[Cite as *Struckman v. Teays Valley Local School Dist. Bd. of Edn.*, 2017-Ohio-1177.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PICKAWAY COUNTY

MICHAEL STRUCKMAN,	:	
Plaintiff-Appellant,	:	Case No. 16CA10
v.	:	DECISION AND JUDGMENT ENTRY
BOARD OF EDUCATION OF TEAYS VALLEY LOCAL SCHOOL DISTRICT, ET AL.,	:	
Defendants-Appellees.	:	RELEASED 03/27/2017

APPEARANCES:

Richard T. Ricketts, Ricketts Co., LPA, Pickerington, Ohio, for appellant.

Victoria A. Flinn and Sue W. Yount, Bricker & Eckler LLP, Columbus, Ohio, for appellees.

Hoover, J.

{¶ 1} Plaintiff-appellant, Michael Struckman ("Struckman"), appeals the judgment of the Pickaway County Common Pleas Court dismissing his action against defendants-appellees (collectively "Teays Valley") for breach of the parties' 2004 real estate purchase contract. In 2004, Struckman agreed to sell nearly 70 acres of property to Teays Valley. Struckman filed the complaint against Teays Valley alleging that Teays Valley violated the parties' purchase contract by failing to abide by the representation that they would use the property for a site to build a new school. In response, Teays Valley filed a motion to dismiss the complaint pursuant to Civ.R. 12(B)(6). The trial court granted the motion.

{¶ 2} On appeal, Struckman presents two assignments of error. In both assignments of error, Struckman contends that the trial court erred by dismissing his complaint pursuant to Civ.R. 12(B)(6). Struckman contends that he agreed to sell the property to Teays Valley below market value based on the material representations that the property would be used for a "School Site" and that he would have a right to continue to farm the property until such time that a school was developed on the property. However, a specific provision that Teays Valley must use the property to build a school is not contained in the parties' purchase contract. The purchase contract does contain a provision that allowed Struckman to continue farming the property until Teays Valley began construction on the property or occupied a portion of the property "in connection with its intended use thereof."

{¶ 3} Struckman argues that the phrase "its intended use" is ambiguous within the contract and that the phrase refers to Struckman's alleged representation by Teays Valley that they would use the property to build a new school. Struckman argues that since this phrase is ambiguous, extrinsic evidence should be examined in order for the trial court to understand the intention of the parties.

{¶ 4} We do not agree with Struckman. We find that the parties' purchase contract, specifically the phrase, "its intended use", to be unambiguous. Because the phrase is unambiguous, and because the parties' purchase contract does not contain a provision requiring Teays Valley to use the property to build a school, Struckman's claims for breach of contract are usurped by the contract. Accordingly, the trial court properly dismissed Struckman's complaint for failure to state a claim upon which relief may be granted, pursuant to Civ.R. 12(B)(6).

{¶ 5} For those reasons and the reasons more fully discussed below, Struckman's assignments of error are overruled. The judgment of the trial court is affirmed.

I. Facts and Procedural History

{¶ 6} In May 2004, Struckman and Teays Valley executed a written purchase contract ("purchase contract"), wherein Teays Valley purchased approximately 70 acres of real estate ("the property") from Struckman for $10,400. The parties agreed that Struckman would retain his right to farm the property. Paragraph 23 of the contract, in part, states: "* * * Furthermore, Seller shall be entitled to without charge from Buyer continue its Farming Activities on any part of the Real Estate purchased by Buyer until Buyer commences construction on any such portion of the Real Estate or otherwise must occupy said portion of the Real Estate in connection with its intended use thereof."

{¶ 7} On July 21, 2015, Robin Halley, the superintendent of the Teays Valley Local School District, wrote a letter to Struckman to confirm the school district's intent to begin occupying the property and that Struckman's farming rights would terminate at the conclusion of the 2015 farming season. Halley also stated, "The District's plans include the construction of a small facility on the site in conjunction with its occupancy and use of the property for the District's student FFA organization and other potential school-related or extracurricular functions."

{¶ 8} In March 2016, Struckman commenced this action by filing a complaint against the Board of Education of Teays Valley Local School District, the members of the school board in their representative capacity, and the superintendent of the school, individually and in his representative capacity. In his complaint, Struckman asserted the following counts against Teays Valley: breach of contract (Count One), specific performance (Count Two), declaratory relief (Count Three), injunctive relief (Count Four), and willful, wanton and knowing breach of

contract (Count Five). In his complaint, Struckman asserted inter alia, the following background facts:

> 8. It was specifically and affirmatively represented to Mr. Struckman that the Real Estate was being purchased for use as a future school site ("School Site").
>
> 9. Mr. Struckman would not have sold the Real Estate or entered into a contract for its sale for a purpose other than the use of the Real Estate by [Teays Valley] for a School Site.
>
> 10. Mr. Struckman agreed to sell the Real Estate to [Teays Valley] at an amount less than its fair market value, based on two material considerations and representations by [Teays Valley]:
>
> a. The Real Estate would be used for a School Site; and
>
> b. Struckman would have the right to continue to farm the Real Estate, at no additional charge, until such time as a school was developed on the Real Estate (collectively, "Express Considerations and Representations").
>
> 11. Plaintiff, as seller, and [Teays Valley], as buyer, entered into a Real Estate Purchase Contract for the sale and purchase of the Real Estate as a School Site.
>
> * * *
>
> 13. The Contract specifically provides at paragraph 23 as follows:
>
> "The Plaintiff shall be entitled to farm the Real Estate after the closing and so long thereafter until Defendant commences construction on or otherwise occupies the Real Estate in connection with its <u>intended use</u>". [sic]
>
> (Emphasis added.)

14. [Teays Valley] represented and warranted that the intended use of the Real Estate was for a School Site.

{¶ 9} Struckman attached a copy of the purchase contract and the superintendent's July 21, 2015 letter to his complaint. Struckman also attached newspaper articles and letters published by Teays Valley that aim to demonstrate Teays Valley's intention to use the property for a school site. In his complaint, Struckman asserted that Teays Valley's intentions to use the property for purposes other than a school site are a breach of the parties' purchase contract and Teays Valley's express representations.

{¶ 10} On March 25, 2016, Teays Valley filed a motion to dismiss Struckman's complaint pursuant to Civ.R. 12(B)(6). In its motion to dismiss, Teays Valley asserted the following arguments: (1) Struckman failed to state a claim against the individual members of the School Board and the school's superintendent; (2) the purchase contract does not require Teays Valley to build a school; (3) count five of the complaint must be dismissed because a claim for willful wanton and knowing breach of contract does not exist under Ohio law; and (4) punitive damages are not available for breach of contract.

{¶ 11} Struckman filed a memorandum in opposition to Teays Valley's motion to dismiss. Teays Valley then filed a reply in support of its motion to dismiss.

{¶ 12} On May 5, 2016, the trial court granted Teays Valley's motion to dismiss. In its decision, the trial court only addressed Teays Valley's second argument, i.e. that the purchase contract did not require Teays Valley to build a school on the property. The trial court concluded that the second argument was dispositive; thus, the other issues were rendered moot. In its decision, the trial court stated:

Attached to Plaintiff's complaint as Exhibit A is the Real Estate Purchase Contract. A perusal of this contract shows that there is no reference whatsoever to the land being limited to use as a future school site. Plaintiff points to Paragraph 23 of the contract * * *[.]

Plaintiff hangs his hat on the phrase "intended use." This phrase is not defined in the contract. Plaintiff also provides parol evidence in the form of newspaper articles about the land sale and letters between Plaintiff and Defendant. See Complaint Exhibits B-G.

* * *

Plaintiff claims that the term "intended use" is ambiguous, thus allowing the introduction of parol evidence. This Court does not find this term to be ambiguous at all. The definition of intend is "to plan or want to do (something): to have (something) in your mind as a purpose or goal." http://www.merriam-webster.com/dictionary/intend. Use is defined as "the act of using something." http://www.merriam-webster.com/dictionary/use. So here, TVLSD [Teays Valley] is simply stating that at some time, in the future, they plan to use this land. No specification is made as to what that use will be. Further, it seems doubtful that this paragraph would have even been inserted into the contract except to define the agreement for Plaintiff to farm the land for free until Defendant's plans for its own use came to fruition. The purpose of the paragraph appears to be to establish Plaintiff's right to farm, not to limit Defendant's intended use in the future.

> Plaintiff could have insisted, at the time of contracting, that the intended use be specified. He did not. The intention of building a school is simply never mentioned.
>
> * * *

{¶ 13} Struckman now presents this timely appeal of the trial court's decision.

II. Assignments of Error

{¶ 14} Struckman presents the following assignments of error for our review:

Assignment of Error I:

> The Trial Court erred in granting Defendants-Appellees' Motion to Dismiss when it determined Plaintiff-Appellant failed to state a claim upon which relief can be granted pursuant to Civil Rule 12(B)(6).

Assignment of Error II:

> The Trial Court erred in granting Defendants-Appellees' Motion to Dismiss when it determined the purchase contract was not ambiguous and/or the words "intended use" did not have a special meaning in respect of the purchase contract.

III. Law and Analysis

A. The Trial Court Did Not Err by Granting Teays Valley's Motion to Dismiss Pursuant to Civ.R. 12(B)(6).

{¶ 15} We will address both of Struckman's assignments of error simultaneously. In both his first and second assignments of error, Struckman argues that the trial court erred when it granted Teays Valley's motion to dismiss pursuant to Civ.R. 12(B)(6). Struckman contends that, under the legal standard for motions for dismissal pursuant to Civ.R. 12(B)(6), his complaint set forth facts that would allow him to recover on his breach of contract claims. Specifically, in his complaint, Struckman asserted that he agreed to sell the property to Teays Valley at an amount less than fair market value based on two material considerations: (1) that the property would be

used for a "School Site" and (2) that he would have the right to farm the property at no additional charge until "such time as a school was developed on the property." Struckman asserts that the trial court's interpretation of the language of the purchase contract was not appropriate in the context of a decision on a Civ.R. 12(B)(6) motion to dismiss.

{¶ 16} Struckman further argues that the phrase in paragraph 23 "its intended use" refers to Teays Valley's representation that the property would be used for a future school site. Struckman contends that since the phrase "its intended use" is ambiguous, extrinsic evidence, which he attached to his complaint, should be considered to ascertain the parties' intentions. Therefore, Struckman concludes that because the purchase contract contains an ambiguous phrase that requires interpretation, it was premature and incorrect for the trial court to grant Teays Valley's motion to dismiss.

{¶ 17} Teays Valley argues that the trial court's decision granting its motion to dismiss should be affirmed. Teays Valley asserts that the purchase contract states nothing with respect to a requirement that they build a school before being able to terminate Struckman's farming rights. Teays Valley contends that the purchase contract was unambiguous in allowing them to terminate Struckman's right to farm the property after they gave notice of its intention to use the property. Teays Valley also reasserts its previous arguments that the trial court rendered moot in its decision dismissing Struckman's complaint. Accordingly, Teays Valley avers that they provided adequate notice; and thus the trial court correctly granted its motion to dismiss.

1. Standard of Review- Civ.R. 12(B)(6) Motion to Dismiss

{¶ 18} Because it presents a question of law, we review a trial court's decision regarding a motion to dismiss independently and without deference to the trial court's determination. *See Roll v. Edwards*, 156 Ohio App.3d 227, 2004-Ohio-767, 805 N.E.2d 162, ¶ 15 (4th Dist.); *Noe v.*

Smith, 143 Ohio App.3d 215, 218, 757 N.E.2d 1164 (4th Dist.2000). "A motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint." *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548, 605 N.E.2d 378 (1992). A trial court may not grant a motion to dismiss for failure to state a claim upon which relief may be granted unless it appears "beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery." *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975), syllabus; *see also Taylor v. London*, 88 Ohio St.3d 137, 139, 723 N.E.2d 1089 (2000).

{¶ 19} Furthermore, when considering a Civ.R. 12(B)(6) motion to dismiss, the trial court must review only the complaint, accepting all factual allegations as true and making every reasonable inference in favor of the nonmoving party. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988); *Estate of Sherman v. Millhon*, 104 Ohio App.3d 614, 617, 662 N.E.2d 1098 (10th Dist.1995); *see also JNS Ents., Inc. v. Sturgell*, 4th Dist. Ross No. 05CA2814, 2005-Ohio-3200, ¶ 8. The court, however, need not presume the truth of legal conclusions that are unsupported by factual allegations. *McGlone v. Grimshaw*, 86 Ohio App.3d 279, 285, 620 N.E.2d 935 (4th Dist.1993), citing *Mitchell* at 193.

{¶ 20} "When reviewing a Civ.R. 12(B)(6) motion, courts are confined to the allegations contained in the complaint." *Cooper v. Highland Cty. Bd. Of Commrs.*, 4th Dist. Highland No. 01CA15, 2002-Ohio-2353, ¶ 9, citing *State ex rel. Alford v. Willoughby Civ. Serv. Comm.*, 58 Ohio St.2d 221, 223, 390 N.E.2d 782 (1979). "But courts may consider written instruments if they are attached to the complaint." *Id.*, citing *First Michigan Bank & Trust v. P. & S. Bldg.*, 4th Dist. Meigs No. 413, 1989 WL 11915 (Feb. 16, 1989), in turn citing *Slife v. Kundtz Properties, Inc*. 40 Ohio App.2d 179, 318 N.E.2d 557 (8th Dist.1974). "However, courts should avoid

interpreting these written instruments at the pre-trial stage unless the instrument is clear and unambiguous on its face." *Id.*, citing *Slife* at 184-85. "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 only where the language of the writing is clear and unambiguous and presents an insuperable bar to relief." (Internal quotations omitted.) *Demeraski v. Bailey*, 2015-Ohio-2162, 35 N.E.3d 913, ¶ 13 (8th Dist.)

2. Legal Analysis

{¶ 21} Our analysis will involve contract interpretation. "In construing a written instrument, the primary and paramount objective is to ascertain the intent of the parties so as to give effect to that intent." *Shafer v. Newman Ins. Agency*, 4th Dist. Highland No. 12CA11, 2013–Ohio–885, ¶ 10 citing *Aultman Hosp. Assn. v. Community Mut. Ins. Co.*, 46 Ohio St.3d 51, 53, 544 N.E.2d 920 (1989). When the terms of 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. *Waina v. Abdallah*, 8th Dist. Cuyahoga No. 86629, 2006–Ohio–2090, ¶ 31, citing *Shifrin v. Forest City Ents.*, 64 Ohio St.3d 635, 597 N.E.2d 499 (1992). "Courts must give common words their ordinary meaning unless manifest absurdity would result or some other meaning is clearly evidenced from the face or overall contents of the written instrument." *Shafer* at ¶ 10, citing *In re All Kelley & Ferraro Asbestos Cases*, 104 Ohio St.3d 605, 2004–Ohio–7104, 821 N.E.2d 159, ¶ 29.

{¶ 22} " 'If a contract is clear and unambiguous, the court need not go beyond the plain language of the agreement to determine the parties' rights and obligations; instead, the court must give effect to the agreement's express terms.' " *Id.*, quoting *Uebelacker v. Cincom Sys., Inc.*, 48 Ohio App.3d 268, 271, 549 N.E.2d 1210 (1st Dist.1988). "Ambiguity exists only when a

provision at issue is susceptible of more than one reasonable interpretation." *Lager v. Miller–Gonzales*, 120 Ohio St.3d 47, 2008-Ohio-4838, 896 N.E.2d 666, ¶ 16.

{¶ 23} The pertinent issue before us in this appeal is whether the phase "its intended use," contained in paragraph 23, presents an ambiguity that allows Struckman to introduce extrinsic evidence in order to show that the parties had an agreement that Teays Valley would use the property for a school site. After reviewing the language in paragraph 23, as well as the entire purchase contract, we find that the language is unambiguous.

{¶ 24} Paragraph 23 of the purchase contract states:

> 23. FARMING RIGHTS: * * *The Contract shall not affect the current right to use the Real Estate for Farming Activities prior to closing. Furthermore, Seller shall be entitled to without charge from Buyer continue its Farming Activities on any part of the Real Estate purchased by Buyer until Buyer commences construction on any such portion of the Real Estate or otherwise must occupy said portion of the Real Estate in connection with its *intended use* thereof. In the event Buyer notifies Seller by October 1 (Buyer shall provide Seller with as much advance notice as is reasonably possible of its intent to use the Real Estate purchased by Buyer, Seller agrees that Buyer shall not be liable to Seller for any loss or damage incurred by Seller, including the cost of any damaged crops on the Real Estate, as a result of Buyer's use of said Real Estate in the ensuring year.
>
> * * *

{¶ 25} First, it is clear that the purchase contract does not state both of the two "material considerations" that Struckman alleges the parties' agreed to. Nowhere in the purchase contract does Teays Valley promise to build a school on the property or agree that they may only

terminate Struckman's farming rights in order to begin construction for a new school. While it is true that we must accept Struckman's factual allegations contained in his complaint, under the Civ.R. 12(B)(6) standard, Struckman's claims arise from the parties' purchase contract. As such, we must determine whether the purchase contract bars Struckman's claims from relief. *Demeraski*, *supra* at ¶ 13. It is noteworthy that the purchase contract contains an integration clause in paragraph 20, stating that the purchase contract "embodies the entire agreement between Seller and Buyer * * *[.]"

{¶ 26} Examining paragraph 23, the parties agreed that Struckman had the right to farm the property until one of the following occurred: (1) Teays Valley began construction on any portion of the property or (2) Teays Valley otherwise must occupy said portion of the property in connection with "its intended use thereof." We agree with the trial court's conclusion that the paragraph's intention is to establish Struckman's ability to farm the property for free until a certain time when Teays Valley sought to use the property they purchased. This is evidenced by the title of the paragraph, i.e. "Farming Rights". Our interpretation of the phrase "its intended use" is that Teays Valley could not arbitrarily occupy the property just to terminate Struckman's farming rights. Instead, Teays Valley must have occupied the property with the intent to use it for some envisioned purpose. We find this to be the only reasonable interpretation of paragraph 23. As such, we find that the language in paragraph 23 is unambiguous.

{¶ 27} With the superintendent's letter to Struckman in July 2015, Teays Valley gave notice that they intended to beginning occupying and using a portion of the property. Struckman's entire complaint is based upon the assertion that Teays Valley's notice breached the terms of the purchase contract because they did not intend to use it as a site for a new school. Because we have found that the purchase contract did not contain a provision that Teays Valley

must build a school on the property and the unambiguous nature of paragraph 23 allows for only the enforcement of the purchase contract's express terms, Struckman has failed to set forth a claim upon which relief can be granted. The parties' purchase contract presents an insuperable bar to relief on Struckman's breach of contract claims.

{¶ 28} We find that Teays Valley's other arguments set forth in their motion to dismiss are moot. Accordingly, we overrule both of Struckman's assignments of error. The judgment of the trial court is affirmed.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED. Appellant shall pay the costs.

The Court finds that reasonable grounds existed for this appeal.

It is ordered that a special mandate issue out of this Court directing the Pickaway County 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.

Abele, J., and McFarland, J.: Concur in Judgment and Opinion.

For the Court

By:_____
Marie Hoover, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.