SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2631-21

IN THE MATTER OF THE ESTATE OF DEBRA ANN HEYN, deceased.

———————————————

Submitted March 1, 2023 – Decided July 21, 2023

Before Judges Accurso and Natali.

On appeal from the Superior Court of New Jersey, Chancery Division, Morris County, Docket No. P-001925-20.

Law Offices of Steven A. Varano, PC, attorneys for appellant Steven Heyn (Albert J. Seibert, on the briefs).

Jeremy Klausner Law, PC, attorneys for respondent John Sheil (Jeremy Klausner, on the brief).

PER CURIAM

This is a dispute over settlement of estate and matrimonial litigation. John Sheil, the estranged husband of the decedent Debra Ann Heyn, filed a caveat against any will to be offered for probate by the temporary, court-appointed executor, the decedent's brother, Steven Heyn. Sheil and Heyn

eventually settled their differences, both in the estate litigation and the divorce pending at the decedent's death, by way of a consent order and final judgment filed in the Probate Part in Morris County on February 25, 2021. As relevant here, the consent order provided that Sheil would disclaim a percentage of the decedent's "401(k)s/IRAs/qualified retirement accounts" equal to the sum of $600,000. The consent order expressly provides:

> The $600,000.00 shall be disclaimed from the portion of the Decedent's 401(k)s/IRAs/qualified retirement accounts that is not invested in TIAA Traditional or from other liquid accounts. The transfer shall be effective as of the date of the disclaimer ("Effective Date") and all parties shall bear the risk of loss on their respective portions of the 401(k) after that time. The Parties acknowledge that the disclaimed portion is subject to fluctuation with equity markets and shall make any necessary adjustment with respect to the value of the disclaimed portion as of the Effective Date. By way of example only, if the disclaimed portion of the 401(k) has a market value of $601,000.00 as of the Effective Date, the Estate shall pay Sheil the amount of $1,000.00 to adjust the disclaimed amount to $600,000.00. The party responsible for paying any adjustment shall make such payment within 7 days of the Effective Date.

TIAA approved the form of the disclaimer on January 22, 2021. Sheil signed it on January 31, 2021, before a notary, the same day he executed the

settlement agreement.[1] The disclaimer identifies specifically the assets disclaimed and states they were valued at $597,034.87 as of January 7, 2021. The parties agree the value of the disclaimed accounts on January 31, the date Sheil executed the disclaimer, was $587,487.26. Thus, the Estate took the position that Sheil owed it $12,512.74 pursuant to the terms of the consent order.

Sheil refused to pay. He claimed the Effective Date was not the date he signed the disclaimer, but "the date the disclaimer was approved by TIAA," the decedent's plan administrator, which Sheil claimed was February 11, 2021, the day the money was transferred to the Estate. The parties agree the value of the disclaimed accounts on that date was $611,824.13. Thus, Sheil took the position the Estate owed him $11,824.13.

On cross-motions before the Probate Part, both the Estate and Sheil asserted the language of the consent order was unambiguous and could be interpreted by the court as a matter of law. The Estate argued the words of the agreement that "[t]he transfer shall be effective as of the date of the disclaimer" could not be clearer, and could only mean the date Sheil signed the

[1] Sheil's counsel advised TIAA on Tuesday, February 2, that "Sheil signed and sent the disclaimer." TIAA confirmed its receipt on February 5.

disclaimer. Although asserting the parties' intentions were not necessarily relevant given the unambiguous language of the agreement, the Estate maintained it was never the intention to make the effective date the day TIAA processed the disclaimer. The Estate noted neither party had any control over TIAA, and it could well have taken weeks or months for it to have processed Sheil's request.

Sheil, on the other hand, argued the January 31 date he signed the disclaimer was simply an arbitrary date of a letter to TIAA requesting approval of the disclaimer. He contended that had the parties intended that date to control, the consent order would have specified it as such. He also argued January 31 was not the date of the transfer because no transfer could have been effected until TIAA approved the disclaimer request, and had there been no approval, there would have been no transfer.

The Probate judge defined the sole issue as the "date [Sheil's] disclaimer became effective." Characterizing the agreement as a "carefully crafted consent order," the judge found "the parties were acutely aware of the fluctuating value of decedent's retirement accounts and clearly intended to designate an effective disclaimer date," thereby "avoid[ing] any ambiguity . . . for purposes of determining the value of the accounts on that given day" and

making clear who would "bear[] the risk of loss." But although acknowledging that settlement agreements are interpreted and enforced like contracts, Quinn v. Quinn, 225 N.J. 34, 45 (2016), and thus that the court was obligated to "enforce the agreement as written," ibid., the judge eschewed the plain language of the consent order.

Instead, because the parties were offering different interpretations of what was intended by "Effective Date" "while simultaneously arguing" there was no ambiguity in the language, the judge concluded "the plain language of the consent order is not helpful in the court's analysis," thus requiring her "to decipher the true intention of the parties in defining the effective disclaimer date."

The judge acknowledged "the Consent Order did not expressly . . . reference the need for TIAA approval," but she posited the Estate surely knew that Sheil's "signing and delivering a disclaimer letter to TIAA were not the only steps necessary to effectuate the transfer." The judge concluded that although "the parties demonstrated an express intention to avoid ambiguity, the most logical interpretation of the effective disclaimer date is when TIAA approved [Sheil's] disclaimer letter," as there could "be no effective transfer" without approval of the fiduciary holding the accounts. The judge also echoed

Sheil's contention that had the Estate "wished for the effective date to be as soon as [Sheil] evidenced his mere intention to disclaim, [the Estate] could have advocated for the terms of the Consent Order to reflect that."

The Estate appeals, reprising its argument that the consent order sets forth in clear and unambiguous terms that "[t]he transfer shall be effective as of the date of the disclaimer," that is the day Sheil signed it, and the trial court erred in concluding otherwise. We agree and reverse.

The construction of contract language is generally a question of law unless its "meaning is both unclear and dependent on conflicting testimony." Bosshard v. Hackensack Univ. Med. Ctr., 345 N.J. Super. 78, 92 (App. Div. 2001). As neither exception applies here, our review is de novo. Kieffer v. Best Buy, 205 N.J. 213, 222 (2011). We owe "no special deference to the trial court's interpretation and look at the contract with fresh eyes." Id. at 223.

As the trial court correctly recited, "where the terms of a contract are clear and unambiguous there is no room for interpretation or construction and the courts must enforce those terms as written." Karl's Sales & Serv. v. Gimbel Bros., Inc., 249 N.J. Super. 487, 493 (App. Div. 1991). As our Supreme Court has instructed, "[t]he judicial task is simply interpretative; it is

not to rewrite a contract for the parties better than or different from the one they wrote for themselves." Kieffer, 205 N.J. at 223.

Here, the trial court's error was in deciding "the plain language of the Consent Order" was "not helpful" because the parties were each arguing for a different interpretation of the meaning of the phrase, "[t]he transfer shall be effective as of the date of the disclaimer." The law is well settled, however, that a contract term is ambiguous only when it is "susceptible to at least two reasonable alternative interpretations," Schor v. FMS Fin. Corp., 357 N.J. Super. 185, 191 (App. Div. 2002) (quoting Nester v. O'Donnell, 301 N.J. Super. 198, 210 (App. Div. 1997)), which is not the case here. A contract term is not made ambiguous merely because the parties disagree over its meaning. See Oxford Realty Grp. Cedar v. Travelers Excess & Surplus Lines Co., 229 N.J. 196, 207 (2017).

And, of course, the parties' disagreement over the meaning of a contractual term does not relieve the judge of a plain language analysis. See Schor, 357 N.J. Super. at 191 ("The pertinent principles of contractual construction are straightforward. The court makes the determination whether a contractual term is clear or ambiguous."). "To determine the meaning of the terms of an agreement by the objective manifestations of the parties' intent, the

terms of the contract must be given their 'plain and ordinary meaning.'" Ibid. (quoting Nester, 301 N.J. Super. at 210). Our cases counsel that "[t]he court should examine the document as a whole and . . . 'not torture the language . . . to create ambiguity.'" Ibid. (quoting Nester, 301 N.J. Super. at 210).

Applying those principles here, we have no hesitation in holding the disputed language means exactly what it says: "The transfer [of the disclaimed funds] shall be effective as of the date of the disclaimer," that is, January 31, 2021, the undisputed date "[b]y his notarized signature below, John Sheil hereby disclaims" the identified assets. The language is not in the least ambiguous. As the Estate argues, Sheil and the court's interpretation — that the disclaimer is not effective until the date TIAA approved the disclaimer and transferred the funds — turns the language on its head. Not only did the Estate, and presumably Sheil, "wish[] for the effective date to be as soon as [Sheil] evidenced his mere intention to disclaim" by his notarized signature on the disclaimer, the terms of the consent order, that is "the objective manifestations of the parties' intent," Schor, 357 N.J. Super. at 191 (quoting Nester, 301 N.J. Super. at 210), reflect exactly that.

Were we to have any doubt about the plain language of the clause, which we don't, the rest of the sentence, that the "parties shall bear the risk of loss on

their respective portions of the 401(k) after that time," would dispel it. Reading the disputed language as Sheil does and the court did, that the disclaimer was not effective until the funds were transferred, would render that part of the sentence superfluous. Of course the parties would bear the risk of loss on their respective portions after the funds were transferred to them, they would at that point own their respective shares of the decedent's retirement funds.[2]

The remainder of the sentence only makes sense if the transfer was "effective as of the date of the disclaimer," because in that event there would be a delay between the date of the disclaimer and TIAA's approval and transfer of the funds. As it turned out, the market value of the disclaimed funds as identified in the disclaimer, that is "100% of the CREF portion (487015N1) of the referenced [TIAA] contract as well as 100% of the TIAA Real Estate investments," otherwise identified as "all contract investments other than TIAA Traditional," on January 31, 2021, the date of the disclaimer, was

[2] The $587,487.26 value of the funds on the January 31 effective date was nearly $10,000 less than their $597,034.87 value on January 7, three weeks earlier. That volatility is likely what spurred the detailed language about the valuation date and risk of loss in the consent order.

$587,487.26, requiring Sheil to pay the Estate $12,512.74 "to adjust the disclaimed amount to $600,000" as the consent order provides.

The risk of loss was the fluctuation in value of those same assets between January 31, 2021, the effective date of the transfer, and February 11, the date TIAA transferred the funds. Had those identified investment assets continued their slide, the Estate would have received less than the $600,000 agreed, without recourse, as it bore the risk of loss in the identified investments disclaimed between the date of the disclaimer and the date the funds were transferred.[3]

Because the language of the consent order clearly and unambiguously provides that "[t]he transfer shall be effective as of the date of the disclaimer," that is January 31, 2021, we reverse the order granting Sheil's motion for payment of $11,824.13, and remand for entry of judgment for the Estate in the sum of $12,512.74, interests and costs being left to the trial court. We do not retain jurisdiction.

Reversed and remanded.

[3] As it happened, the value of the assets reversed their slide, recovering their January 7, 2021 value and then some, their market value being $611,824.13 on the February 11 transfer date.