[Cite as *Greif Packaging, L.L.C. v. Ryder Integrated Logistics, Inc.*, 2010-Ohio-4384.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Greif Packaging, LLC	Court of Appeals No. L-09-1259
Appellant	Trial Court No. CI0200805478
v.	
Ryder Integrated Logistics, Inc., et al.	**DECISION AND JUDGMENT**
Appellees	Decided: September 17, 2010

* * * * *

Marcel C. Duhamel, Maureen P. Tracey and Heather M. Lutz, for appellant.

George R. Hicks, Jr., and Michael F. Schmitz, for appellees.

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COSME, J.

{¶ 1} This appeal involves the interpretation of a disputed clause in a transportation agreement between appellant, Greif Packaging, LLC ("Greif"), and appellees, Ryder Integrated Logistics, Inc. and Ryder Dedicated Logistics, Inc. (collectively "Ryder"). The clause at issue provides, "Fuel Charge: $.182 per mile. All fuel in excess of this amount will be billed to the customer." The trial court held that this

provision was a fuel charge of $.182 per mile in additional to the fuel costs incurred by Ryder in excess of $.182 per mile. Because we find that the subject clause is clearly an excess fuel-cost provision requiring Greif to pay only the cost of fuel that exceeds $.182 per mile, we reverse the judgment of the Lucas County Court of Common Pleas.

I. BACKGROUND

{¶ 2} On November 15, 2004, Greif entered into a contract with Ryder for on-site dedicated transportation services from its Toledo, Ohio, manufacturing facility. The contract, entitled "Ryder Integrated Logistics, Inc. Transportation Agreement," covered the period November 1, 2004, through October 31, 2007, and continued thereafter by virtue of an agreed extension through December 31, 2007. The agreement provides that Ryder will carry freight tendered for transport by Greif to various delivery points in accordance with the pricing provisions contained in an attached "Schedule of Services – Toledo, OH."

{¶ 3} As relevant here, the Toledo Schedule provides:

{¶ 4} "I. RATES AND CHARGES

{¶ 5} "A. Rates. The following rates and charges ('Rates') apply to the Services described in this Schedule:

{¶ 6} "1. Fixed Charge: $9, 256.54 per week. The Fixed Charge shall be invoiced in advance, with all other charges billed in arrears unless expressly stated otherwise.

{¶ 7} "2. Variable Rates.

{¶ 8} "a) Mileage Rate: $.545 per mile.

{¶ 9} "b) Hourly Rate. $21.564 per hour up to and including 40 per driver per week.

{¶ 10} "c) Overtime rate. $31.67 per hour for all hours in excess of 40 per driver per week.

{¶ 11} "d) Stop Charge. $17.50 per stop.

{¶ 12} "e) Delay/Detention Charge. 11.876 per hour, beginning 90 minutes after arrival.

{¶ 13} "f) Layover Charge. $21.564 per hour, Limited to 8 hours per 24 hour period.

{¶ 14} "g) *Fuel Charge: $.182 per mile. All fuel in excess of this amount will be billed to the customer.*

{¶ 15} "3. Allowances. Actual costs in excess of the following allowances will be billed to Shipper.

{¶ 16} "a) Tolls Allowance: Pass though.

{¶ 17} "b) Third Structure Tax and Gross Receipts Tax Allowance: Pass through.

{¶ 18} "c) Licenses, Permits, and Other Taxes: $1,525.00 Licenses per year and $550.00 FHUT per year for T/A Tractors and $1,075.00 Licenses per year and $320.00 FHUT per year for S/A Tractors.

{¶ 19} "* * *

{¶ 20} "B. Fuel. Unless a fuel allowance is specified in this Schedule, Carrier's full cost of fuel (which includes among other things, associated state and federal taxes and which will change from time to time) will be billed to Shipper in addition to all other Rates." (Emphasis added.)

{¶ 21} From November 1, 2004, through April 30, 2007, Ryder did not attempt to collect a fuel charge of $.182 per mile in addition to the mileage rate of $.545. Instead, Ryder billed Greif only for fuel costs that exceeded $.182 per mile. On May 1, 2007, however, Ryder began to invoice Greif for weekly fuel charges of $.182 per mile, separate and apart from the mileage rate and excess fuel charge. Although Greif disputed the $.182 per mile fuel charge, it nevertheless paid those invoices through December 31, 2007, which totaled $85,037.50, in order to prevent an interruption to its distribution channels. Ryder then billed Greif $396,025.99 for back fuel charges at the rate of $.182 per mile for each week during the period of November 1, 2004, through April 30, 2007, which Greif refused to pay.

{¶ 22} On July 16, 2008, Greif filed a complaint against Ryder in the Lucas County Court of Common Pleas, seeking to recover the $85,037.50 in fuel charges that it paid to Ryder for the period May 1, 2007, through December 31, 2007. Ryder filed a counterclaim on August 19, 2008, to collect the unpaid bill of $396,025.99 in fuel charges from November 1, 2004, through April 30, 2007.[1] Following discovery, the

[1]In its counterclaim, Ryder claimed that $399,068.87 in fuel charges was due and owing from Greif. Ultimately, however, Ryder stipulated that the total fuel charge for the period November 1, 2004, through April 30, 2007, amounted to $396,025.99.

parties filed cross-motions for summary judgment, each focusing its attention primarily on the fuel-charge provision in paragraph I(A)(2)(g) of the Toledo Schedule and secondarily on the purported interplay between that provision and the fuel-cost provision at paragraph I(B) of the Schedule. Greif argued that the clear import of those provisions is to establish a fuel allowance of $.182 per mile, which cost is already embedded in the mileage rate, and to allow recovery by Ryder of actual fuel costs in excess of that amount. Ryder argued that the stated rate of $.182 per mile in paragraph I(A)(2)(g) is clearly a fuel charge, not an allowance, and that paragraph I(B) requires Greif to pay Ryder's full cost of fuel in addition to all other rates and charges in the Schedule.

{¶ 23} In an opinion dated August 25, 2009, the trial court granted summary judgment in favor of Ryder and against Greif. Applying Florida law as chosen by the parties in their agreement, the trial court interpreted paragraph I(A)(2)(g) to require that Greif pay both a weekly fuel charge of $.182 per mile and Ryder's actual fuel costs in excess of that amount. In so doing, the court reasoned that the caption of the disputed paragraph and its placement among the other rates and charges in the Schedule are indicative of a "fuel charge," not a "fuel allowance," and that paragraph I(B) requires Greif to pay Ryder's full cost of fuel "[u]nless a fuel allowance is specified in this Schedule." Accordingly, the court dismissed Greif's claims to recover its payment of $85,037.50 and continued the matter for an assessment of damages on Ryder's counterclaim.

{¶ 24} On September 17, 2009, the trial court journalized its final judgment in which it awarded damages to Ryder in the amount of $396,025.99. Although a motion for attorney fees filed by Ryder is still pending below, the trial court properly certified the cause for appellate review under Civ.R. 54(B). The matter is now before this court upon Greif's appeal of that judgment.

II. CHOICE OF LAW

{¶ 25} As a preliminary matter, we agree with the trial court that the parties' contractual rights and duties are governed by the law of Florida. The Transportation Agreement in this case provides, "This Agreement shall be governed by the laws of the State of Florida, without regard to principles of conflicts of law." In *Schulke Radio Productions, Ltd. v. Midwestern Broadcasting Co*. (1983), 6 Ohio St.3d 436, the Supreme Court of Ohio adopted the Restatement of the Law 2d, Conflict of Laws (1971) 561, Section 187(2), which essentially provides that the parties' choice of law to govern their contract will be enforced, except where the chosen state has no substantial relationship to the parties or the transaction or when the application of its law would offend a fundamental policy of a state with a materially greater interest.

{¶ 26} Neither of the Section 187(2) exceptions is applicable in this case. Ryder's principal place of business is in Florida and, as explained in Comment f to Section 187, a substantial relationship exists when the chosen state is "where one of the parties is domiciled or has his principal place of business." Id. at 567. Nor is the application of Florida contract law in this case contrary to any fundamental policy of Ohio. Indeed, no

more is required to resolve the present dispute than the straightforward application of some fairly rudimentary interpretive principles that are not materially different from those applied by Ohio courts. Accordingly, we will apply the substantive law of Florida in resolving this contractual dispute.

III. INTERPRETATION OF THE FUEL-CHARGE PROVISION

{¶ 27} Greif sets forth the following four assignments of error:

{¶ 28} "1. The trial court erred by failing to construe clear and unambiguous contractual terms in light of common understanding as required by Florida law.

{¶ 29} "2. The trial court erred by failing to give effect to all provisions of the 2004 transportation agreement as required by Florida law. Specifically, the court failed to give effect to the language: '$.182 per mile. All fuel in excess of this amount will be billed to the customer.'

{¶ 30} "3. The trial court erred by determining that the heading 'Fuel Charges' meant Greif was responsible for the first $.182 per mile of fuel, when the clear and unambiguous language of the contract provides that paragraph headings are not to be used in contract interpretation.

{¶ 31} "4. The trial court erred by considering parol evidence after determining that the contract was clear and unambiguous as a matter of law."

{¶ 32} In attempting to address these assignments of error in piecemeal fashion, we have found that the arguments raised by both parties tend to overlap and meld into a single determinative issue—whether the parties intended the stated rate of $.182 per mile

in paragraph I(A)(2)(g) of the Toledo Schedule to be a billable fuel charge in its own right or the baseline for an excess fuel charge. Accordingly, we will address appellant's assignments of error in a consolidated manner as they relate to this single issue.

{¶ 33} "'The interpretation of a contract is a question of law and, therefore, we are not bound by the conclusions reached by the trial court regarding construction of the Contract. Thus decisions which construe a contract are generally subject to review on appeal by the de novo standard of review.'" *WSOS-FN, Inc. v. Hadden* (Fla.App. 2007), 951 So.2d 61, 63, quoting *NPC Lake Power, Inc. v. Fla. Power Corp*. (Fla.App. 2004), 781 So.2d 531, 536.

{¶ 34} In interpreting a contract, the court's essential function is to ascertain the parties' intent. *St. Augustine Pools, Inc. v. James M. Barker, Inc*. (Fla.App. 1997), 687 So.2d 957, 958. Where the terms of the contract are unambiguous, "the parties' intent must be determined from within the four corners of the document." *Barakat v. Broward Cty. Hous. Auth*. (Fla.App. 2000), 771 So.2d 1193, 1194. In examining the contract, "a court must consider the document as a whole, rather than attempting to isolate certain portions of it." *Lambert v. Berkley S. Condominium Assn., Inc*. (Fla.App. 1996), 680 So.2d 588, 590. "An interpretation giving a reasonable meaning to all provisions of a contract is preferred to one that renders part of the contract meaningless." *Three Keys, Ltd. v. Kennedy Funding, Inc*. (Fla.App. 2009), 28 So.3d 894, 903-904. Thus, apparently inconsistent contractual provisions "must be given such an interpretation and construction as will reconcile them, if possible, and if one interpretation would lead to an

absurd conclusion, then such interpretation should be abandoned and the one adopted which would accord with reason and probability." *Am. Med. Internatl., Inc. v. Scheller* (Fla.App. 1984), 462 So.2d 1, 7.

{¶ 35} In this case, paragraph I(A)(2)(g) of the Toledo Schedule provides, "Fuel Charge: $.182 per mile. All fuel in excess of this amount will be billed to the customer." The necessary corollary to the expressed intent that all fuel costs in excess of $.182 per mile will be billed to the customer is that all fuel costs equal to or less than $.182 per mile will not be billed to the customer. In ordinary parlance, the statement that a customer will be billed for costs exceeding a specified amount may fairly be relied upon to mean that the customer will not be billed unless the provider's costs exceed the specified amount. See *Bradley v. Sanchez* (Fla.App. 2006), 943 So.2d 218, 221 (contractual terms should be construed in light of common understanding); *McIlmoil v. McIlmoil* (Fla.App. 2001), 784 So.2d 557, 561 (contractual language is to be given a realistic interpretation based on the plain, everyday meaning conveyed by the words); *Gen. Acc. Fire & Life Assur. Corp v. Liberty Mut. Ins. Co.* (Fla.App. 1972), 260 So.2d 249, 253 (terms of a contract should be understood in their ordinary sense and accorded a reasonable, practical and sensible interpretation).

{¶ 36} In construing paragraph I(A)(2)(g) to impose a fuel charge consisting of both $.182 per mile and actual costs that exceed that amount, the trial court and Ryder ignore the contextual relation between the paragraph's stated rate of $.182 per mile and the limiting language in the succeeding sentence, which immediately qualifies "this

amount" as a baseline or triggering point for the application of an excess fuel charge. Indeed, an examination of the other rates and charges in the Toledo Schedule bears this out.

{¶ 37} Paragraph I(A)(2)(g) is the latter of seven provisions in paragraph I(A)(2) that deal with variable rates or charges. Aside from paragraph I(A)(2)(g), four of those provisions contain language that qualifies the stated charge. In each case, the qualifying language serves to limit or restrict the application of the respective charge or, more precisely, to define the point at which the stated charge begins or ends. Thus, paragraph I(A)(2)(b) limits the application of the hourly rate to "40 per driver per week"; paragraph (A)(2)(c) limits the application of the overtime rate to "all hours in excess of 40 per driver per week"; paragraph (A)(2)(e) limits the charge for delay or detention to hours "beginning 90 minutes after arrival"; and paragraph (A)(2)(f) limits the layover charge "to 8 hours per 24 hour period." It is highly improbable in this context that the parties suddenly shifted gears in paragraph I(A)(2)(g) and inserted qualifying language in order to augment or amplify the stated fuel charge.

{¶ 38} The trial court also relied on the purported interplay between paragraphs I(A)(2)(g) and I(B) to support its interpretation that Greif is responsible for Ryder's full cost of fuel. The trial court basically reasoned that paragraph I(B) manifests the parties' intent to bill Greif for Ryder's full cost of fuel, since no "fuel allowance" is "specified" in the Schedule. Ryder adds that Greif's interpretation of paragraph I(A)(2)(g) "would contradict if not effectively delete paragraph I.B." According to Ryder, even if paragraph

I(A)(2)(g) requires Greif to pay only for fuel costs in excess of $.182 per mile, it still does not specifically provide for a fuel allowance of $.182 per mile. Thus, pursuant to paragraph I(B), Ryder's full cost of fuel is billable to Grief in addition to all other rates, including the fuel charge set forth in paragraph I(A)(2)(g).

{¶ 39} We find the reasoning of Ryder and the trial court to be problematic in two respects. First, while the Schedule does not specify a "fuel allowance" as such, paragraph I(A)(2)(g) essentially provides for one. A fuel charge for costs that exceed $.182 per mile is by definition a fuel allowance for costs that do not exceed $.182 per mile. In fact, that is precisely how the parties defined "allowances" in their Schedule: "Allowances. Actual costs in excess of the following allowances will be billed to Shipper." With regard to the billing of costs "in excess of" $.182 per mile, the denomination of paragraph I(A)(2)(g) as a fuel charge is merely the flip side of the same conceptual coin that marks it as a fuel allowance. Indeed, pursuant to section 13(O) of the Transportation Agreement, "headings or captions to paragraphs and sections in this Agreement are for the convenience of the parties only, are not part of this Agreement and shall have no effect upon the interpretation or construction of this Agreement." Thus, when read together, paragraphs I(A)(2)(g) and I(B) clearly evince the parties' intent not to bill Greif for Ryder's full cost of fuel.

{¶ 40} Second, even if we accept Ryder's distinction between a fuel charge for costs in excess of $.182 per mile and a fuel allowance of $.182 per mile, it is clear that paragraph I(B) was not intended to negate a limited fuel charge any more than it was

intended to trump a fuel allowance. Paragraph I(B) is obviously a standardized default provision that applies in the absence of any scheduled allocation of fuel costs. Applying paragraph I(B) where the Schedule actually provides for a fuel charge of less than Ryder's full cost of fuel makes absolutely no sense. Under this interpretation, paragraph I(B) automatically converts paragraph I(A)(2)(g) into a full-cost-of-fuel provision, even though the parties expressed their intent in the latter paragraph to provide for a different allocation. Indeed, such an interpretation reduces both provisions to a mere tautology and renders it pointless for the parties to have even scheduled a fuel charge in the first place. It is well-established in Florida that an interpretation leading to unreasonable, absurd, or unintended results should be avoided in favor of one that provides a more reasonable contract. See *Philip Morris, Inc. v. French* (Fla.App. 2004), 897 So.2d 480, 489; *Am. Employers' Ins. Co. v. Taylor* (Fla.App. 1985), 476 So.2d 281, 284; *James v. Gulf Life Ins. Co.* (Fla.App. 1953), 66 So.2d 62, 63. In this light, paragraph I(B) cannot be interpreted to establish the very $.182 per mile fuel charge that paragraph I(A)(2)(g) denies.

{¶ 41} Based on the foregoing, we hold that paragraph I(A)(2)(g) of the Toledo Schedule in the parties' Transportation Agreement is clearly an excess fuel-cost provision requiring Greif to pay only the cost of fuel that exceeds $.182 per mile; that paragraph I(B) of the Toledo Schedule does not apply to require Greif to pay Ryder's full cost of fuel; and that the trial court inappropriately granted summary judgment in favor of Ryder as to both its counterclaim and Greif's complaint.

{¶ 42} Accordingly, Greif's assignments of error, considered together, are well-taken.

IV. CONCLUSION

{¶43} The judgment of the Lucas County Court of Common Pleas is reversed, and the cause is remanded to the trial court for further proceedings consistent with this decision. Appellees are ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Keila D. Cosme, J. _____
CONCUR.
JUDGE