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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-801

No. COA22-129

Filed 6 December 2022

Johnston County, No. 17CVS3116

BS & HS LLC; P.P.S. MANAGEMENT, INC., and HARDIP S. ROOPRAI, Plaintiffs,

v.

NYALKARAN INC.; VINAYAKJI LLC; PARESH PATEL; GORDHANBHAI S. PATEL; & USHA PATEL, Defendants.

Appeal by plaintiffs from judgment entered 22 July 2021 by Judge Eula E. Reid in Johnston County Superior Court. Heard in the Court of Appeals 6 September 2022.

The Armstrong Law Firm, PA, by L. Lamar Armstrong III, for plaintiffs-appellants.

Reece & Reece, by Mary McCullers Reece, and Woodruff & Fortner, by Gordon C. Woodruff, for defendants-appellees.

GORE, Judge.

¶ 1 Plaintiffs, BS & HS LLC, P.P.S. Management, Inc., and Hardip S. Rooprai, appeal from judgment entered upon their claims for breach of contract, implied-in-fact contract, and unjust enrichment, arising from a 2012 Lease Agreement. After hearing the matter without a jury, the trial court determined that defendants Paresh Patel and Vinayakji, LLC, were liable for breach of contract and damages in the

amount of $58,000 for franchise fees and $8,500 for a bulk TV lease. Further, it determined that plaintiffs were entitled to indemnification from Paresh Patel and Vinayakji in the amount of $118,385.78. On these issues, the trial court rejected plaintiffs' claims against defendant Nyalkaran, Inc. As to all defendants, the trial court found no liability for unjust enrichment or attorney's fees.

¶ 2 Plaintiffs raise four issues on appeal. They argue the trial court erred in concluding: (1) plaintiffs are not entitled to indemnification against defendant Nyalkaran; (2) defendant Nyalkaran is not liable for breach of contract; (3) plaintiffs are not entitled to an award of unjust enrichment against defendants; and (4) plaintiffs are not entitled to reimbursement of their attorney's fees and costs resulting from defendants' breach of contract. We affirm.

I.

¶ 3 "The standard of review on appeal from a judgment entered after a non-jury trial is whether there is competent evidence to support the trial court's findings of fact and whether the findings support the conclusions of law and ensuing judgment." *Cartin v. Harrison*, 151 N.C. App. 697, 699, 567 S.E.2d 174, 176 (2002) (quotation marks and citation omitted). "A trial court's findings of fact are binding on appeal if supported by competent evidence." *E. Carolina Reg'l Hous. Auth. v. Lofton*, 369 N.C. 8, 11, 789 S.E.2d 449, 452 (2016) (quotation marks and citation omitted). "We review *de novo* the trial court's conclusions of law." *Town of Green Level v. Alamance*

Cnty., 184 N.C. App. 665, 669, 646 S.E.2d 851, 854 (2007) (citation omitted). "The trial court's award of damages at a bench trial is a matter within its sound discretion, and will not be disturbed on appeal absent an abuse of discretion." *Helms v. Schultze*, 161 N.C. App. 404, 414, 588 S.E.2d 524, 530 (2003) (citation omitted).

II.

¶ 4 On the issue of breach of contract and indemnification, plaintiffs broadly assert Nyalkaran is a successor or assign of Paresh and Vinayakji as a matter of law. Plaintiffs provide cursory definitions for the terms "successor" and "assignee" as set forth in Black's Law Dictionary (9th ed. 2009). They also cite two cases for a general premise, which they then fail to analogize or distinguish to the facts in the case at bar. *See G.P. Publications, Inc. v. Quebecor Printing*, 125 N.C. App. 424, 432-33, 481 S.E.2d 674, 679 (1997) (listing four exceptions to the general rule against successor liability); *see also Budd Tire Corp. v. Pierce Tire Co.*, 90 N.C. App. 684, 689, 370 S.E.2d 267, 270 (1988) ("[T]he question of a successor corporation's liability for the debts or liabilities of its predecessor as a matter of equity . . . ."). Plaintiffs (i) generally contend there was no competent evidence before the trial court absolving Nyalkaran from indemnification; (ii) do not specify which exception to the general rule against successor liability might apply in this case; and (iii) place the burden of proof upon defendants to demonstrate otherwise. We determine that plaintiffs fail to sufficiently support their argument with citation to authority upon which they rely. Accordingly,

plaintiffs' argument is overruled. *See* N.C.R. App. P. 28(b)(6).

¶ 5 In the alternative, plaintiffs argue Nyalkaran is liable for breach of implied-in-fact contract. Again, plaintiffs cite a case for its general proposition but do not apply the facts before us to guiding legal precepts. *See Ellis Jones, Inc. v. W. Waterproofing Co.*, 66 N.C. App. 641, 646, 312 S.E.2d 215, 218 (1984) (An implied-in-fact contract can be seen in the parties' "conduct rather than in any explicit set of words . . ." and may be enforceable as an express contract.). This argument is also overruled. *See* N.C.R. App. P. 28(b)(6).

¶ 6 Next, plaintiffs argue Nyalkaran is liable for unjust enrichment. Unjust enrichment is "a claim in quasi contract or a contract implied in law." *Booe v. Shadrick*, 322 N.C. 567, 570, 369 S.E.2d 554, 556 (1988). "The general rule of unjust enrichment is that where services are rendered and expenditures made by one party to or for the benefit of another, without an express contract to pay, the law will imply a promise to pay a fair compensation therefor." *Atl. C. L. R. Co. v. State Highway Com.*, 268 N.C. 92, 95-96, 150 S.E.2d 70, 73 (1966).

¶ 7 There are five elements to a prima facie claim for unjust enrichment:

> "First, one party must confer a benefit upon the other party. Second, the benefit must not have been conferred officiously, that is it must not be conferred by an interference in the affairs of the other party in a manner that is not justified in the circumstances. Third, the benefit must not be gratuitous. Fourth, the benefit must be measurable. Last, the defendant must have consciously

accepted the benefit.

JPMorgan Chase Bank, Nat'l Ass'n v. Browning, 230 N.C. App. 537, 541-42, 750 S.E.2d 555, 559 (2013) (emphasis omitted) (quotation marks and citations omitted).

¶ 8 In support of their claim, plaintiffs argue: (i) they conferred benefits on Nyalkaran of at least $341,640; (ii) Nyalkaran accepted these benefits by closing on the Hotel purchase; and (iii) this measurable benefit was not conferred gratuitously or by interference in Nyalkaran's affairs. However, the trial court determined, based on competent evidence, that any benefits conferred upon Nyalkaran were exactly those specified in the terms of the underlying agreement. Though Nyalkaran realized benefits from the transaction, "[t]he mere fact that one party was enriched, even at the expense of the other, does not bring the doctrine of unjust enrichment into play. There must be some added ingredients to invoke the unjust enrichment doctrine." *Williams v. Williams*, 72 N.C. App. 184, 187, 323 S.E.2d 463, 465 (1984) (quotation marks and citation omitted). Thus, the trial court did not abuse its discretion in failing to find an equitable basis for imposing terms of sale beyond those agreed to on the date of closing.

¶ 9 Finally, plaintiffs argue they are entitled to reimbursement of attorney's fees and costs resulting from defendants' breach of contract pursuant to N.C. Gen. Stat. § 6-21.6 (2021). Specifically, plaintiffs argue § 6-21.6(c) does not give the trial court discretion to decline enforcement of a valid and binding reciprocal attorney's fee

provision in a business contract; the statute only gives the trial court discretion in determining the amount (reasonableness) of its award. We disagree.

¶ 10 "The plain language of a statute is the primary indicator of legislative intent[,]" *First Bank v. S&R Grandview, L.L.C.*, 232 N.C. App. 544, 546, 755 S.E.2d 393, 394 (2014) (citation omitted), and the plain language of § 6-21.6 indicates an award of attorney's fees is permissive, not mandatory. The statute specifies, "[r]eciprocal attorneys' fees provisions in business contracts are valid and enforceable for the recovery of reasonable attorneys' fees and expenses . . . ." § 6-21.6(b). If a business contract governed by North Carolina law contains an enforceable "reciprocal attorneys' fees provision, the [trial] court . . . *may* award reasonable attorneys' fees *in accordance with the terms of the business contract*. In determining reasonable attorneys' fees and expenses under this section, the [trial] court . . . *may consider* all relevant facts and circumstances, including, but not limited to, [thirteen enumerated facts and circumstances.]" § 6-21.6(c) (emphasis added). Further, "[r]easonable attorneys' fees and expenses shall not be governed by (i) any statutory presumption or provision in the business contract providing for a stated percentage of the amount of such attorneys' fees or (ii) the amount recovered in other cases in which the business contract contains reciprocal attorneys' fees provisions." § 6-21.6(d).

¶ 11 Such language places the decision of whether to award reasonable attorney's fees and expenses, pursuant to an enforceable reciprocal attorney's fee provision,

within the sound discretion of the trial court. The trial court *may* enter a discretionary award if there is a valid reciprocal attorney's fee provision; it is not required to. "The test for abuse of discretion is whether a decision is manifestly unsupported by reason, or is so arbitrary that it could not have been the result of a reasoned decision." *Cap Care Grp., Inc. v. McDonald*, 149 N.C. App. 817, 823, 561 S.E.2d 578, 582 (2002) (citation omitted). As a matter of law, Nyalkaran is not liable for reciprocal attorney's fees pursuant to a lease agreement it was not a party to. *See* § 6-21.6(b). Additionally, plaintiffs fail to demonstrate the trial court abused its discretion by *declining* to assess attorney's fees against defendants based on the relevant facts and circumstances before it.

III.

¶ 12 For the foregoing reasons, we affirm the trial court's judgment.

AFFIRMED.

Judges ZACHARY and JACKSON concur.

Report per Rule 30(e).