statement of the Case ¶ 10]. Heltman made no attempt to file the attachments to the Complaint under seal.

19. The Americas Property Stock Purchase Agreement and APMC Stock Purchase Agreement both contain an identical confidentiality clause:

> 12. *Confidentiality*. This Agreement and the terms thereof will remain confidential and Seller shall not disclose the terms to anyone, except counsel, accountants, or as otherwise required by law or court order, for any purpose whatsoever without the express prior written consent of Buyer, and the Buyer and Company may make public disclosures as they deem necessary or appropriate.[Ex. A § 12; Ex. B § 12]

20. The uncontradicted testimony at trial was that these confidentiality provisions were imperative because Americas Property and APMC's main client contained a very chauvinistic group. Littmann was concerned that the client would give her problems if it learned that Heltman no longer owned part of Americas Property and APMC. [Trial Tr. at 46:7-17]

21. For this very reason, the Stock Purchase Agreements required Heltman to consult or attend client meetings at Littmann's request. [Trial Tr. at 46:19-47:3, 56:6-10]

22. These confidentiality provision also protected Littmann's privacy, which she considered important. [Trial Tr. at 47:16 22]

23. On October 14, 2014, Littmann sent Heltman a letter quoting the language from the confidentiality provisions and stating that the disclosure of the Stock Purchase Agreements in the public record constituted a material breach. [Statement of the Case ¶ 11; Oct. 14, 2014 Letter, Ex. D]

24. Littmann then ceased making payments to Heltman under the Stock Purchase Agreements. [Statement of the Case ¶ 12]

25. In September of 2014, Littmann began to wind down APMC and finished the wind down in November of 2014, so APMC stopped maintaining properties. [Statement of the Case ¶ 13; Trial Tr. at 50:16-51:6]

26. There was no agreement between the parties that Littmann had to manage Americas Property or APMC in perpetuity. [Trial Tr. at 62:23-2, 79:4-14]

***4** 27. If Littmann breached the Americas Property Stock Purchase Agreement's provision on the purchase price, and if the law does not excuse her failure to perform, Heltman would be owed $56,170.56. [Trial Tr. at 7:11-17]

28. If Littmann breached the Americas Property Stock Purchase Agreement's provision providing Heltman consulting fees, and if her lack of performance was not excused, Heltman would receive $10,000 under that provision as damages. [Trial Tr. at 7:19-25]

29. If Littmann breached the APMC Stock Purchase Agreement, and if her non-performance was not excused, Heltman would receive $38,000 in damages under that agreement. [Trial Tr. at 8:8-12]

CONCLUSIONS OF LAW

Heltman alleges that Littmann breached the two Stock Purchase Agreements when, in October of 2014, she stopped the monthly payments outlined in the schedules. Littmann concedes that she stopped paying Heltman in October of 2014, but maintains that she does not owe Heltman any money because (1) by the time that she stopped paying him, Americas Property and APMC were no longer generating net profits from their businesses; (2) Heltman breached the Stock Purchase Agreements first by ignoring the confidentiality provisions; and (3) Heltman repudiated the Stock Purchase Agreements.

I. HELTMAN'S PRIOR BREACH EXCUSES LITTMANN'S NON-PERFORMANCE.

It is a "fundamental principle of contract law that a material breach by one contracting party excuses the performance by the other party." *Idem.* *Ins. Corp. of DC v. Caylao*, 130 So. 3d 783, 787 (Fla. 1st DCA 2014); *see also* *City of Miami Beach v. Carner*, 579 So. 2d 248, 250-51 (Fla. 3d DCA 1991) ("[A] contracting party, faced with a material breach by the other party, may treat the contract as totally breached and stop performance."). The first issue for this Court is whether Heltman materially breached the Stock Purchase Agreements when he disclosed them on the public docket.

"To constitute a vital or material breach," the nonperformance of an agreement "must be such as to go to the essence of the contract." *Beefy Trial, Inc. v. Beefy King Int'l, Inc.*, 267 So. 2d 853, 857 (Fla. 4th DCA 1972). Whether a breach is material is "a question of fact." *Covelli Fam., LP v. ABG5, LLC*, 977 So. 2d 749, 752 (Fla. 4th DCA 2008). Here, the Stock Purchase Agreements' language and the uncontradicted testimony of Littmann leads this Court to conclude that Heltman's disclosure constituted a material breach.

The Stock Purchase Agreement's confidentiality language does not equivocate. It plainly bars *any* disclosure: "This Agreement and the terms thereof will remain confidential and Seller shall not disclose the terms *to anyone ... for any purpose whatsoever* without the express prior written consent of Buyer." [Ex. A § 12; Ex. B § 12] (emphasis added). Littmann considered this

language critical to the Stock Purchase Agreements. Indeed, Littmann agreed to pay Heltman a consulting fee just to appear at meetings with this client's employees if needed. [Trial Tr. at 46:19-47:3, 56:6-10]. The essence of a contract varies from each party's perspective. To Heltman, the essence of the agreements was the purchase price he was to receive from Littmann. But to Littman, the essence of the agreements was receiving ownership of an ongoing concern with a reasonable chance of success. The uncontradicted testimony, which this Court accepts as credible, is that Littman feared she was buying a business which would dissipate by virtue of her gender if Heltman did not continue to appear publicly to be involved. As a result, the confidentiality provision was essential and went to the essence of the agreements from Littman's perspective. [2]

***5** The Court concludes Heltman breached first, and, therefore, Littmann was excused from further performing under the Stock Purchase Agreements. Heltman's breach-of-contract claim fails.

II. BREACH OF THE STOCK PURCHASE AGREEMENTS.

Because the Court concludes that Heltman's actions excuse non-performance by Littmann, it need not consider whether Littman's failure to pay Heltman constitutes a material breach of the Stock Purchase Agreements. This Court will nevertheless address Heltman's breach of contract claims in the event this Court's conclusion that Littman's non-performance was excused is overturned by an appellate court.

To prevail on a breach-of-contract claim, a plaintiff must prove "(1) a valid contract; (2) a material breach; and (3) damages." *Grove Isle Ass'n, Inc. v. Grove Isle Assocs., LLLP*, 137 So. 3d 1081, 1094-95 (Fla. 3d DCA 2014) (per curiam). At trial, it is the plaintiff's burden to prove these elements. *See Juvenile Diabetes Research Found. v. Rievman*, 370 So. 2d 33, 36 (Fla. 3d DCA 1979).

The parties offer different interpretations of three different clauses: the purchase price provision in the Americas Property Stock Purchase Agreement, the purchase price provision in the APMC Stock Purchase Agreement, and the consultant compensation provision in the Americas Property Stock Purchase Agreement. "[T]he interpretation of contract provisions is a question of law for the courts where the language is clear, unambiguous and susceptible [to] only one interpretation." *Abel Homes at Naranja Villas, LLC v. Hernandez*, 960 So. 2d 891, 893 (Fla. 3d DCA 2007) (alterations in original). "It is a cardinal rule in the construction of contracts that the intention of the parties thereto is to govern." *Bal Harbour Shops, Inc. v. Greenleaf & Crosby Co.*, 274 So. 2d 13, 15 (Fla. 3d DCA 1973) (per curiam). "[I]n the absence of some ambiguity, the intent of the parties to a written contract must be ascertained from the words used in the contract, without resort to extrinsic evidence." *Dirico v. Redland Estates, Inc.*, 154 So. 3d 355, 357 (Fla. 3d DCA 2014) (alteration in original).

A. AMERICAS PROPERTY STOCK PURCHASE AGREEMENT'S PURCHASE PRICE PROVISION.

As to the purchase price provision in the Americas Property Stock Purchase Agreement, that provision states:

> 2. *Purchase Price and Other Compensation for Sale*. (a) Buyer shall pay the Purchase Price to Seller only from net profits generated from the Company's business. The total Purchase Price (the "Purchase Price") paid to Seller for the Stock will be One Hundred and Four Thousand and 00/100 Dollars ($104,000), subject to certain adjustments ("Purchase Price") and payable on a monthly basis over a four year period starting from the Effective Date (the "Pay-Out Period") in accordance with the installment payments set forth in the attached Schedule A, which is incorporated by reference and made a part hereof. Seller agrees and understands that the Purchase Price will be adjusted down and reduced to account for loss of properties in the Company's property management portfolio. As the Company loses a property for whatever reason including, without limitation, due to a property being sold or reassigned, the Purchase Price owed to Seller will be reduced by a percentage amount equal to the percentage amount that the loss of the property represents to the Company's overall income due to the loss of such property. By way of illustration and not by limitation, if Miami Dade Portfolio is no longer part of the Company's property

> management portfolio and such property represented 10.17% of the Company's overall income, then the remaining balance of the purchase price owed and payable to Seller will be reduced by an equal 10.17% amount. Schedule A also represents the current clients of the Company as of the Effective Date. [Ex. A § 2(a)]

***6** The Contract does not set forth how the net profits will be calculated, whether on a monthly, annual, or other basis. Based on the plain language of the contract, once the net profits equaled or exceeded the Purchase Price Littmann was obligated to pay the full amount, albeit on a monthly schedule. There is no dispute the net profits exceeded purchase price. Moreover, selling the assets would be considered profits from the business. The Contract does not specify that the profits must be from the regularly conducted business of managing properties.

Littmann could lower the Purchase Price only if Americas Property *lost* "a property for whatever reason." Here, Americas Property did not lose a property; it sold its assets. The language on which Littmann relies—"Buyer shall pay the Purchase Price to Seller only from net profits generated from the Company's business" — has no time limitation. Since Americas Property made enough net profits in 2013 to pay the entire Purchase Price, Littmann would be obligated to pay the entire Purchase Price adjusted for lost properties. Therefore, but for Heltman's prior breach, Littmann would owe him $56,170.50 (32 payments of $1,755.33) under the Americas Property Management Corp. Agreement.

2. APMC Stock Purchase Agreement's purchase price provision

A similar legal analysis applies to the APMC Stock Purchase Agreement's purchase price provision. The language of that provision is very similar to the language found in the Americas Property Stock Purchase Agreement:

> 2. *Purchase Price and Other Compensation for Sale*. (a) Buyer shall pay the Purchase Price to Seller only from net profits generated from the Company's business. The total Purchase Price (the "Purchase Price") paid to Seller for the Stock will be Seventy Thousand and 00/100 Dollars ($70,000), subject to certain adjustments (the "Purchase Price") and payable on a monthly basis over a period of thirty-five (35) months starting from the Effective Date (the "Pay-Out Period") in accordance with the installment payments set forth in the attached Schedule A, which is incorporated by reference and made a part hereof. Seller agrees and understands that the Purchase Price will be adjusted down and reduced to account for loss of clients. Schedule A also represents the current clients of the Company as of the Effective Date. [Ex. B § 2(a)]

The Court interprets this language the same way it interpreted the language in the Americas Property Stock Purchase Agreement. Therefore, but for Heltman's prior breach, Littmann would owe him $38,000.00 (19 payments of $2,000.00) under the APMC Construction Corp. Agreement.

3. Americas Property Stock Purchase Agreement's consulting provision

Under the Americas Property Stock Purchase Agreement, Heltman remained a consultant for Americas Property. In return, Littmann agreed to pay Heltman a "maximum" of $26,000 over a certain period. Littmann does not owe Heltman any of the remaining consultation fee.

The relevant provision states:

> (b) *Consultant Compensation*. As consideration for providing his licenses to the Company and for continuing to participate in client meetings as requested by the Buyer or Company, the Company shall retain Seller as a paid consultant on a 1099, independent-contractor basis. Seller shall receive a bi-

> weekly compensation equal to $500.00 for a total of $26,000.000 (the "Consulting Fee") running from the period of June 15, 2013 through July 31, 2015 (the "Consulting Period"). As long as the Company remains in business and solvent, the Consulting Fee will not be changed throughout the Consulting Period. Irrespective of the Pay-Out period, Seller acknowledges and understands that neither Company nor Buyer shall be obligated to pay any consulting compensation or other fees to Seller beyond the $26,000 Consulting Fee, which is the maximum amount of consulting compensation that Seller may receive thereunder. Seller further acknowledges and agrees that his engagement as a Consultant will cease upon the expiration of the Consulting Period, unless otherwise extended by the Company and Buyer. [Ex. A § 2(b)]

***7** By its plain language this provision guarantees Heltman compensation "for continuing to participate in client meetings" and "[a]s long as the Company remains in business and solvent," but Americas Property was no longer in business after August of 2014. This language is echoed in Schedule A, which again notes that Heltman receives this compensation "[p]roviding that Americas Property … is in business." Heltman has not offered any contrary interpretation, and the Court finds Littmann's interpretation to be correct. Accordingly, Littmann did not breach the Americas Property Stock Purchase Agreement by refusing to pay Heltman the remaining $10,000 under the consultation schedule.

CONCLUSION

The Court concludes that Defendant, Civita Littmann's, non-performance of the Americas Property Stock Purchase Agreement and the APMC Stock Purchase Agreement was excused by Heltman' s prior material breach. For these reason, the Court awards Heltman zero damages. As a result of this Order, and the prior rulings on the Motion to Dismiss and Motion for Summary Judgment, Defendant is entitled to judgment on all claims.

JUDGMENT

Plaintiff, Alfred S. Heltman, shall take nothing by this suit and shall go hence without day. The Court retains jurisdiction to award attorneys' fees and costs under any applicable contractual provisions, Florida Statutes, and Florida rules.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 06/30/18.

<<signature>>

MIGUEL M. DE LA O

CIRCUIT JUDGE

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed original order sent electronically to the Clerk of Courts for filing in the Court file.

Footnotes

1 All other claims in this case have been dismissed through the November 16, 2015 Order Granting Motion to Dismiss First Amended Complaint and the March 9, 2018 Order on Defendant's Corrected Motion for Summary Judgment and Plaintiff's Motion for Summary Judgment.

2 Although Heltman argues that the confidentiality provisions could not have mattered for this purpose by the time he filed his lawsuit because Americas Property had been sold, the record is clear that APMC was still an active business in August 2014 and that it did not lose its customers until *after* Heltman filed his complaint and publicly disclosed the Stock Purchase Agreements. [Trial Tr. 49:19-51:6]

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