

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-1016

Filed 15 August 2023

Iredell County, No. 20 CVS 107

LANGTREE DEVELOPMENT COMPANY, LLC, Plaintiff,

v.

JRN DEVELOPMENT, LLC, f/k/a JRN INVESTMENTS, LLC, Defendant.

Appeal by Defendant from judgement entered 9 May 2022 by Judge Lora C. Cabbage in Iredell County Superior Court. Heard in the Court of Appeals 24 May 2023.

*Manning, Fulton & Skinner, P.A., by Michael S. Harrell, for Defendant-Appellant.*

*Morningstar Law Group, by Harrison M. Gates and William J. Brian, Jr., for Plaintiff-Appellee.*

WOOD, Judge.

This appeal concerns a dispute between neighborhood development companies. We must determine whether the trial court properly interpreted the language of a contract such that it correctly granted partial summary judgment. We must also consider an unpreserved jury instruction matter. For reasons explained below, we

hold that the trial court did not err.

### **I. Background**

Langtree Development Company, LLC (“Langtree”) and JRN Development, LLC (“JRN”) own neighboring properties separated by a road in Mooresville, North Carolina. JRN was developing a residential townhome subdivision known as “The Waterfront at Langtree,” while Langtree was developing a mixed-use community.

In September 2018, JRN decided it needed to install a sewer line to serve its property. The line would need to be under Langtree’s property and the road separating the two properties to complete its development project. Langtree learned JRN had obtained approval from the town for a sewer line to serve JRN’s property and that the sewer line would encroach upon portions of Langtree’s property. Langtree then informed JRN that, if JRN attempted to install a sewer line on Langtree’s property, Langtree would consider such an act as trespass. Thereafter, JRN and Langtree entered into a written agreement, called an Agreement for Road Improvements, Sanitary Sewer Easement, and Access Easement, whereby Langtree would allow JRN to install a sewer line on Langtree’s property. In exchange, JRN would expand two portions of road benefiting Langtree’s property.

After signing the contract, JRN installed its sewer line under Langtree’s property; however, JRN refused to expand certain portions of road described in the contract. In a letter dated 31 October 2019, Langtree sought assurances from JRN that it would complete the improvements and requested that JRN produce a

timeframe for completion. JRN did not respond to Langtree's letter but, in its answer to Langtree's complaint, claimed that it was not required to construct the road improvement.

Langtree and JRN disputed whether, under the agreement, JRN was required to complete the Southside Langtree Road Improvements regardless of whether the North Carolina Department of Transportation ("NCDOT") required the improvements to be made. Langtree commenced a lawsuit against JRN on 13 January 2020 alleging several claims, including a claim for breach of contract. In its fourth cause of action, Langtree alleged that JRN breached Paragraph 1 of their agreement by failing to construct the road improvements described in the agreement. On 21 October 2020, Langtree filed a motion for partial summary judgment on the claim for breach of contract. On 7 December 2020, the trial court denied the motion but stated that "the issues may be readdressed upon further motions" following discovery. After conducting further discovery, Langtree again moved for partial summary judgment on the breach of contract claim. On 5 October 2021, the trial court granted this motion and determined, as a matter of law, that the contract required JRN to improve the road at issue and that JRN breached the contract by refusing to do so.

Thereafter, on 11 April 2022, the case proceeded to trial on the issue of damages. At the jury charge conference, Langtree proposed a jury instruction regarding direct damages. JRN did not object, and the trial court charged the jury

accordingly. The jury returned a verdict in favor of Langtree in the amount of \$350,000.00, and the trial court entered a judgment in favor of Langtree for that amount. JRN appeals from the trial court's judgment pursuant to N.C. Gen. Stat. § 1-278.

## **II. Standard of Review**

We review summary judgment orders *de novo*. *Forbis v. Neal*, 361 N.C. 519, 524, 649 S.E.2d 382, 385 (2007) (citing *Builders Mut. Ins. Co. v. N. Main Constr., Ltd.*, 361 N.C. 85, 88, 637 S.E.2d 528, 530 (2006)). “Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (citations and internal quotation marks omitted). “Summary judgment is appropriate 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 any party is entitled to a judgment as a matter of law.’” *Forbis*, 361 N.C. at 523-24, 649 S.E.2d at 385 (quoting N.C. Gen. Stat. § 1A-1, Rule 56©).

Similarly, we review properly preserved challenges to a “trial court’s decisions regarding jury instructions *de novo*.” *State v. Richardson*, 270 N.C. App. 149, 152, 838 S.E.2d 470, 473 (2020) (citing *State v. Osorio*, 196 N.C. App. 458, 466, 675 S.E.2d 144, 149 (2009)). However, a party cannot raise a jury instruction issue on appeal when he did not object to the instruction during his civil trial. N.C. R. App. P. 10(a)(2).

## **III. Discussion**

JRN challenges the trial court’s partial summary judgment in favor of Langtree, arguing that the trial court misinterpreted the plain language of the parties’ contract. Secondly, JRN challenges the trial court’s use of Langtree’s proposed jury instruction for determining damages. We review each challenge in turn.

### **A. Summary Judgment**

Language in a contract “should be given its natural and ordinary meaning.” *Southpark Mall Ltd. P’ship v. CLT Food Mgmt., Inc.*, 142 N.C. App. 675, 678, 544 S.E.2d 14, 16 (2001). “[T]he court is obliged to interpret the contract as written, and cannot, under the guise of construction, ‘reject what the parties inserted or insert what the parties elected to omit.’” *Corbin v. Langdon*, 23 N.C. App. 21, 25, 208 S.E.2d 251, 254 (1974) (quoting *Weyerhaeuser Co. v. Light Co.*, 257 N.C. 717, 719, 127 S.E.2d 539, 541 (1962)). Moreover, “a contract must be considered as a whole, considering each clause and word with reference to all other provisions and giving effect to each whenever possible.” *Williamson v. Bullington*, 139 N.C. App. 571, 574, 534 S.E.2d 254, 256 (2000).

JRN’s obligations under the contract here are included in the following clause:

[Langtree] and JRN agree that JRN shall install and complete the road improvements along Langtree Road as required by the North Carolina Department of Transportation (“NCDOT”) as such are depicted in the green and yellow areas on the map attached as Exhibit A to this Agreement, which attachment is incorporated herein by reference. Specifically, JRN will expand

Langtree Road as shown in green and increase the width of Langtree Road as shown in yellow, all at the sole cost and expense of JRN. *Further, JRN will install additional pavement to widen the southern side of Langtree Road between Mecklynn Road and the Interstate-77 on ramp as depicted in yellow on Exhibit B attached hereto and incorporated herein by reference.* In the event that the subject road work is required to be bonded by the NCDOT, or any governmental agency have [sic] jurisdiction over such work, JRN agrees that, at [Langtree's] request, it will immediately provide such bond at its sole cost and expense. (emphasis added).

JRN argues that the trial court erred in construing the obligation to “widen the southern side of Langtree Road” as an independent obligation irrespective of whether improvements were required by NCDOT. JRN contends that the sentence at issue should be read in conjunction with the first sentence and that the phrase in the first sentence “as required by the North Carolina Department of Transportation (“NCDOT”)” should be interpreted as conditional language upon JRN’s obligations in the third sentence.

JRN’s argument is partially correct. By its plain reading, the language of the first sentence does inform the third, but such language is not conditional.

The key to a proper understanding of the sentences’ interrelation lies in the transition words, *specifically* and *further*, used at the beginning of each sentence. The first sentence introduces the reader to the gist of the agreement: “JRN shall install and complete the road improvements.” The following two sentences specify which two road improvements are to be installed and completed.

[1] *Specifically*, JRN will expand Langtree Road as shown in green and increase the width of Langtree Road as shown in yellow, all at the sole cost and expense of JRN. [2] *Further*, JRN will install additional pavement to widen the southern side of Langtree Road between Mecklynn Road and the Interstate-77 on ramp as depicted in yellow on Exhibit B attached hereto and incorporated herein by reference. (emphasis added).

Therefore, any modifying language attached to the “road improvements” in the first sentence will also modify the more specific directives of the following two sentences. In English grammar, a modifier is a word, clause, or, as used here, phrase that functions as an adjective or adverb to provide additional information about another word or phrase. We next consider what, if any, effect the modifying language “as required by . . . (NCDOT)” has on the third sentence, the sentence requiring that “JRN will install additional pavement to widen the southern side of Langtree Road between Mecklynn Road and the Interstate-77 on ramp.” We hold that the plain meaning of “as required by . . . (NCDOT),” used in this context, is descriptive rather than conditional.

The word *as* has several definitions when used as a preposition, but, by itself, none are conditional. Relevant to this case, the word may be “used to introduce an adjectival clause.” *As*, Webster’s Third New International Dictionary (1971). This is descriptive. “As required by . . . (NCDOT),” then, merely describes the way the intended road improvements are to be performed. It is of no consequence, for the purposes of this issue, that the parties misapprehended the actual NCDOT

requirements regarding the road improvements. It is enough that the road improvements are identifiable.

In sum, the phrase “as required by . . . (NCDOT),” as applied to the improvements specified in the third sentence, is merely descriptive, and does not affect JRN’s obligations under the contract. Whether NCDOT actually required the improvements is immaterial. What the phrase requires is that the road improvements be done in the way and manner required by NCDOT. Had the phrase been conditional, such as with the use of prepositions like “only if,” “as long as,” or “when,” JRN would not be obligated to perform the road improvements at issue. Instead, the phrase begins with the descriptive preposition “as.” This, of course, does not bar certain contract defenses such as impossibility, mistake, or frustration of purposes. However, these considerations are not before us on appeal; we, therefore, need not address them.

## **B. Jury Instruction**

JRN next challenges the trial court’s decision to use the jury instruction proposed by Langtree. This instruction included language for calculating damages from a breach of contract based upon the reasonable costs necessary for Langtree to complete the project. Langtree’s requested special instruction for direct damages is as follows:

Direct Damages are the economic losses that usually or customarily result from a breach of contract. In this case, you will determine direct damages, if any, by determining



the reasonable cost to the plaintiff of the labor, materials, and other costs necessary to complete the road improvements at issue in conformity with the requirements of the contract.

JRN argues this instruction was not proper and that the trial court should have instructed the jury that Langtree should be awarded damages upon a diminution in value standard. However, JRN agreed to Langtree's proposed jury instruction at the charge conference and did not object at trial to the trial court's use of the jury instruction. "A party may not make any portion of the jury charge or omission therefrom the basis of an issue presented on appeal unless the party objects thereto before the jury retires to consider its verdict, stating distinctly that to which objection is made and the grounds of the objection." N.C. R. App. P. 10(a)(2). "[W]here a party fails to object to jury instructions, it is conclusively presumed that the instructions conformed to the issues submitted and were without legal error." *Madden v. Carolina Door Controls, Inc.*, 117 N.C. App. 56, 62, 449 S.E.2d 769, 773 (1994) (internal quotation omitted). Therefore, JRN has failed to preserve this argument for appeal. Thus, we reject this challenge.

#### **IV. Conclusion**

The trial court did not err when it granted Langtree's motion for partial summary judgment. The trial court properly concluded the plain language of the parties' contract required JRN to make improvements to the road benefiting Langtree. Further, JRN's challenge to the jury instruction was not properly

LANGTREE DEV. CO. V. JRN DEV., LLC

*Opinion of the Court*

preserved for our review.

NO ERROR.

Judges ARROWOOD and GORE concurs.

Report per Rule 30(e).