

COURT OF APPEALS OF GEORGIA

Vidalia Outdoor Products, Inc. v. Higgins, 305 Ga. App. 836

701 S.E.2d 217 (Ga. Ct. App. 2010) · No. A10A1250 · Decided September 7, 2010

SUMMARY

The Georgia Court of Appeals reversed summary judgment granting Scott Higgins rescission of a contract for the purchase of a one-percent ownership interest in Vidalia Outdoor Products, Inc. The court held that genuine issues of material fact remained regarding whether the company's failure to issue a stock certificate and initially record Higgins's ownership interest constituted a material breach warranting rescission.

CASE DETAILS

COURT	Court of Appeals of Georgia
WRITING FOR THE COURT	Smith, Presiding Judge; Mikell, Judge; Adams, Judge
JURISDICTION	Georgia
DECIDED	September 7, 2010
DOCKET	A10A1250
DISPOSITION	reversed
PROCEDURAL POSTURE	Vidalia Outdoor Products, Inc. appealed the trial court's grant of summary judgment to Scott Higgins on his claim for rescission of a contract.
STANDARD OF REVIEW	Summary judgment is proper only when the record shows no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published Georgia Court of Appeals opinion
PARTIES	Vidalia Outdoor Products, Inc. v. Scott Higgins

TOPICS

[rescission](#) [material breach](#) [breach of contract](#) [remedies](#) [commercial litigation](#)

PRACTICE AREAS

[contract law](#) [corporate law](#) [remedies](#) [commercial litigation](#)

QUESTIONS PRESENTED

1. Whether Vidalia Outdoor's initial failure to issue a stock certificate and reflect Higgins's one-percent ownership interest on its tax returns constituted a material breach that authorized unilateral rescission.
2. Whether summary judgment for Higgins was proper when genuine issues of fact remained concerning the materiality of Vidalia Outdoor's alleged nonperformance.

HOLDINGS

1. A party may rescind a contract only when the opposing party's nonperformance or breach is material—so substantial and fundamental that it defeats the object or goes to the root of the contract. Because genuine issues of fact remained concerning whether Vidalia Outdoor's initial failure to issue a stock certificate and record Higgins's ownership interest was material, summary judgment for Higgins was improper.

KEY QUOTATIONS

“A breach is material when it is so substantial and fundamental as to defeat the object of the contract.” (701 S.E.2d at 219)

“In other words, to trigger the right to rescission, the act failed to be performed must go to the root of the contract.” (701 S.E.2d at 219)

FACTUAL BACKGROUND

Vidalia Outdoor agreed in writing to sell Higgins a one-percent ownership interest for \$29,000. The writing did not mention a stock certificate or a buy-back agreement, although Higgins claimed those matters were orally represented to him. Vidalia Outdoor initially failed to issue a stock certificate and did not reflect Higgins's ownership interest on its tax returns, but Higgins participated in corporate meetings and discussed corporate finances for more than a year. After Higgins demanded information and reviewed corporate documents, he rescinded the contract and sought return of his investment.

PROCEDURAL HISTORY

Higgins sued Vidalia Outdoor Products, Inc. and Tim Montgomery seeking rescission of a contract for the sale of a one-percent ownership interest and a refund of his \$29,000 investment. The trial court granted Montgomery summary judgment based on lack of individual liability and granted Higgins summary judgment against Vidalia Outdoor for \$29,000. Vidalia Outdoor appealed, contending that genuine issues of fact existed as to whether its alleged nonperformance authorized unilateral rescission.

DISPOSITION

reversed

CASES CITED

- Forsyth County v. Waterscape Svcs., 303 Ga. App. 623, 633, 694 S.E.2d 102 (2010)

OPINION

SMITH, J.

701 S.E.2d 217 (2010) VIDALIA OUTDOOR PRODUCTS, INC. et al. v. HIGGINS. No. A10A1250. Court of Appeals of Georgia. September 7, 2010. *218 Bryant & Cook, Malcolm F. Bryant, Jr., Vidalia, for appellants. Jones & Walden, Cameron M. McCord, Atlanta, for appellee. SMITH, Presiding Judge. Vidalia Outdoor Products, Inc. ("Vidalia Outdoor") appeals from the trial court's grant of summary judgment to Scott Higgins on his claim for rescission of a contract.

For the reasons set forth below, we reverse. The record reveals without dispute that on May 14, 2004, Vidalia Outdoor agreed "to sell Scott Higgins one (1) percent of [Vidalia Outdoor] for \$29,000." The written agreement was signed by Higgins and Tim Montgomery, as president of Vidalia Outdoor.

In his affidavit, Higgins contends that "Montgomery represented" that Higgins "would receive a stock certificate in exchange for his investment in VOP." Higgins asserts that Montgomery also represented that should Higgins "become dissatisfied for any reason with his investment in VOP, that Montgomery would buy back the VOP stock."

In his affidavit, Montgomery contends that the contract is "the entire agreement between the parties and fully states the agreement of the parties." The written contract makes no mention of stock certificates or a buy-back agreement.

The written contract also provides that Higgins would "represent VOP in the Atlanta, GA area as [an] independent sales agent." According to Montgomery, Higgins began selling grills after the stock purchase. Higgins and his wife also "participated in corporate meetings and discussed the corporate finances with [Montgomery] and other members of the corporation."

By January 2006, Vidalia Outdoor had \$5,390 in outstanding invoices for products delivered to Higgins or at Higgins's direction to a customer. According to Montgomery, all attempted communications with Higgins after January 2006 failed.

The record before us shows that Higgins's counsel requested information from Vidalia Outdoor in April 2008 about Higgins's ownership interest in Vidalia Outdoor. After reviewing documents provided in response to this request in July 2008, Higgins rescinded the sales contract for a one-percent ownership interest based upon mutual mistake, fraudulent misrepresentation, and Vidalia Outdoor's alleged nonperformance.

According to the letter of rescission, Vidalia Outdoor breached the contract by failing to issue a stock certificate to Higgins, failing to reflect Higgins's ownership interest in its tax returns, and failing to "otherwise include... Higgins in the operations and ownership of [Vidalia Outdoor]."

Based upon his rescission of the contract, Higgins requested a refund of his initial \$29,000 investment.

On October 1, 2008, Higgins filed suit against Vidalia Outdoor and Tim Montgomery based upon his rescission of contract claim. The trial court subsequently granted Montgomery's motion for summary judgment based upon his lack of individual liability under the contract. Higgins moved for summary judgment in his favor on his claim for rescission based upon Vidalia Outdoor's failure to implement the sale of a one-percent ownership interest to him.

Vidalia Outdoor opposed the motion, arguing that Higgins had not demonstrated a material breach and that Higgins failed to seek rescission as soon as possible. In support of its opposition, Vidalia Outdoor pointed to evidence showing that it issued a stock certificate to Higgins in October 2008, that it amended its tax returns to reflect Higgins's one-percent interest, and that it reconstructed lost corporate minutes approving the sale of stock to Higgins.

The trial court granted summary judgment to Higgins in the amount of \$29,000 based upon its conclusion that Vidalia Outdoor failed to perform its obligation under the contract because Higgins "did not receive the certificates or any other evidence of his purchase" and because Vidalia Outdoor "acted as though no conveyance had been made, representing on 2004, 2005, 2006, and 2007 tax returns that Tim Montgomery was the 100 percent owner."

In its appeal, Vidalia Outdoor contends that issues of fact remain with regard to whether its alleged nonperformance authorized Higgins to unilaterally rescind the contract. We agree. Generally, one injured by a breach of a contract has the election to rescind or continue under the contract and recover damages for the breach. But to justify rescission, there must be a material nonperformance or breach by the opposing party.

If the breach is not material, the party is limited to a claim for damages and cannot rescind the contract. A breach is material when it is so substantial and fundamental as to defeat the object of the contract. In other words, to trigger the right to rescission, the act failed to be performed must go to the root of the contract. A breach which is incidental and subordinate to the main purpose of the contract does not warrant termination.

(Citations and punctuation omitted.) *Forsyth County v. Waterscape Svcs.*, 303 Ga. App. 623, 633, 694 S.E.2d 102 (2010). In this case, the contract provided only that Vidalia Outdoor would sell Higgins a one-percent ownership interest for \$29,000. Vidalia Outdoor admits that Higgins has such an interest, and the record shows that Higgins participated in corporate meetings and discussed corporate finances for over a year after he purchased the ownership interest.

Montgomery denies that he orally agreed to provide a stock certificate to Higgins and also denies the existence of a buy-back agreement. Based on the limited record before us, genuine issues of fact remain as to whether Vidalia Outdoor's initial failure to issue a stock certificate to Higgins and

its initial failure to note his one-percent ownership interest on its tax returns was a breach "so substantial and fundamental as to defeat the object of the contract."

Waterscape Svcs., *supra* at 633, 694 S.E.2d 102. Judgment reversed. MIKELL and ADAMS, JJ., concur.

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