

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

GMAC, Inc.

Court of Appeals No. H-12-013

Appellant

Trial Court No. CVH 2010 959

v.

Richard Branham

DECISION AND JUDGMENT

Appellee

Decided: May 24, 2013

* * * * *

Matthew G. Burg, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Huron County Court of Common Pleas that directed a verdict in favor of appellee, Richard Branham. For the reasons that follow, the judgment of the trial court is reversed.

{¶ 2} On October 31, 2006, Branham executed a “GMAC SmartLease Agreement” for a 2007 vehicle from Sharpnack II Chevy Olds (“Sharpnack”), a car dealer in Willard, Ohio. The lease agreement consisted of a single, double-sided page.

At the top of the agreement is a small box next to the following language: “If this box is checked, Lessor (Retailer) will assign the lease and sell the vehicle to General Motors Acceptance Corporation (‘GMAC’) [.]” A typed-in “XX” partially fills the box, although slightly off-center, extending below the box and partially onto another box on the line below. The lower box is adjacent to a statement indicating that if it is checked, “GMAC helped to arrange the lease and Lessor (Retailer) will assign it and sell the vehicle to Central Originating Lease Trust.”

{¶ 3} At the bottom of the lease on the front side, is a box with signature lines for the lessor and lessee. One line is signed by the lessor (a representative for Sharpnack) and the other is signed by the lessee, Richard Branham. In that box, immediately above the two signatures, is the following language: “THIS IS THE ENTIRE AGREEMENT. This lease, including the front and the back of this form, contains the entire agreement between you and us relating to the lease of the vehicle. Any change to the terms of this lease must be in writing and signed by you and us. No oral changes are binding.”

{¶ 4} Immediately below the above-described signature box is the following additional language:

Lessor assigns all right, title, and interest in this lease to the party identified in the lease as the intended assignee, under the terms of the Lease Plan Dealer Agreement in effect from time to time with the assignee (the “Dealer Agreement”). Lessor also assigns all right, title, and interest in the

leased vehicle to the party identified in this lease as the intended assignee, or its designee, under the terms of the Dealer Agreement.

{¶ 5} Immediately below is a signature line with Sharpnack Chevy-Olds, Inc. identified as lessor followed by an illegible signature.

{¶ 6} After signing the lease, Branham made approximately 13 payments to GMAC before falling behind on the payments, as attested to by Branham in the affidavit attached to his motion for summary judgment. Branham also attested that “I signed a Lease agreement with GMAC on or about October 31, 2006.” Branham ultimately failed to pay on the lease for three months before the vehicle was repossessed. Following the repossession, GMAC sent Branham a letter informing him that it had ended the lease due to a breach in the terms of the agreement. GMAC further notified Branham that it was planning on selling the vehicle at auction unless Branham paid on the delinquent account. Branham never made any further payments. GMAC sold the vehicle at auction, resulting in a deficiency balance of \$15,167.39.

{¶ 7} On October 12, 2010, GMAC filed a complaint seeking to recover the deficiency balance. GMAC specifically pled in its complaint that the lease at issue was assigned to GMAC. Branham asserted ten affirmative defenses, none of which related to GMAC not having standing to enforce the lease agreement as the real party in interest.

{¶ 8} Both parties moved for summary judgment, which the trial court denied, and on March 28, 2012, the matter proceeded to a bench trial. At trial, GMAC presented two witnesses—a representative from the company and Branham as if on cross-examination.

GMAC submitted several exhibits into evidence, including the underlying lease agreement and various correspondence from GMAC to Branham regarding the delinquency balance on his account under the lease, all of which the trial court admitted.

{¶ 9} At the conclusion of GMAC’s case, Branham moved for a directed verdict, arguing that GMAC failed to establish a valid assignment because it never produced the “dealer agreement” between Sharpnack and GMAC. Branham argued that the dealer agreement was crucial in order to establish an assignment to GMAC. GMAC opposed that argument, asserting that the lease agreement contains a clear assignment from Sharpnack, the retailer, to GMAC, the party that provided Branham the financing for the vehicle. GMAC further argued that, in addition to the contract itself, the assignment was supported by all of the activity between the parties, including the GMAC credit application that Branham completed, correspondence from GMAC to Branham, and the fact that Branham made all of his payments to GMAC.

{¶ 10} In response to Branham’s motion, the trial court found that GMAC had failed to sustain its burden of proof by showing that it was the assignee in this matter, and granted judgment in favor of Branham. GMAC timely appeals.

{¶ 11} GMAC sets forth the following assignments of error:

Assignment of Error No. I:

The trial court erred as a matter of law in holding that there was insufficient evidence that GMAC was the real party in interest. Even if the trial court found that the assignment in the lease was ambiguous, the

evidence at trial negated any ambiguity, overwhelmingly demonstrating that GMAC was the assignee and the real party in interest with standing to assert its rights under the lease.

Assignment of Error No. II:

Despite the fact that GMAC is the real party in interest, the trial court erred in dismissing GMAC's case in that Branham waived any argument because: (1) he never raised the affirmative defenses that GMAC did not have standing or that it was not the real party in interest to enforce the contract, so this argument was therefore waived and should not have been entertained by the trial court; and (2) he waived or ratified any improper assignment through his conduct.

{¶ 12} Initially, we note that appellant incorrectly requested relief pursuant to a Civ.R. 50 directed verdict at the close of the plaintiff's case. It is well established that in a bench trial, the proper motion for judgment at the conclusion of a plaintiff's case is one for dismissal under Civ.R. 41(B)(2). *Harris v. City of Cincinnati*, 79 Ohio App.3d 163, 607 N.E.2d 15 (1st Dist.1999). Thus, we will construe it as one for involuntary dismissal under Civ.R. 41(B)(2). The trial court on a motion for involuntary dismissal "is not required to review the evidence in the light most favorable to the plaintiff but is required only to determine whether the plaintiff has made out his case by a preponderance of the evidence." *Jacobs v. Bd. of Cty. Commrs.*, 27 Ohio App.2d 63, 65, 272 N.E.2d 635 (3d Dist.1971).

{¶ 13} In support of its first assignment of error, appellant asserts that even if the trial court properly found that the assignment in the lease was ambiguous, sufficient evidence was presented at trial to negate any ambiguity and demonstrate that GMAC was the assignee and thus had standing to enforce the terms of the lease.

{¶ 14} Ohio law recognizes the contractual nature of a lease. *See Bevy's Dry Cleaners & Shirt Laundry, Inc. v. Streble*, 2 Ohio St.2d 250, 208 N.E.2d 528 (1965). "In construing the terms of a written contract, the primary objective is to give effect to the intent of the parties, which we presume rests in the language that they have chosen to employ. * * * Where the terms are clear and unambiguous, a court need not go beyond the plain language of the agreement to determine the rights and obligations of the parties." *In re All Kelley & Ferraro Asbestos Cases*, 104 Ohio St.3d 605, 2004-Ohio-7104, 821 N.E.2d 159, ¶ 29. Where the terms of an agreement are ambiguous, however, the court can consider extrinsic evidence to interpret or construe terms. *Avers v. O'Boyle*, 6th Dist. No. OT-93-061, 1994 WL 518134 (Sept. 23, 1994)

{¶ 15} In the case before us, the trial court found that a valid assignment existed in the agreement but that the identity of the assignee was unclear. Apparently, the trial court believed that the identity of the assignee could not be established without reference to the "Lease Plan Dealer Agreement" referenced in the agreement, and that GMAC therefore did not have standing to bring the case.

{¶ 16} The trial court was required to read the contract in its entirety. We find that doing so leads to the conclusion that GMAC is the assignee under the lease. The

assignment at the bottom of the page, signed by a Sharpnack representative, indicates that Sharpnack assigned its rights under the lease: “Lessor assigns all right, title, and interest in this lease to the party identified in this lease as the intended assignee * * *.” This language indicates that the assignee must be identified in the lease, not in another separate agreement. We again reference the provision located at the top of the lease agreement.

{¶ 17} Despite the fact that a very small portion of the “XX” mark on the lease agreement adjacent to the assignment to GMAC touches the box below referencing a possible assignment to “Central Originating Lease Trust,” there is not a single piece of evidence in the record indicating that “Central Originating Lease Trust” had any role whatsoever in the lease transaction giving rise to this matter. To the contrary, every indication in the record as supported by evidence admitted at trial points to an assignment of the lease to GMAC and GMAC’s continued relationship with Branham from the date the lease agreement was signed. It is undisputed that Branham made his payments to GMAC, that GMAC corresponded with Branham regarding the payment issues, and that GMAC repossessed the vehicle.

{¶ 18} On consideration of the foregoing, we find that the trial court’s finding is not supported by any competent, credible evidence. Accordingly, appellant’s first assignment of error is well-taken.

{¶ 19} In support of its second assignment of error, GMAC further asserts that the trial court erred by dismissing the case because Branham did not raise affirmative

defenses as to GMAC's lack of standing and waived any argument as to improper assignment by making all of his monthly payments to GMAC. Based on our finding as to appellant's first assignment of error that the trial court erred by dismissing GMAC's case, this assignment of error is moot.

{¶ 20} On consideration whereof, the judgment of the Huron County Court of Common Pleas is reversed. This matter is remanded to the trial court for further proceedings including the presentation of appellee Branham's evidence. Costs of this appeal are assessed to appellee 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, P.J.

JUDGE

Thomas J. Osowik, J.

CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
