[Cite as *Vetor v. Cliffs Natural Resources, Inc.*, 2016-Ohio-5846.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104023

DUKE D. VETOR, ET AL.

PLAINTIFFS-APPELLANTS

vs.

CLIFFS NATURAL RESOURCES, INC.

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-15-850469

BEFORE: McCormack, J., Jones, A.J., and Celebrezze, J.

RELEASED AND JOURNALIZED: September 15, 2016

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TIM McCORMACK, J.:

{¶1} Plaintiffs-appellants, Duke D. Vetor and James M. Bartolomucci, former executives of Cliffs Natural Resources, Inc. ("Cliffs"), appeal from a judgment of the Cuyahoga County Court of Common Pleas that granted Cliffs' Civ.R. 12(B) motion to dismiss in a dispute involving their severance benefits. After a review of the record and applicable law, we affirm the trial court's judgment.

Background

{¶2} Vetor and Bartolomucci were former executives at Cliffs; Vetor was the Executive Vice President of Global Operations Services, and Bartolomucci was the Senior Vice President, Chief Risk Officer of the company. The instant litigation involved the severance benefits they were entitled to when their employment was terminated in 2014.

{¶3} Cliffs had a "Change-in-Control Severance Agreement" ("CIC severance agreement" hereafter) with its upper-level executives, which was to provide them with severance benefits in the event of a change in control of the company.[1] The CIC severance agreement was revised periodically. The most recent revision of the agreement was signed by Vetor and Bartolomucci on January 1, 2014.

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[1]The CIC severance agreement provided that the executive would be entitled to severance benefits if he or she was terminated during the "protection period." The "protection period" covers a two-year period after a change in control, as well as a one-year period preceding the change in control.

{¶4} A month after signing that agreement, the two executives were terminated from their employment with Cliffs; in February 2014, they separately entered into a severance agreement with Cliffs ("February 2014 severance agreement" hereafter), under which each received substantial severance payments.[2]

{¶5} Vetor and Bartolomucci claimed they were additionally entitled to severance payments under the CIC severance agreement, because six months after the two executives were terminated from Cliffs, on August 6, 2014, Cliffs underwent a change in control of the company. Cliffs rejected their claims.

{¶6} Vetor and Bartolomucci subsequently filed the instant lawsuit in the common pleas court, asserting a breach of contract claim relating to the CIC severance agreement and also seeking attorney fees (Counts I and II). Bartolomucci in addition claimed that Cliffs violated the non-disparagement provision under the February 2014 severance agreement (Count III).

{¶7} Cliffs filed a partial motion to dismiss pursuant to Civ.R. 12(B)(6) regarding Counts I and II.[3] The trial court granted the motion after an oral hearing. Vetor and Bartolomucci now appeal, raising one assignment of error. They contend the trial court erred in granting Cliff's motion to dismiss Counts I and II of the complaint.

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[2]Vetor and Bartolomucci redacted the amount of payment they received under the February 2014 severance agreement from the copy of the agreement attached to the complaint. In the filings at the trial court, Cliffs alleged the amounts to be more than $1 million for each executive.

[3]Count III (non-disparagement claim asserted by Bartolomucci) was not part of Cliffs' motion to dismiss. Because the trial court's judgment contained a "no just reason for delay" language required by Civ.R. 54(B), the trial court's judgment is final and appealable.

Civ.R. 12(B)(6) Motion to Dismiss

{¶8} A Civ.R. 12(B)(6) motion to dismiss for failure to state a claim tests the sufficiency of the complaint. *Assn. for Defense of Washington Local School Dist. v. Kiger*, 42 Ohio St.3d 116, 537 N.E.2d 1292 (1989). In deciding the motion, the court's review is limited to the four corners of the complaint along with any documents properly attached to or incorporated within the complaint. *Windsor Realty & Mgt., Inc. v. N.E. Ohio Regional Sewer Dist*., 8th Dist. Cuyahoga No. 103635, 2016-Ohio-4865, ¶ 23, citing *High St. Props. L.L.C. v. Cleveland*, 8th Dist. Cuyahoga No. 101585, 2015-Ohio-1451, ¶ 17. The trial court presumes all factual allegations contained in the complaint to be true and makes all reasonable inferences in favor of the nonmoving party. *Garofalo v. Chicago Title Ins. Co.*, 104 Ohio App.3d 95, 104, 661 N.E.2d 218 (8th Dist.1995). In order for the trial court to grant a motion to dismiss for failure to state a claim, it must appear beyond a doubt that the plaintiff can prove no set of facts in support of the asserted claim that would entitle the plaintiff to relief. *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 245, 327 N.E.2d 753 (1975). Our review of the trial court's determination is de novo. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 5.

{¶9} In a case such as the instant matter where a plaintiff's claim is predicated upon a written instrument attached to the complaint, a dismissal under Civ.R. 12(B)(6) is proper where the language of the writing is "clear and unambiguous" and thus "presents an insuperable bar to relief." *Demeraski v. Bailey*, 2015-Ohio-2162, 35 N.E.3d 913, ¶

13 (8th Dist.), citing *Abdallah v. Doctor's Assocs.*, 8th Dist. Cuyahoga No. 89157, 2007-Ohio-6065, ¶ 3.

Analysis

{¶10} On appeal, Vetor and Bartolomucci assert that the CIC severance agreement provided severance benefits separate from severance benefits paid under the February 2014 severance agreement; that the CIC severance agreement only became "operative" when a change in control occurred in August 2014, after the February 2014 severance agreement; that the CIC severance agreement may not be "modified" without their written consent; and that the release clause in the February 2014 severance agreement did not reference the CIC severance agreement and therefore did not apply to their claims under that agreement. Having carefully reviewed the CIC severance agreement and the subsequent February 2014 severance agreement, we find no merit to these assertions.

{¶11} Our review of the February 2014 severance agreement reflects that Vetor and Bartolomucci each executed a comprehensive general release in exchange for a lump-sum severance payment. The agreement contained the following release language:

> Employee * * * acknowledges and understands that this Agreement is intended to bar all equitable claims and all common law claims, including without limitation claims of or for: [b]reach of an express or an implied contract; * * * [and] [u]npaid wages, salary, commissions, vacation, or other employee benefits[.]

(Section III.C.) The agreement also provided the following:

> Employee further understands, acknowledges, and agrees that this Agreement is a general release, and that Employee further waives and assumes the risk of any and all claims which exist as of the date this Agreement is executed, including those of which the Employee does not

> know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect Employee decision to sign this Agreement.

(Section III.D.)

{¶12} To eliminate any doubt that the executives released Cliffs from all claims, present or future, in connection with their termination, the Recitals section of a separate document titled "Release" attached to the severance agreement contains the following language: "Employee and the Company desire to settle fully and finally any and all differences between them which have arisen, or may arise, out of the employment relationship * * *."

{¶13} "A release is a contract subject to the rules governing the construction of contracts." *Shifrin v. Forest City Ents., Inc.*, 64 Ohio St.3d 635, 638, 597 N.E.2d 499 (1992). It has long been established that "[w]hen the terms in a contract are unambiguous, courts will not in effect create a new contract by finding an intent not expressed in the clear language employed by the parties." *Shifrin* at 638, citing *Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St.2d 241, 246, 374 N.E.2d 146 (1978). Furthermore, "'[c]ommon words appearing in a written instrument will be given their ordinary meaning unless manifest absurdity results, or unless some other meaning is clearly evidenced from the face or overall contents of the instrument.'" *Id.* quoting *Alexander* at 246.

{¶14} Giving the above-cited language from the February 2014 severance agreement its ordinary meaning, we find the terms of the release indicate clearly and

unambiguously the intent of appellants to release all claims they have had, have, or may have against Cliffs in connection with the termination of their employment from the company.

{¶15} The February 2014 severance agreement, executed after the CIC severance agreement, contains, in addition, the following integration clause:

> This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter hereof, and supersedes any and all prior and contemporaneous agreements, promises, representations, negotiations, and understandings of the Parties, whether written or oral. There are no agreements of any nature whatsoever among the Parties except as expressly stated herein.

{¶16} As the Supreme Court of Ohio instructed:

> "When two parties have made a contract and have expressed it in a writing to which they have both assented as the complete and accurate integration of that contract, evidence, whether parol or otherwise, of antecedent understandings and negotiations will not be admitted for the purpose of varying or contradicting the writing."

Ed Schory & Sons, Inc. v. Soc. Natl. Bank, 75 Ohio St.3d 433, 440, 662 N.E.2d 1074 (1996), quoting 3 Corbin, *Corbin on Contract*, Section 573 at 357 (1960).

{¶17} Here, both agreements dealt with the subject matter of severance benefits — both documents were titled "Severance Agreement." By the clear and unambiguous

terms of the integration clause, the February 2014 severance agreement constituted the sole agreement regarding appellants' severance benefits upon termination and it superseded all prior agreements on this subject matter. "'When the terms in a contract are unambiguous, courts will not create a new contract by finding an intent not expressed in the clear language employed by the parties.'" *Olds v. Jones*, 8th Dist. Cuyahoga No. 98169, 2012-Ohio-4941, ¶ 6, quoting *Shifrin*, 64 Ohio St.3d at 638, 597 N.E.2d 499.

{¶18} Given the integration clause, the February 2014 severance agreement superseded all prior agreements governing appellants' severance benefits, and the release clause contained in that agreement released Cliffs from all existing or future claims arising out of appellants' employment relationship with Cliffs upon the payment of specified severance benefits. Both the integration and release clause employed clear and unambiguous language, rendering a dismissal under Civ.R. 12(B)(6) proper.

{¶19} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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TIM McCORMACK, JUDGE

LARRY A. JONES, SR., A.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR