Lee v. Seagram and Sons, Inc.

552 F.2d 447 (2nd Cir. 1977)

Gurfein, Circuit Judge

This is an appeal by defendant Joseph E. Seagram & Sons, Inc. ("Seagram") from a judgment entered by the District Court, Hon. Charles H. Tenney, upon the verdict of a jury in the amount of $407,850 in favor of the plaintiffs on a claim asserting common law breach of an oral contract. The plaintiffs are Harold S. Lee (now deceased) and his two sons, Lester and Eric ("the Lees") We affirm.

. . .

[The Lees had a 50% interest in a liquor distributorship. They sold the interest to Seagram under a written contract. The Lees claimed they had also reached a prior oral agreement with Seagram to relocate Harold Lee’s sons, Lester and Eric, in a new distributorship.]

The plaintiffs claimed a breach of the oral agreement to relocate Harold Lee's sons, alleging that Seagram had had opportunities to procure another distributorship for the Lees but had refused to do so. The Lees brought this action on January 18, 1972, fifteen months after the sale of the Capitol City distributorship to Seagram. They contended that they had performed their obligation by agreeing to the sale by Capitol City of its assets to Seagram, but that Seagram had failed to perform its obligation under the separate oral contract between the Lees and Seagram. The agreement which the trial court permitted the jury to find was "an oral agreement with defendant which provided that if they agreed to sell their interest in Capitol City, defendant in return, within a reasonable time, would provide the plaintiffs a Seagram distributorship whose price would require roughly an amount equal to the capital obtained by the plaintiffs for the sale of their interest in Capitol City, and which distributorship would be in a location acceptable to plaintiffs." No specific exception was taken to this portion of the charge. By its verdict for the plaintiffs, we must assume - as Seagram notes in its brief - that this is the agreement which the jury found was made before the sale of Capitol City was agreed upon.

I

Appellants urge that, as a matter of law, plaintiffs' proof of the alleged oral agreement is barred by the parol evidence rule.

Judge Tenny . . . decided that the rule did not bar proof of the oral agreement. We agree.

The District Court, in its denial of the defendant's motion for summary judgment, treated the issue as whether the written agreement for the sale of assets was an "integrated" agreement not only of all the mutual agreements concerning the sale of Capitol City assets, but also of all the mutual agreements of the parties. Finding the language of the sales agreement "somewhat ambiguous," the court decided that the determination of whether the parol evidence rule applies must await the taking of evidence on the issue of whether the sales agreement was intended to be a complete and accurate integration of all of the mutual promises of the parties.

Seagram did not avail itself of this invitation. It failed to call as witnesses any of the three persons who negotiated the sales agreement on behalf of Seagram regarding the intention of the parties to integrate all mutual promises or regarding the failure of the written agreement to contain an integration clause.

Appellants contend that, as a matter of law, the oral agreement was "part and parcel" of the subject-matter of the sales contract and that failure to include it in the written contract barred proof of its existence. Mitchill v. Lath, 247 N.Y. 377, 380, 160 N.E. 646 (1928).

The position of appellants, fairly stated, is that the oral agreement was either an inducing cause for the sale or was a part of the consideration for the sale, and in either case, should have been contained in the written contract. In either case, they argue that the parol evidence rule bars its admission.

Appellees maintain, on the other hand, that the oral agreement was a collateral agreement and that, since it is not contradictory of any of the terms of the sale agreement, proof of it is not barred by the parol evidence rule.

Because the case comes to us after a jury verdict we must assume that there actually was an oral contract, such as the court instructed the jury it could find. The question is whether the strong policy for avoiding fraudulent claims through application of the parol evidence rule nevertheless mandates reversal on the ground that the jury should not have been permitted to hear the evidence. See Fogelson v. Rackfay Constr. Co., 300 N.Y. 334 at 337-38, 90 N.E.2d 881 (1950).

The District Court stated the cardinal issue to be whether the parties "intended" the written agreement for the sale of assets to be the complete and accurate integration of all the mutual promises of the parties. If the written contract was not a complete integration, the court held, then the parol evidence rule has no application.

We assume that the District Court determined intention by objective standards. See 3 Corbin on Contracts §§573-574. The parol evidence rule is a rule of substantive law. Fogelson v. Rackfay Constr. Co., supra . . .

The law of New York is not rigid or categorical, but is in harmony with this approach. As Judge Fuld said in *Fogelson*: "Decision in each case must, of course, turn upon the type of transaction involved, the scope of the written contract and the content of the oral agreement asserted." 300 N.Y. at 338. And the Court of Appeals wrote in Ball v. Grady, 267 N.Y. 470, 472, 196 N.E. 402 (1935): "In the end, the court must find the limits of the integration as best it may be reading the writing in light of the surrounding circumstances." Accord, Fogelson, supra, 300 N.Y. at 338.  Thus, certain oral collateral agreements, even though made contemporaneously, are not within the prohibition of the parol evidence rule "because [if] they are separate, independent and complete contracts, although relating to the same subject.... are allowed to be proved by parol because they were made by parol, and no part thereof committed to writing." Thomas v. Scutt, 127 N.Y. 133, 140-41, 27 N.E. 961 (1891).

Although there is New York authority which in general terms supports defendant's thesis that an oral contract inducing a written one or varying the consideration may be barred, see, e.g., Fogelson v. Rackfay Constr. Co., supra, 300 N.Y. at 340, the overarching question is whether, in the context of the particular setting, the oral agreement was one which the parties would ordinarily be expected to embody in the writing . . . Fogelson v. Rackfay Constr. Co., supra, 300 N.Y. at 338. See Restatement on Contracts §240.

For example, integration is most easily inferred in the case of real estate contracts for the sale of land, e.g., Mitchill v. Lath, supra, 247 N.Y. 377, or leases, Fogelson, supra . . .. In more complex situations, in which customary business practice may be more varied, an oral agreement can be treated as separate and independent of the written agreement even though the written contract contains a strong integration clause. . . .

Thus, as we see it, the issue is whether the oral promise to the plaintiffs, as individuals, would be an expectable term of the contract for the sale of assets by a corporation in which plaintiffs have only a 50% interest, considering as well the history of their relationship to Seagram.

    Here, there are several reasons why it would not be expected that the oral agreement to give Harold Lee's sons another distributorship would be integrated into the sales contract. In the usual case, there is an identity of parties in both the claimed integrated instrument and in the oral agreement asserted. Here, although it would have been physically possible to insert a provision dealing with only the shareholders of a 50% interest, the transaction itself was a corporate sale of assets. Collateral agreements which survive the closing of a corporate deal, such as employment agreements for particular shareholders of the seller or consulting agreements, are often set forth in separate agreements. See Gem Corrugated Box Corp. v. National Kraft Container Corp., supra, 427 F.2d at 503 ("it is... plain that the parties ordinarily would not embody the stock purchase agreement in a writing concerned only with box materials purchase terms"). It was expectable that such an agreement as one to obtain a new distributorship for certain persons, some of whom were not even parties to the contract, would not necessarily be integrated into an instrument for the sale of corporate assets. As with an oral condition precedent to the legal effectiveness of an otherwise integrated written contract, which is not barred by the parol evidence rule if it is not directly contradictory of its terms, Hicks v. Bush, 10 N.Y.2d 488, 225 N.Y.S.2d 34, 180 N.E.2d 425 (1962); cf. 3 Corbin on Contracts §589, "it is certainly not improbable that parties contracting in these circumstances would make the asserted oral agreement...." 10 N.Y.2d at 493.

Similarly, it is significant that there was a close relationship of confidence and friendship over many years between two old men, Harold Lee and Yogman, whose authority to bind Seagram has not been questioned. It would not be surprising that a handshake for the benefit of Harold's sons would have been thought sufficient. In point, as well, is the circumstance that the negotiations concerning the provisions of the sales agreement were not conducted by Yogman but by three other Seagram representatives, headed by John Barth. The two transactions may not have been integrated in their minds when the contract was drafted.

Finally, the written agreement does not contain the customary integration clause, even though a good part of it (relating to warranties and negative covenants) is boilerplate. The omission may, of course, have been caused by mutual trust and confidence, but in any event, there is no such strong presumption of exclusion because of the existence of a detailed integration clause, as was relied upon by the Court of Appeals in Fogelson, supra, 300 N.Y. at 340.

Nor do we see any contradiction of the terms of the sales agreement. Mitchill v. Lath, supra, 247 N.Y. at 381; 3 Corbin on Contracts §573, at 357. The written agreement dealt with the sale of corporate assets, an oral agreement with the relocation of the Lees. Thus, the oral agreement does not vary or contradict the money consideration recited in the contract as flowing to the selling corporation. That is the only consideration recited, and it is still the only consideration to the corporation.

We affirm.