2024 IL App (5th) 240620-U

NO. 5-24-0620

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

TERRY CLARK, Plaintiff-Appellant, v. EMINENCE REAL ESTATE, LLC; TRAVIS CLARK; and ADAM SHANKS, Defendants (Adam Shanks, Defendant-Appellee).	)	Appeal from the Circuit Court of Champaign County. No. 19-L-206 Honorable Jason M. Bohm, Judge, presiding.

JUSTICE SHOLAR delivered the judgment of the court.
Justices Cates and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's amended judgment in favor of defendant is affirmed where the subsequent contract executed by the parties was a valid contract and did not contain personal guarantees of the defendants.

¶ 2 Plaintiff, Terry Clark, appeals the April 15, 2024, order of the circuit court of Champaign County. The court's April 15, 2024, order entered judgment in favor of Terry against Eminence Real Estate, LLC, and vacated its previous judgments against defendants Travis Clark and Adam Shanks. On appeal, Terry argues the court erred in finding the May 21st agreement superseded the May 12th contract and alternatively, that the May 21st agreement does not contain personal guarantees. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 We limit our recitation of the facts to those relevant to our disposition on appeal. We will recite additional facts in the analysis section as needed to address the specific arguments of the parties.

¶ 5 On May 12, 2017, Liberty Self Storage, LLC (owned 100% by Terry Clark) loaned Eminence Real Estate, LLC (owned 50% by Travis Clark and 50% by Adam Shanks) $250,000 for the construction of triplex rental units. The parties entered into a "Contract for Loan from Liberty Self Storage, LLC to Eminence Real Estate, LLC" dated May 12, 2017 (hereinafter "May 12th contract"). On May 21, 2017, the parties executed a document titled "Agreement" (hereinafter "May 21st agreement") involving the same loan transaction.

¶ 6 On December 18, 2019, Terry filed a three-count complaint alleging Travis and Adam defaulted on the repayment terms of the loan. Count I alleged breach of the repayment terms by Eminence Real Estate, LLC. Count II alleged breach of repayment by Travis. Count III alleged breach of repayment by Adam. Travis did not file an appearance or answer.

¶ 7 The matter proceeded to a bench trial on November 3, 2023. The evidence at trial established that May 12th was not the date that the parties executed the May 12th contract, but rather, Terry marked "5/12/2017" next to the parties' signatures to memorialize the date he wrote the check. The evidence further established that the parties signed the contract sometime before May 12, 2017. The May 12th contract provided, in relevant part:

> "On this date of 5/12/2017 Liberty Self Storage, LLC of Mahomet, IL owned 100% by Terry L. Clark of Mahomet, IL took a secured mortgage loan on Liberty Self Storage, LLC for the total amount of $250,000.00 at the interest rate of 4.7500% which matures 5/10/2042 and the interest rate varies every five years, agreed to loan Eminence Real Estate, LLC of Mahomet, IL owned 50% by Travis Clark of Mahomet, IL and 50% by Adam Shanks of Mahomet, IL the full amount of $250,000.00 with Travis Clark, Eminence Real Estate LLC 50% owner as a guarantor for 50% of loan for the amount of $125,000.00 and Adam Shanks,

> Eminence Real Estate, LLC 50% owner as a guarantor for 50% of loan for the amount of $125,000.00. *** In the event of sale, foreclosure, going out of business, death, insurance claim, loss of property, or any other reason, Guarantor Travis Clark agrees to make a minimum payment of $712.76 to Liberty Self Storage, LLC of Mahomet, IL with a total amount of $125,000.00 paid in full no later than 5/12/2022 and Guarantor Adam Shanks agrees to make a minimum payment of $712.76 to Liberty Self Storage, LLC of Mahomet, IL with a total amount of $125,000.00 paid in full no later than 5/12/2022."

Terry delivered a check for $250,000 to Travis on May 12, 2017.

¶ 8 The May 21st agreement identifies Eminence Real Estate, LLC, as "Party One" and Terry as "Party Two." The May 21st agreement provides, in relevant part:

> "1) PARTY ONE OBLIGATIONS.
>
> Party One does hereby covenant and agree that it shall:
> Make full and complete payment in the sum of $250,000.00 to Party Two as detailed within this agreement.
>
> 2) PARTY TWO OBLIGATIONS.
>
> Party Two does hereby covenant and agree that it shall:
> Provide Party One the payment schedule as indicated in paragraph four of this Agreement.
>
> 3) REPRESENTATIONS AND WARRANTIES OF THE PARTIES.
>
> Party One hereby represents and warrants: That the total assets and real equity of Eminence Real Estate LLC is in excess of $1,000,000.00 at the time of this Agreements execution.
>
> Party One also represents and warrants: That its members have sufficient personal funds to repay the full monetary amount shown in paragraph one of this Agreement.
>
> 4) ADDITIONAL TERMS.
>
> Both Parties agree that this Agreement is intended to ensure that Party One makes full payment to Party Two in the amount of $250,000.00. Both Parties also agree that the payment schedule is not to exceed 2 years/months in duration from the date of the execution of this Agreement, by which time Party One agrees to have repaid, in full, the monetary amount shown in paragraph one of this agreement to Party Two. ***
>
> ***

6) GENERAL PROVISIONS.

* * *

D. Entire Agreement. This Agreement constitutes the entire agreement with respect to the subject matter hereof, and supersedes all other prior agreements and understandings, both written and oral, among the parties hereto and their affiliates."

¶ 9 Following the trial, the trial court entered judgment in favor of Terry on all three counts. The trial court entered judgment in favor of Terry and against Eminence Real Estate, LLC, in the amount of $239,893.91. The court entered judgment in favor of Terry and against Travis in the amount of $119,946.95. Lastly, the court entered judgment in favor of Terry and against Adam in the amount of $105,691.75.

¶ 10 On December 5, 2023, Adam filed a motion to reconsider and to vacate judgment, asserting that the trial court erred in its application of existing law. In his motion to reconsider, Adam argued the terms of the May 21st agreement controlled, and that agreement placed no obligation on him to personally guarantee repayment of the loan or any part of the loan. On April 15, 2024, following hearing on the motion to reconsider, the court entered an amended order vacating the previous judgments as to Travis and Adam and entered judgment in their favor.

¶ 11 Terry filed a timely notice of appeal on May 6, 2024.

¶ 12 II. ANALYSIS

¶ 13 On appeal, Terry argues that the trial court erred by granting the motion to reconsider and entering an amended judgment in favor of Travis and Adam. Adam argues the court correctly held that the May 21st agreement is valid, controlling, and does not include a personal guarantee. For the reasons that follow, we agree with Adam and affirm.

¶ 14 Generally, following a bench trial, the standard of review is whether the order or judgment is against the manifest weight of the evidence. *Reliable Fire Equipment Co. v. Arredondo*, 2011

IL 111871, ¶ 12. "However, to the extent that issues in a bench trial involve the interpretation of statutes or the legal effect of documents, such rulings are conclusions of law that the appellate court reviews *de novo*." *Granville Tower Condominium Ass'n v. Escobar*, 2012 IL App (1st) 200362, ¶ 27 (citing *Eychaner v. Gross*, 202 Ill. 2d 228, 252 (2002)). The resolution of this case hinges on the legal effect of the May 21st agreement, and as such, our review is *de novo*.

¶ 15 First, Terry argues that the May 21st agreement lacked sufficient consideration to be a valid contract. More specifically, Terry argues consideration was lacking because the $250,000 loan was paid after the signing of the May 12th contract, and no additional payment was made following execution of the May 21st agreement. Adam argues the consideration in the May 21st agreement is self-evident. We agree with Adam.

¶ 16 In Illinois, offer, acceptance, and consideration are the basic requirements of a contract. *Melena v. Anheuser-Busch, Inc.*, 219 Ill. 2d 135, 151 (2006). "Valuable consideration for a contract consists of some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other." *Dohrmann v. Swaney*, 2014 IL App (1st) 131524, ¶ 23. "Any act or promise which is of benefit to one party or disadvantage to the other is a sufficient consideration to support a contract." *Steinberg v. Chicago Medical School*, 69 Ill. 2d 320, 330 (1977).

¶ 17 Under Illinois law, "[a] complete, valid, written contract merges and supersedes all prior and contemporaneous negotiations and agreements dealing with the same subject matter." *Courtois v. Millard*, 174 Ill. App. 3d 716, 720 (1988) (citing *Harris Trust & Savings Bank v. Chicago & Title Trust Co.*, 84 Ill. App. 3d 280, 283 (1980)). Merger occurs when a contract supersedes and incorporates all or part of an earlier contract. *American National Bank & Trust Co. of Chicago v. Bentley*, 159 Ill. App. 3d 27, 29 (1987). "When a subsequent contract relates to the

same subject matter and contains the same terms as a previous contract, the actions of the parties are based on the provisions of the subsequently executed contract." *Aon Corp. v. Utley*, 371 Ill. App. 3d 562, 567 (2006).

¶ 18 Both parties cite to *Courtois v. Millard* to support their respective positions. *Courtois v. Millard*, 174 Ill. App. 3d 716 (1988). In *Courtois*, this court determined that two contracts for the sale of the same parcel of real estate involved identical subject matter. *Id.* at 720. The first contract was a form contract with the blanks filled in by the parties. *Id.* The second contract was drafted more specifically but contained several provisions that were inconsistent with the first contract. *Id.* The court found that the "inconsistencies between the two contracts evinces the conclusion that the two parties intended for the second contract to control their agreement and to supersede the first contract." *Id.* The court noted, *inter alia*, that the second contract provided for a mortgage, casualty insurance requirements, and default provisions, all of which were not contained in the first contract. *Id.* Additionally, the second contract contained no intention by the parties to incorporate the terms of the first contract. *Id.* Therefore, the court concluded that the second contract controlled the agreement and superseded the first. *Id.*

¶ 19 Terry distinguishes *Courtois*, arguing that in the case at hand, the loan was paid after the signing of the May 12th contract, and no additional payment was made following execution of the May 21st agreement. Terry also argues that the terms of the second agreement were not so different as to suggest that the parties intended for the second agreement to supersede the first. In contrast, Adam points to the "Entire Agreement" clause of the May 21st agreement which reads: "This Agreement constitutes the entire agreement with respect to the subject matter hereof, and supersedes all other prior agreements and understandings, both written and oral, among the parties hereto and their affiliates."

¶ 20 Our examination of the contracts reveals that the May 21st agreement contains several additional terms that were not found in the May 12th contract including an arbitration clause and a "General Provisions" section. The general provisions section includes, *inter alia*, where to send notices, that the agreement binds successors and assignees, a waiver and amendment clause, an entire agreement clause, a severability clause, a choice of law clause, that the parties voluntarily executed the agreement, and that the agreement could be signed in counterparts and electronically. Additionally, the May 12th contract required repayment in full no later than five years from execution of the contract, while the May 21st agreement stated the repayment schedule was not to exceed two years. As in *Courtois*, we find that the inconsistencies between the two contracts evinces that the parties intended for the May 21st agreement to control and supersede the May 12th contract.

¶ 21 Having determined that the May 21st agreement superseded the May 12th contract, we further find that the additional and modified terms of the May 21st agreement constituted sufficient consideration. See *Steinberg*, 69 Ill. 2d at 330 ("Any act or promise which is of benefit to one party or disadvantage to the other is a sufficient consideration to support a contract."). The May 21st agreement is a valid, written contract dealing with the same subject matter as the May 12th contract. As such, the May 21st agreement is valid and controlling.

¶ 22 Terry next argues that even if this court finds the May 21st agreement valid, it contains sufficient language to find that Adam personally guaranteed the loan of $250,000. Initially, the trial court found the May 12th contract controlled and that it contained a personal guarantee by Travis and Adam. The court entered judgment against Travis and Adam personally. Upon reconsideration, the court found the May 21st agreement superseded the prior contract and that the May 21st agreement did not contain personal guarantees of Travis and Adam.

¶ 23 Section 3 of the May 21st agreement was titled "Representations and Warranties of the Parties." It reads:

> "Party One hereby represents and warrants: That the total assets and real equity of Eminence Real Estate LLC is in excess of $1,000,000.00 at the time of this Agreements execution.
>
> Party One also represents and warrants: That its members have sufficient personal funds to repay the full monetary amount shown in paragraph one of this Agreement."

In support of his argument, Terry points to his testimony and argues it is clear that the intent of the parties was to include a personal guarantee. Terry testified that he would not have signed the May 21st agreement if it did not contain a personal guarantee.

¶ 24 Terry further argues finding that the May 21st agreement does not contain a personal guarantee renders section 3 of the contract meaningless. Adam admits that if not for the subsequent contract superseding the first, he and Travis would be personally liable for the amount owed. Adam argues, however, that section 3 simply represents and warrants that Eminence Real Estate, LLC had, at the time, assets and equity in excess of $1 million and that he and Travis had sufficient personal assets to repay the debt. Adam notes that in the May 12th contract, they were identified as "Guarantors" and expressly obligated to repay any amount owed "[i]n the event of sale, foreclosure, going out of business, death, insurance claim, loss of property, or any other reason." Adam argues that because Terry drafted the May 12th contract which contained personal guarantee language, Terry was aware of what personal guarantee language should have been included in the May 21st agreement, and therefore, his intent could not have been to hold Travis and Adam personally liable. We agree with Adam. See *Air Safety, Inc. v. Teachers Realty Corp.*, 185 Ill. 2d 457, 462 (1999) ("Traditional contract interpretation principles in Illinois require that: '[a]n agreement, when reduced to writing, must be presumed to speak the intention of the parties who signed it. It speaks for itself, and the intention with which it was executed must be determined

from the language used. It is not to be changed by extrinsic evidence.' " (quoting *Western Illinois Oil Co. v. Thompson*, 26 Ill. 2d 287, 291 (1962))).

¶ 25 For the foregoing reasons, we conclude that the May 12th contract was superseded by the May 21st agreement and that the latter agreement was a valid contract containing sufficient consideration. Additionally, we find that the May 21st agreement did not contain personal guarantees by Travis and Adam. As such, the trial court properly vacated the portions of its November 6, 2023, judgment against Travis and Adam.

¶ 26 III. CONCLUSION

¶ 27 For the foregoing reasons, we affirm the April 15, 2024, order of the circuit court of Champaign County.

¶ 28 Affirmed.