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IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 4, 2019 Session

KINGSTON SPRINGS MEDICAL, LLC v. KARL FRANCIS ET AL.

Appeal from the Chancery Court for Cheatham County
No. 15483 Robert E. Lee Davies, Senior Judge

No. M2018-01617-COA-R3-CV

A lessee contended that its right of first refusal to purchase leased real estate was triggered when its lessors transferred the real estate to a general partnership. The lessors disagreed. They contended that the lessee's right only arose upon receipt of a "bona fide offer from an unrelated third party to purchase" the property and that there was no such offer. The lessee sued the lessors and the general partnership, including its partners and a related individual, seeking specific performance or damages. The trial court dismissed the lessee's claims on summary judgment. On appeal, we conclude that the defendants were entitled to summary judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

W. NEAL MCBRAYER, J., delivered the opinion of the court, in which ANDY D. BENNETT, J., and TIMOTHY L. EASTER, SP.J., joined.

Timothy V. Potter (on appeal and at trial), Andrew Mills (on appeal), and Brian Ragan (at trial), Dickson, Tennessee, for the appellant, Kingston Springs Medical, LLC.

Patricia R. Young, Brentwood, Tennessee, for the appellees, Karl Francis, Indian Pointe General Partners, JKW Family Limited Partnership, AAA Family Limited Partnership, and Jason West.

No brief filed on behalf of appellee, Pamela Francis.

OPINION

I.

A.

In March 2001, Karl Francis, and his wife, Pamela Francis, purchased unimproved real property in the Indian Pointe Subdivision in Kingston Springs, Tennessee. Although only the names of the Francises appeared on the deed, they considered the acquisition as being in partnership with Mr. Francis's friend, Jason West. Mr. West provided $50,000 of the $100,000 cash down payment and paid one-half of the interest on the loan for the balance of the purchase price. Mr. West also bore a share of the expenses associated with the property and guaranteed a later loan used to prepare the property for commercial development.

Despite Mr. West's significant financial contributions, the Francises and Mr. West did not memorialize their arrangement in writing. As Ms. Francis later explained, "it was just a handshake, because [Mr. Francis and Mr. West] had been friends and trusted each other." Mr. West and Ms. Francis described Mr. West's involvement as a "silent partner."

In 2005, Dr. Reggie Anderson approached Mr. Francis and Mr. West about investing in a proposed medical office building to be located in either Kingston Springs or Pegram. Mr. Francis and Mr. West both declined the investment opportunity. But when Dr. Anderson inquired if the men knew of any potential sites for the building, Mr. Francis suggested the Indian Pointe property.

Although Dr. Anderson wanted to purchase the lot on which he would construct his building, the Francises were only interested in leasing. An attorney for Mr. Francis drafted a ground lease with a seventy-five year term. Still Dr. Anderson insisted that the lease include an "opportunity to purchase" the lot. So he "crafted" language that would permit the lessee to match any "bona fide offer from an unrelated third party to purchase the fee simple interest in the Leased Premises" and purchase the property on the same terms and conditions.

The Francises signed the lease with Kingston Springs Medical, LLC, an entity Dr. Anderson formed for the purposes of developing, owning, and leasing the medical office building. Mr. West was not a party to the lease, and the parties dispute whether Dr. Anderson was aware of Mr. West's involvement with the leased property or his partnership with the Francises when the lease was signed.

After signing the lease, Kingston Springs Medical constructed a 10,360 square foot medical building on the property. Sometime in the fall of 2011, Dr. Anderson went

to the bank to inquire about refinancing Kingston Springs Medical's loan, which it used to construct the building. During that meeting, Dr. Anderson learned that the leased property was no longer owned by the Francises. In 2008, without informing Dr. Anderson, the Francises had conveyed the property to Indian Pointe General Partners.

According to Mr. Francis, he and his wife transferred the property to Indian Point General Partners for tax and estate planning purposes. Indian Pointe General Partners had two partners, each with a fifty percent interest in the partnership: AAA Family Limited Partnership and JKW Family Limited Partnership. AAA Family Limited Partnership was composed of the Francises and their children, and JKW Family Limited Partnership was composed of Mr. West, his wife, and their children.

Believing that the conveyance to Indian Pointe General Partners triggered Kingston Springs Medical's opportunity to purchase under the lease, Dr. Anderson proposed to purchase the leased real estate for $250,000. Dr. Anderson based the offer on what he understood the property appraised for when it was purchased by the Francises in 2001. The Francises and Mr. West declined the offer. They also disputed that the transfer of the property to Indian Pointe General Partners entitled Kingston Springs Medical to purchase the property.

B.

In chancery court, Kingston Springs Medical sued the Francises, Mr. West, Indian Pointe General Partners, AAA Family Limited Partnership, and JKW Family Limited Partnership. Kingston Springs Medical contended that the Francises had breached the lease and engaged in "misrepresentation by concealment" by failing to provide notice of the transfer of the leased property and by failing to disclose the information necessary for Kingston Springs Medical to exercise its opportunity to purchase the property. Kingston Springs Medical also alleged that all of the defendants had been unjustly enriched by the lease payments made after the transfer of the leased real estate to Indian Pointe General Partners and by Kingston Springs Medical's improvements to the property.

Kingston Springs Medical asked the court to "enforce the terms of the Lease . . . by directing the Defendants to offer . . . the present right and opportunity to purchase the Subject Property free and clear of any and all liens and encumbrances." As part of that relief, it requested that the court fix the value of the property transferred to Indian Pointe General Partners and for that amount to "be established . . . as the purchase price to be paid by [Kingston Springs Medical] . . . if [it] elects to exercise its right or opportunity to purchase the Subject Project according to the terms of the Lease." Alternatively, Kingston Springs Medical asked for damages. It also requested an award of attorney's fees and expenses under the lease. All of the defendants answered. In the case of Mr. West, JKW Family Limited Partnership, and Indian Pointe General Partners, they also counterclaimed for an award of attorney's fees and expenses.

Mr. West, JKW Family Limited Partnership, and Indian Pointe General Partners moved for summary judgment. They argued that the Indian Pointe General Partners conveyance did not entitle Kingston Springs Medical to an opportunity to purchase under the lease. And even if the conveyance could be equated with a "bona fide offer," Indian Pointe General Partners could not be considered an "unrelated third party" by virtue of the Francises' interest in one of its two partners, AAA Family Limited Partnership. In addition, because there was no or nominal consideration for the conveyance, the contracted price for the opportunity to purchase could not be determined. So they submitted that Kingston Springs Medical's claims should be dismissed. They also requested summary judgment on their counterclaims. The other defendants joined in the motion.

In response, Kingston Springs Medical contended that the opportunity to purchase under the lease was much broader than asserted in the motion for summary judgment. It claimed that all but one type of proposed transfer of the realty was a triggering event, the only exception being a transfer of ownership occasioned by death. Although the Francises may have made the transfer to Indian Pointe General Partners in contemplation of death, the transfer was not occasioned by death. Kingston Springs Medical further argued that the claim that Indian Pointe General Partners was a "related entity" to the Francises ignored the facts. The Francises' interest in Indian Pointe General Partners was indirect, and following the conveyance, several people and an entity unrelated to the Francises could claim an indirect interest in the property.

Even if a sale was necessary, Kingston Springs Medical submitted that the facts could support a finding that the Francises sold the property to Indian Pointe General Partners. As for the purchase price that it would be required to match, Kingston Springs Medical argued that the court should look to the deed conveying the property. The deed recited that the consideration was "TEN DOLLARS, cash in hand paid, and other good and valuable considerations." Kingston Springs Medical submitted that it was up to the Francises to establish the amount of the "other good and valuable considerations." Alternatively, Kingston Springs Medical advocated for using the value placed on the property in tax filings by Mr. Francis, Mr. West, JKW Family Limited Partnership, and Indian Pointe General Partners.

The court granted summary judgment to the defendants on Kingston Springs Medical's claims. It concluded "from the terms [of the lease] that the parties intended to create the 'traditional garden-variety type of first refusal' where the price and other conditions are determined by a third party offer." Based on the undisputed facts, the court determined that "there ha[d] been no bona fide offer from an unrelated third party that would give rise to the exercise of the right of first refusal set forth in the lease agreement." But even if the right of first refusal was triggered by the Francises' intention to convey the leased realty to Indian Pointe General Partners, the court concluded that

provision would be unenforceable because it "[wa]s not definite enough regarding price such that specific performance can be decreed."

In a separate order, the court dismissed the counterclaims of Mr. West, JKW Family Limited Partnership, and Indian Pointe General Partners. The court determined that the Francises were entitled to attorney's fees as prevailing parties and ordered that counsel submit an affidavit of fees. The court entered an agreed order awarding fees.

II.

A.

Only Kingston Springs Medical appeals. It raises a single issue for our review: "whether the trial court erred by granting summary judgment to the defendants and opining that the 'right of first refusal' set forth in paragraph 18 of the ground lease had not been triggered by the execution of the quitclaim deed [to Indian Pointe General Partners]?"

Summary judgment may be granted only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04. The party moving for summary judgment has "the burden of persuading the court that no genuine and material factual issues exist and that it is, therefore, entitled to judgment as a matter of law." *Byrd v. Hall*, 847 S.W.2d 208, 211 (Tenn. 1993). If the moving party satisfies its burden, "the nonmoving party must then demonstrate, by affidavits or discovery materials, that there is a genuine, material fact dispute to warrant a trial." *Id.*

We review the summary judgment decision as a question of law. *Martin v. Norfolk S. Ry. Co.*, 271 S.W.3d 76, 84 (Tenn. 2008); *Blair v. W. Town Mall*, 130 S.W.3d 761, 763 (Tenn. 2004). So our review is de novo; the trial court's decision enjoys no presumption of correctness. *Rye v. Women's Care Ctr. of Memphis, MPLLC*, 477 S.W.3d 235, 250 (Tenn. 2015).

As the sole issue on appeal confirms, the trial court's grant of summary judgment on Kingston Springs Medical's claims turned on the proper interpretation of the ground lease.[1] Lease interpretation is also a question of law that we review de novo with no

[1] In addition to arguing that the trial court misinterpreted the lease, Kingston Springs Medical clings to the notion that Mr. "West's actions amounted to a bona fide offer to purchase the Subject Property from an unrelated third party." But Kingston Springs Medical did not demonstrate facts that "could lead a rational trier of fact to find in [its] favor" on this point. *See Rye*, 477 S.W.3d at 265.

presumption of correctness. *Allstate Ins. Co. v. Watson*, 195 S.W.3d 609, 611 (Tenn. 2006).

B.

The "cardinal rule of contract interpretation is to ascertain and give effect to the intent of the parties" as expressed in the plain language of the contract. *Allstate Ins. Co.*, 195 S.W.3d at 611; *see Dick Broad. Co. v. Oak Ridge FM, Inc.*, 395 S.W.3d 653, 659 (Tenn. 2013). All the content of the contract must be examined. *D & E Const. Co., Inc. v. Robert J. Denley Co., Inc.*, 38 S.W.3d 513, 518-19 (Tenn. 2001). This is required "for one clause may modify, limit or illuminate another." *Cocke Cty. Bd. of Highway Comm'rs v. Newport Utils. Bd.*, 690 S.W.2d 231, 237 (Tenn. 1985). And where possible, the language "should be construed harmoniously to give effect to all provisions and to avoid creating internal conflicts." *Wilson v. Moore*, 929 S.W.2d 367, 373 (Tenn. Ct. App. 1996). If the language used is unambiguous, we enforce the contract as written. *Dick Broad. Co.*, 395 S.W.3d at 659; *Allstate Ins. Co.*, 195 S.W.3d at 611.

Kingston Springs Medical argues that the trial court's interpretation of the opportunity to purchase provision of the lease ignored two important sentences set out separately at the end of the provision. The opportunity to purchase provision, found in paragraph 18 of the lease, provided as follows:

> Opportunity to Purchase - If during the term of this agreement, Lessor receives a bona fide offer from an unrelated third party to purchase the fee simple interest in the Leased Premises then Lessor, prior to closing on a sale of the said fee simple interest, shall give to Lessee written notice of Lessor's intent to sell unto said third party. Lessee, if not then in default in the performance of the terms and conditions of this agreement, may match the purchase offer of the third party, and first purchase the fee simple interest to the Leased Premises on the same terms and conditions as contained in the purchase offer from the third party. Notice of Lessor's intent to sell to a third party shall be given unto the Lessee and shall contain a copy of the offer to purchase by said third party. Lessee shall have forty-five days from the date of the mailing of the notice by Lessor to match and close upon the said third party offer to purchase. If Lessee does not close on a purchase of the fee simple interest then the opportunity to purchase the fee simple interest shall be thereafter terminated.
>
> This opportunity to purchase which is afforded to Lessee shall not be applicable to any transfer of the fee simple interest which may occur as a result of a death.

> Any transfer of the fee simple interest in the Leased Premises (except to Lessee) shall be a conveyance subject to the terms and conditions of this agreement.

According to Kingston Springs Medical, the parties drafted the provision "intentionally and specifically with the purpose to not trigger the right of first refusal in only one instance, a death." So all transfers, other than by death, must necessarily grant Kingston Springs Medical a right of first refusal. It contends that the final sentence bolsters the point, making "[a]ny transfer of the fee simple interest in the Leased Premises (except to Lessee) . . . subject to the terms and conditions of this agreement."

Based on the language of this lease, we agree with the trial court that the right of first refusal required a proposed sale of the property by the Francises to an "unrelated third party." *See Riverside Surgery Ctr., LLC v. Methodist Health Sys., Inc.*, 182 S.W.3d 805, 811-12 (Tenn. Ct. App. 2005) ("[T]he triggering of the right of first refusal is dependent on the language of the contract . . . ."). Although the provision specifically excluded transfers that were occasioned by the death of the lessors, we do not read that specific exclusion as including a right of first refusal in the case of all other transfers. To do so, we would have to ignore other parts of the provision defining the right of first refusal as the right to "match the purchase offer of the third party." *See Wilson*, 929 S.W.2d at 373 (recognizing the need "to give effect to all provisions" of the contract).

The last sentence of the opportunity to purchase provision does not change our conclusion. Kingston Springs Medical interprets the word "agreement" in that sentence as meaning the right of first refusal such that any transfer of the fee simple interest is subject to the right of first refusal. But that is not how the word "agreement" is used elsewhere in the provision. As Kingston Springs Medical acknowledged at oral argument, in the first part of the provision, the word "agreement" refers to the parties' lease, not just the right of first refusal. So we read the last sentence as a non-disturbance clause, an agreement that any subsequent transferee of the property will be bound by the terms of the lease. Such a clause would be beneficial to Kingston Springs Medical if it elected not to exercise its right of first refusal.

Here, the opportunity to purchase provision created "a traditional garden-variety right of first refusal." *Riverside Surgery Ctr., LLC*, 182 S.W.3d at 812; *see also* David I. Walker, *Rethinking Rights of First Refusal*, 5 STAN. J.L. BUS. & FIN. 1, 8 (1999) (describing the arrangement "typical of the classic right of first refusal"). The price terms and other conditions were to be determined by reference to a third-party offer. The undisputed facts established that there was no third-party offer.

III.

The transfer of the realty by Mr. and Mrs. Francis did not trigger Kingston Springs Medical's right of first refusal under the ground lease. We conclude that the grant of summary judgment was appropriate. So we affirm.

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W. NEAL MCBRAYER, JUDGE