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2019 IL App (3d) 180395-U

Order filed July 11, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

DALY WOOD PRODUCTS, INC.,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellant,)	Will County, Illinois.
)	
v.)	Appeal No. 3-18-0395
)	Circuit No. 16-L-642
HARTZ CONSTRUCTION COMPANY,)	
INC.,)	
)	Honorable John Anderson,
Defendant-Appellee.)	Judge, Presiding.

PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* The court did not err in granting defendant’s motion for summary judgment where plaintiff failed to perform all its obligations under the contract.

¶ 2 Plaintiff, Daly Wood Products, Inc., appeals the Will County circuit court’s granting of summary judgment in favor of defendant, Hartz Construction Company, Inc. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff is an Illinois corporation that buys timber, operates a sawmill, and engages in the wholesale distribution of furniture grade wood, construction grade planks, boards, and wood

related products. Daniel Daly is the president of the corporation and does labor at the mill. Defendant is a residential home builder and developer. Defendant bought a parcel of property that included approximately 30 acres of land consisting of old growth trees. Tom McSharry is the Director of Land Development for defendant. On January 21, 2016, Daly and McSharry met on the property on behalf of their companies to discuss the removal of timber. Plaintiff stated that he would pay defendant \$400 for every semi-truck load of high quality timber that plaintiff removed from the property. Both parties signed a one-page form that they had filled in, which stated,

“The undersigned landowner has this day sold to the undersigned purchaser any logs/trees located on landowner’s farm ***. The landowner acknowledges receipt of the sum of [\$]400.00 per semi load *** for said logs and hereby grants and gives to the purchaser the right of ingress and egress to remove said logs/trees. Purchaser agrees to remove said logs/trees within _____ months from the date of this agreement.”

Defendant told plaintiff that a contract would need to be executed and plaintiff would have to provide evidence of insurance.

¶ 5 Defendant gave plaintiff a copy of the insurance requirements along with a standard form contract. The required insurance included commercial general liability, workers’ compensation, business automobile liability, and umbrella liability. The insurance requirements document stated,

“Prior to the commencement of work, Contractor and all of its subcontractors shall furnish to the designated interest(s) of Hartz Entities certification of all required insurance to the satisfaction of the Hartz Entities. Such certification shall identify the type of insurance, the

insurance limits, and the policy term, and shall specifically list the special provisions enumerated for such insurance required hereunder. Such certification shall designate as Additional Insured the designated interest(s) of Hartz Entities per attached Exhibit A and as identified in this Contract.”

The standard form contract said at the top, “This Contract *** is made and entered into by and between Hartz Construction Co., Inc., (‘Developer’) and Daly Wood Products, Inc. (‘Contractor’).” One provision of the standard contract stated,

“Contractor agrees for itself and on behalf of all persons performing Work by, through, or under Contractor to carry workers’ compensation insurance, employer’s liability insurance, automobile and general liability, including products and completed operations insurance, with coverage and limits in accordance with Hartz Construction Co., Inc. Contractor/Subcontractor Insurance Requirements.”

¶ 6 Plaintiff and defendant met again on February 3, 2016. Defendant told plaintiff that it had to sign the standard form contract and provide evidence of the necessary insurance before any work could begin on the property. Plaintiff received the insurance as required on the contract, with one exception: the workers’ compensation coverage it received did not cover Daly or his wife. When plaintiff decided not to obtain the additional workers’ compensation coverage, defendant hired someone else. Plaintiff filed a complaint against defendant alleging breach of contract.

¶ 7 Defendant filed a motion for summary judgment, alleging that plaintiff’s claim must fail because it did not perform all required contractual conditions where plaintiff chose not to obtain

the required insurance. Defendant attached to its motion a copy of Daly's discovery deposition. In the deposition, Daly stated that, at the time he and McSharry spoke, Daly understood that "meeting [defendant's] insurance requirements was part of [their] deal." He agreed to meet the insurance requirements. Daly gave the insurance requirements to his insurance agent. He found out that the insurance he received excluded him and his wife from workers' compensation coverage, which did not meet defendant's insurance requirements. Daly's insurance carrier quoted an additional \$23,000 in order to include him and his wife on the workers' compensation policy. Daly decided not to get the extra insurance because of the cost. Daly told McSharry that he had hired two loggers and had paid the workers' compensation insurance for them. However, even with hiring two loggers, Daly told McSharry that he would still be present during the work. When Daly told McSharry that he would not be paying for the extra insurance, McSharry stated that they would be hiring someone else. Daly further stated that he would "make \$262,000 in gross profit" from this job alone. The court granted the motion for summary judgment, adopting the reasoning in the motion.

¶ 8

II. ANALYSIS

¶ 9

On appeal, plaintiff argues that the circuit court erred in granting defendant's motion for summary judgment. Because the contract language specifically required that plaintiff's workers' compensation insurance cover Daly as the proprietor and plaintiff made the business decision not to purchase the additional insurance, we find that Daly did not perform his obligations under the contract and the motion for summary judgment was properly granted.

¶ 10

"Section 2-1005 of the Code of Civil Procedure provides for summary judgment when the pleadings, depositions, and admissions on file, together with any affidavits, show that there is no genuine issue as to any material fact ***." *Forsythe v. Clark USA, Inc.*, 224 Ill. 2d 274, 280

(2007); 735 ILCS 5/2-1005 (West 2016). We review the court’s granting of summary judgment *de novo* and review the record in the light most favorable to the nonmoving party. *Id.* Summary judgment is appropriate where the plaintiff cannot establish an element of the claim. *Willett v. Cessna Aircraft Co.*, 366 Ill. App. 3d 360, 368 (2006). “To recover for breach of contract, a plaintiff must prove (1) the existence of a contract; (2) plaintiff performed all contractual obligations; (3) facts constituting a breach; and (4) damages from the breach.” *Storino, Ramello & Durkin v. Rackow*, 2015 IL App (1st) 142961, ¶ 17.

¶ 11 In its motion for summary judgment, defendant alleged that plaintiff could not establish that it had performed all contractual obligations under the contract. “The construction of a contract is a question of law for the trial judge and thus suitable for summary judgment.” *Omnitrus Merging Corp. v. Illinois Tool Works, Inc.*, 256 Ill. App. 3d 31, 34 (1993). In contract construction, the primary objective is to give effect to the intentions of the parties. *Thompson v. Gordon*, 241 Ill. 2d 428, 441 (2011). “[A] contract must be construed as a whole, viewing each part in light of the others.” *Gallagher v. Lenart*, 226 Ill. 2d 208, 233 (2007).

“If the words in the contract are clear and unambiguous, they must be given their plain, ordinary and popular meaning. [Citation.] However, if the language of the contract is susceptible to more than one meaning, it is ambiguous. [Citation.] If the contract language is ambiguous, a court can consider extrinsic evidence to determine the parties’ intent.” *Thompson*, 241 Ill. 2d at 441.

¶ 12 Here, the contract required that before starting work, plaintiff had to provide defendant with certification that it had procured the required insurance “to the satisfaction of the Hartz Entities.” One of the insurance provisions stated,

“Contractor agrees for itself and on behalf of all persons performing Work by, through, or under Contractor to carry workers’ compensation insurance, employer’s liability insurance, automobile and general liability, including products and completed operations insurance, with coverage and limits in accordance with Hartz Construction Co., Inc. Contractor/Subcontractor Insurance Requirements.”

Plaintiff contends that “nothing in [the] contract requires the purchase of non-standard endorsements,” such as a workers’ compensation endorsement to cover Daly as the proprietor. However, our plain reading of the contract establishes that the workers’ compensation insurance needed to cover everyone, including Daly. In his deposition, Daly stated that he understood that he needed to get the insurance and that, though he hired two loggers, he would still need to be present each day while the trees were removed. Moreover, Daly’s decision not to purchase the insurance amounted to a business decision. Daly stated that he decided not to get the insurance because it would cost \$23,000, though he also stated that he stood to make \$262,000 from the contract. Daly obviously weighed the costs and benefits when coming to his decision. In light of these facts, we cannot say there is any genuine issue as to whether plaintiff performed all contractual obligations under the contract. Clearly, plaintiff did not.

¶ 13 In coming to this conclusion, we reject plaintiff’s argument that it was not reasonable for defendant to require workers’ compensation insurance because Daly would have been covered under other insurance. It was within defendant’s right to require that anyone they hired was fully covered by all insurance. Daly understood this when he entered into the contract. Moreover, the very fact that plaintiff’s insurance carrier offered the workers’ compensation coverage for the proprietor confirms that some people purchase such insurance.

III. CONCLUSION

¶ 14

¶ 15

For the foregoing reasons, we affirm the judgment of the circuit court of Will County.

¶ 16

Affirmed.