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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 22-772

Filed 21 March 2023

Durham, No. 20 CVS 1267

OAKRIDGE 58 INVESTORS, a North Carolina General Partnership, Plaintiff,

v.

DURHILL LLC, Defendant.

Appeal by Plaintiff from final judgment entered 16 February 2022 by Judge Orlando F. Hudson in Durham County Superior Court. Heard in the Court of Appeals 7 February 2023.

William J. Riley, for Plaintiff-Appellant.

Bagwell Holt Smith P.A., by Nathaniel C. Smith, for Defendant-Appellee.

RIGGS, Judge.

Plaintiff, Oakridge 58 Investors, appeals the order and judgment of Durham County Superior Court Judge Orlando F. Hudson granting a directed verdict in favor of Defendant, Durhill LLC. Additionally, Plaintiff appeals the order awarding Defendant's reasonable attorney's fees. After careful review, we affirm.

I. Facts & Procedural History

OAKRIDGE 58 INVESTORS V. DURHILL LLC

Opinion of the Court

On 15 August 2017, Oakridge 58 Investor & Oakridge 58 II executed an Agreement for Sale and Purchase of Real Property with Christopher Howlett for the sale of land parcels off U.S. Hwy. 15-501 in Durham, North Carolina.¹ The agreement specified a purchase price of \$12,200,000. As part of the agreement, Plaintiff would provide a two-year loan for \$11,000,000 to finance the purchase. Four months later, on 15 December 2017, the parties executed an amendment to the agreement to add “Lot 10” to the contract for the sum of \$825,000 and to modify terms in the agreement. In the amendment, the parties increased the original contract value to reflect the addition of \$825,000 for “Lot 10;” however, instead of showing an updated contract amount of \$13,025,000, the amendment reflects a value of \$13,500,000, which appears to be overstated by \$475,000. In the amendment, Plaintiff’s financing loan increased by \$475,000 to \$11,475,000. Both parties signed this amendment.

One year later, the parties closed on this land sale contract on 21 December 2018. Although the Agreement for Sale and Purchase of Real Property envisioned one transaction, the sale was handled as two separate transactions. Additionally, Plaintiff made two loans to finance the purchase, a larger loan of \$6,575,000 and a smaller loan of \$4,000,000; the total value of the loans was \$10,575,000. This legal claim focuses on the larger loan.

¹ At an unknown date, the legal entity of Durhill, LLC was formed. Christopher Howlett assigned his interests in the Deeds and Promissory Notes associated with this sale to Durhill, LLC, the legal entity that is Defendant in this claim.

One week after the closing, the agent for Defendant emailed a settlement document for the larger transaction to counsel for Plaintiff. The settlement document had a contract sale price of \$7,575,000 and a purchase money note of \$6,575,000. One month later, on 22 January 2019, Defendant's agent emailed an updated settlement document with a contract sale price that was increased by \$100,000 to \$7,675,000. In this settlement document, the purchase money note remained unchanged at \$6,575,000; a payment of \$100,000 in earnest money was added to the transaction to explain the change in the contract price. In the same email, the agent attached an Assumption & Modification Agreement and indicated that the purpose of the Agreement "is to put on record that the original purchaser(s) are conveying title to another entity and that entity will be assuming the respective note and Deed of Trust." The original entity on the Promissory Note was LRC VI (Individuals) and LRC VII² (Borrower); the Assumption & Modification Agreement allowed those entities to transfer their interest to Durhill LLC.

On the first page of the Assumption & Modification Agreement, the original principal sum of the Note dated 14 December 2018 is \$6,575,000.00. Towards the bottom of page two, there is an item stating: "As of the 22 day of January 2019,³ the

² There is a discrepancy between the email and the Assumption & Modification Agreement as to the Borrower listed on the original promissory note. The promissory note is not part of the record.

³ The date was handwritten on the document.

outstanding principal balance on the Note is \$6,000,000.00.” Neither the Agreement nor the accompanying email explain the reason underlying the principal reduction.

The Assumption & Modification Agreement includes the notarized signature of Christopher Howlett for the Defendant dated 22 January 2019. The Agreement also includes the notarized signatures of Yuan-Shen Huang, managing partner for Plaintiff, and Gary Berman, trustee for Plaintiff. The Plaintiff’s signatures were dated 4 February 2019, thirteen days after receipt of the documents.

Eleven months later, on 15 December 2019, Dr. Huang and Edward Wu signed a Note Modification & Extension Agreement on behalf of the Plaintiff. This Agreement included a paragraph in the center of page one that reads:

WHEREAS, the Larger Note was modified to release LRC VII as a maker by the Assumption & Modification Agreement dated January 22, 2019, recorded February 6, 2019, in Book 8590, Page 541, Durham County Registry (the original Larger Note and the Assumption & Modification Agreement being herein collectively referred to as “the Larger Note as Modified”), and which Agreement reflected that the current principal balance of the Larger Note as of January 22, 2019, was \$6,000,000[.]

Additionally, markings that appear to be Dr. Huang’s initials are on the bottom of each page of the Note Modification & Extension Agreement.

A few days later, on 18 December 2019, Defendant’s agent sent an email to the attorney and trustee for Plaintiff requesting payoff information on the smaller note and accrued interest on both notes. The Record contains a long chain of emails between the parties dated 18 through 30 December 2019, in which the parties

attempt to calculate the interest payments on both loans. In an email authored by Plaintiff's counsel on 18 December 2019, the calculation for interest on the larger loan assumes a loan balance of \$6,575,000. The next day, Mr. Lou Gonzalez, an executive of Defendant, sent an email indicating that the interest calculation was incorrect for a number of reasons, including that it does not take into account a reduction on the larger loan due to a \$575,000 payment on 2 January 2019. Plaintiff's counsel replied with an email that included an updated calculation for the interest on the larger loan based upon the reduced principal. In that email, he indicated that he was not aware of the principal payment. On 30 December 2019, Plaintiff's counsel confirmed an interest payment for the larger loan based upon a loan principal of \$5,900,000; Defendant remitted payment for the smaller note and interest on the larger note.

Two weeks later, Dr. Huang, sent an email indicating that there were "a few serious mistakes in the loan payment." He indicated that Plaintiff had never received Defendant's 2 January 2019 payment of \$575,000 so the loan balance should be \$6,575,000. Mr. Howlett, responded on behalf of Defendant saying that the signed documents, recorded a year ago with the Register of Deeds, indicate a reduction in the loan principal. Mr. Howlett said that he did not recall the reason for the \$575,000 reduction in the loan principal.

On 9 September 2020, Plaintiff filed a complaint in Durham County Superior Court for declaratory judgment and reformation. Defendant filed a motion to dismiss, an answer, and a counterclaim on 25 November 2020. Defendant's counterclaim

conceded that it did not make a principal payment on 2 January 2019. Plaintiff replied to the counterclaim on 25 January 2021 and Dr. Huang, filed an affidavit with the court on 27 January 2021, in which he stated that at the time he executed the Modification & Assumption Agreement, he “mistakenly believed the loan balance stated therein to be correct.” The counterclaim addressed an error in the deed that was recorded as part of this transaction, and the counterclaim was resolved by the parties prior to the trial.

Plaintiff’s claim was heard in a bench trial in Durham County Superior Court. At trial, Dr. Huang testified that he did not read the Modification & Assumption Agreement when he signed the document. Further, he testified that if Defendant had made a payment, he would not have known about the payment because it would have gone to the trustee named in the Modification & Assumption Agreement.

At the close of evidence, the trial court granted a directed verdict for Defendant and issued an order and judgment on 16 February 2022. The trial court made findings of fact that Plaintiff had validly executed two documents, the Assumption & Modification Agreement, and the Note Modification & Extension Agreement; both documents included the reduced loan amount of \$6,000,000. The trial court also found that Plaintiff’s representative did not read the Assumption & Modification Agreement prior to signing. Based upon these findings, the trial court made a conclusion of law that Plaintiff had “failed to establish that it was under any mistake of fact at the time it executed the Assumption & Modification Agreement or the Note

Modification and Extension Agreement.” The trial court found that the balance owed on the larger note was \$5,900,000.⁴

As to the claim for attorney’s fees, the trial court made findings of fact that Dr. Huang admitted at trial that paragraph eleven of the complaint and paragraph ten of his affidavit were not true. Following North Carolina General Statute § 6-21.5, the trial court awarded Defendant reasonable attorney’s fees as part of the judgment. The trial court found that the sum of \$63,145.13 was a fair and reasonable sum for attorney’s fees incurred by Defendant in this matter and taxed that sum to Plaintiff.

Plaintiff filed a timely notice of appeal with this Court on 17 March 2022.

II. Analysis

A. Directed Verdict

On appeal, Plaintiff argues that the trial court erred when it granted a directed verdict in favor of Defendant because the findings of fact were not supported by competent evidence and if the findings of facts are not supported by competent evidence, then they do not support the conclusions of law. We hold that the findings of fact were supported by competent evidence and affirm the judgment.

1. Standard of Review

It is well established that a motion for a directed verdict is only proper in a jury trial. *Dean v. Hill*, 171 N.C. App. 479, 482, 615 S.E.2d 699, 701 (2005). In an

⁴ The amount reflects a payment of \$100,000 in earnest money which was not at issue in this appeal.

action tried without a jury, the proper motion by which to test the sufficiency of the plaintiff's evidence is a motion for involuntary dismissal under Rule 41(b) of the North Carolina Rules of Civil Procedure. *Id.*, at 482-83, 615 S.E.2d at 701. Therefore, this Court treats the trial court's grant of directed verdict as an involuntary dismissal of the claim under Rule 41(b). *Id.*, at 483, 615 S.E.2d at 701; N.C. R. Civ. P. 41(b) (2022). The proper standard of review for involuntary dismissal is whether the trial court had competent evidence to support the findings of fact and whether the findings of fact support the trial court's conclusions of law and its judgment. *Id.* at 483, 615 S.E.2d at 701.

2. Analysis

At trial, Plaintiff argued that a mutual mistake led to the reduction of the loan balance from \$6,575,000 to \$6,000,000. Therefore, it argued, the court should reform the loan to reflect an amount of \$6,575,000.

The North Carolina Supreme Court has defined "mutual mistake" as a mistake common to all parties to a written instrument, which usually relates to a mistake concerning its contents or legal effect. *Hubbard and Co. v. Horne*, 203 N.C. 205, 208, 165 S.E. 347, 349 (1932). The doctrine of reformation is reserved for cases where through mutual mistake or the mistake of one party accompanied by the fraud of the other, the written document does not, as written, truly express their agreement. *Sills v. Ford*, 171 N.C. 733, 736 88 S.E. 636, 637 (1916).

In its complaint, Plaintiff alleges that the mutual mistake was caused because Plaintiff mistakenly believed that Defendant, who drafted the Modification & Assumption Agreement, had made a \$575,000 principal payment on 2 January 2019. Defendant acknowledges, in their response, that no payment was made on 2 January 2019. At one point, Defendant asserted that the modification in the principal amount was due to a principal payment on 2 January 2019, but later asserted that the reduction was “due to errors in the original calculations regarding the loans.” Dr. Huang, filed an affidavit on behalf of the Plaintiff, in which he stated that at the time he executed the Modification & Assumption Agreement, he “mistakenly believed the loan balance stated therein to be correct.” During the bench trial, Dr. Huang testified, contrary to his affidavit, that he did not read the Modification & Assumption Agreement when he signed the document. Additionally, he testified that even if Defendant had made a payment, he would not have known about the payment because it would have gone to Plaintiff’s trustee. However, that trustee also signed the Modification & Assumption Agreement, which included the reduced loan balance.

The North Carolina Supreme Court has said that in the absence of evidence to the contrary, it must be assumed that parties sign the instrument they intend to sign. *Poston v. Bowen*, 228 N.C. 202, 203, 44 S.E.2d 881, 882 (1947). Failure to read the instrument does not absolve parties of the presumption that they know the contents of the document they sign. *Id.* In its order, the trial court made a finding of fact based upon Dr. Huang’s testimony that he did not read the Assumptions &

Modification agreement prior to executing the agreement. The trial court also made a finding of fact that Dr. Huang admitted on cross-examination a portion of the complaint and his affidavit were not true. Accordingly, we hold that the trial court's findings of fact were supported by competent evidence.

Based upon these findings of fact, the trial court made a conclusion of law that Plaintiff had failed to establish it was under any mistake at the time when it executed the Assumption & Modification Agreement or the Note Modification & Extension Agreement. Therefore, the trial court concluded that the documents were valid and binding legal agreements, as written. The finding that Plaintiff was not operating under a mistake when it signed the Assumption & Modification Agreement or the Note Modification & Extension Agreement is sufficient to establish the lack of a mutual mistake. Therefore, we hold that the trial court's conclusions of law are supported by the findings of fact and affirm the lower court's ruling.

B. Attorney's Fees

On appeal, Plaintiff argues that the trial court erred when it ordered Plaintiff to pay the reasonable attorney's fees for Defendant.

1. Standard of Review

In the review of an order granting attorney's fees pursuant to N.C. Gen. Stat § 6-21.5, the presence or absence of justiciable issues in the pleadings is a question of law that this Court reviews *de novo*. *McLennan v. Josey*, 247 N.C. App. 95, 97, 785 S.E.2d 144, 147 (2016).

2. Analysis

North Carolina General Statute § 6-21.5 grants the court, upon motion by the prevailing party, the authority to award reasonable attorney's fees to the prevailing party if they find a complete absence of a justiciable issue of law or fact raised by the losing party in a civil case. N.C. Gen. Stat. § 6-21.5 (2021). This Court has established that when reviewing an award of attorney's fees under this statute, it must review all relevant pleadings and documents of the case in order to determine if either: (1) the pleadings contain a complete absence of a justiciable issue of either law or fact, or (2) the losing party persisted in litigating the case after a point where they should reasonably have become aware that the pleading they filed no longer contained a justiciable issue. *Credigy Receivables, Inc. v. Whittington*, 202 N.C. App. 646, 652, 689 S.E.2d 889, 893 (2010) (internal citation and quotation mark omitted).

In this case, at the time of the pleading, Plaintiff knew or should have known that it did not have a justiciable issue because it had failed to read the Modification & Assumption Agreement. Further, on 27 January 2021, when Dr. Huang tendered his affidavit on behalf of Plaintiff, he made, at best, misleading statements or, at worst, false statements to further Plaintiff's claim. Because the court found this affidavit to be false and that Plaintiff's actions were based upon false statements, we concur that Plaintiff persisted in litigating the case after it reasonably should have been aware that there were no justiciable issues. Therefore, we affirm the order of attorney's fees to Defendant.

III. Conclusion

In this case, the trial court had competent evidence to support the findings of fact, and those findings of fact support the conclusions of law. Therefore, we affirm the trial court's judgment. Additionally, we concur that the pleadings contained an absence of justiciable issues and Plaintiff persisted in litigating long after it was aware of the lack of justiciable issues. For these reasons, we affirm the award of attorney's fees to Defendant.

AFFIRMED.

Chief Judge STROUD and Judge CARPENTER concur.

Report per Rule 30(e).