

SUPREME JUDICIAL COURT OF MAINE

Coastal Ventures v. Alsham Plaza, LLC, 2010 ME 63

1 A.3d 416 (2010) · No. BCD-09-362 · Decided July 20, 2010

SUMMARY

The Supreme Judicial Court of Maine affirmed a judgment concerning the sale of a supermarket and clothing store, a clothing-store inventory agreement, a utility easement supplying water to a gas station, and the scope of a noncompetition agreement. The court held that the appeal was timely, upheld enforcement of the inventory agreement and restoration of the water supply, and concluded that the noncompetition agreement did not restrict sales of similar products or the sale of Coastal's remaining businesses to potentially competing purchasers. The court also affirmed the denial of attorney fees because the indemnification clause did not cover fees incurred in litigating the agreement's meaning and scope.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Gorman, J.; Saufley, C.J.; Levy, J.; Silver, J.; Mead, J.; Jabar, J.
JURISDICTION	Maine
DECIDED	July 20, 2010
DOCKET	BCD-09-362
DISPOSITION	affirmed
PROCEDURAL POSTURE	Alsham appealed from a judgment entered after a nonjury trial on a pleading by agreement under Maine Rule of Civil Procedure 8(g). Coastal cross-appealed the denial of attorney fees and costs and moved to dismiss Alsham's appeal as untimely.
STANDARD OF REVIEW	The court reviewed finality and appellate timeliness as matters of appellate procedure; contract ambiguity de novo; factual findings concerning breach, contract intent, easement overburdening, and interpretation of extrinsic evidence for clear error; and the sufficiency-of-the-evidence challenge for clear error, viewing the record and reasonable inferences in the light most favorable to the judgment.
PRECEDENTIAL VALUE	Published opinion; precedential decision of the Supreme Judicial Court of Maine.

PARTIES

Alsham Plaza, LLC, Alsham Supermarket, LLC, Basel Soukarieh v.
Coastal Ventures, William Bush, Jane Bush

TOPICS

contract interpretation

breach of contract

specific performance remedy

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Alsham's appeal was timely when the trial court issued multiple orders and the final unresolved issue was decided in the June 11, 2009 order.
2. Whether the parties remained bound by an agreement to transfer clothing-store inventory capped at \$50,000 despite the failure to conduct the agreed inventory and the absence of a finding that either party breached.
3. Whether the utility easement was overburdened by the costs of complying with state drinking-water regulations, justifying Alsham's termination of the water supply.
4. Whether the noncompetition agreement prohibited Coastal from selling its remaining businesses to a subsequent purchaser that might compete with Alsham.
5. Whether the noncompetition agreement prohibited Coastal from selling products in its hardware store that were similar to products sold by Alsham.
6. Whether Coastal was entitled to attorney fees under the indemnification provision of the noncompetition agreement.

HOLDINGS

1. An appeal is timely when taken from the order that fully decides and disposes of the entire matter, leaving no unresolved issue for the trial court. Because the February 3 and March 17 orders left the inventory and water-easement issues unresolved, Alsham properly appealed from the June 11 order.
2. The parties remained bound by their agreement to transfer the clothing-store inventory, with a value capped at \$50,000, even though the agreed inventory had not been completed and neither party was found to have breached.
3. The trial court did not clearly err in finding that the water easement was not overburdened and in ordering Alsham to restore the water supply.
4. The noncompetition agreement was ambiguous and, based on the parties' intent, imposed a personal obligation on the Bushes; it did not prevent Coastal from selling its remaining businesses to a third party that might compete with Alsham.
5. The noncompetition agreement was ambiguous as to whether it prohibited Coastal from operating a competing business or merely from selling products that competed with Alsham's products. Extrinsic

evidence supported the trial court's conclusion that the agreement did not prohibit Coastal from selling similar products in its hardware store.

6. Coastal was not entitled to attorney fees incurred litigating the meaning and scope of the noncompetition agreement because the indemnification clause covered expenses arising from operation of the transferred businesses, not expenses incurred prosecuting Coastal's own claim.

KEY QUOTATIONS

“every appeal must be taken from a final judgment.” (¶ 18)

“Despite the delay of three years, the parties are still bound by their agreement.” (¶ 20)

“Because the contract language gives rise to two reasonable and different interpretations, the court did not err by admitting extrinsic evidence of the parties' intent to construe the agreement.” (¶ 27)

“This clause unambiguously requires Alsham to indemnify Coastal for losses or injuries that arise out of the operation of the clothing store and the supermarket after the transfer of the businesses. It does not include costs or fees associated with a claim by Coastal as to the meaning and scope of the agreement.” (¶ 32)

FACTUAL BACKGROUND

Coastal owned a shopping center containing a supermarket, clothing store, gas station, and hardware store. In 2006, Coastal sold the supermarket, clothing store, and related real property to Alsham, while reserving a utility easement allowing the gas station to receive water from a well on the supermarket property. The parties also agreed to transfer clothing-store inventory capped at \$50,000 and executed a ten-year, twenty-mile noncompetition agreement. After closing, the parties failed to complete the inventory, Alsham stopped supplying water to the gas station because of regulatory concerns, and the parties disputed whether the noncompetition agreement restricted Coastal's remaining businesses and potential purchasers.

PROCEDURAL HISTORY

The parties filed a pleading by agreement in the Superior Court seeking declaratory relief concerning a noncompetition agreement and asserting breach-of-contract claims concerning clothing-store inventory and a water easement. The case was transferred to the Business and Consumer Docket, which conducted a nonjury trial and entered orders addressing the inventory, water supply, and noncompetition issues. The Supreme Judicial Court consolidated Coastal's timeliness motion with the merits and affirmed the judgment.

DISPOSITION

affirmed

CASES CITED

- Estate of Dore v. Dore, 2009 ME 21, ¶ 11, 965 A.2d 862, 865
- Berry v. Berry, 634 A.2d 451, 452 (Me. 1993)
- Hazzard v. Westview Golf Club, Inc., 217 A.2d 217, 222 (Me. 1966)

- Musson v. Godley, 1999 ME 193, ¶¶ 4-5, 742 A.2d 479, 480-81
- Bowley v. Bowley, 440 A.2d 332, 333-34 (Me. 1982)
- Cellar Dwellers, Inc. v. D'Alessio, 2010 ME 32, ¶ 15, 993 A.2d 1, 5
- Malenko v. Handrahan, 2009 ME 96, ¶ 37, 979 A.2d 1269, 1278
- Sutherland v. Morrill, 2008 ME 6, ¶ 5, 940 A.2d 192, 193
- VanVoorhees v. Dodge, 679 A.2d 1077, 1080 (Me. 1996)
- Down E. Energy Corp. v. RMR, Inc., 1997 ME 148, ¶ 8 n. 4, 697 A.2d 417, 420
- Sullivan v. Porter, 2004 ME 134, ¶ 25, 861 A.2d 625, 633
- Hardigan v. Kimball, 553 A.2d 1265, 1267 (Me. 1989)
- Eaton v. Town of Wells, 2000 ME 176, ¶ 41, 760 A.2d 232, 246
- Hartwell v. Stanley, 2002 ME 29, ¶ 10, 790 A.2d 607, 611
- In re Anthony R., 2010 ME 4, ¶ 8, 987 A.2d 532, 534
- Bernier v. Merrill Air Eng'rs, 2001 ME 17, ¶¶ 22-24, 770 A.2d 97, 105
- Midland Fiberglass, Inc. v. L.M. Smith Corp., 581 A.2d 402, 404 (Me. 1990)
- Gutcheon v. Becton, 585 A.2d 818, 822-23 (Me. 1991)
- Handy Boat Serv., Inc. v. Prof'l Servs., Inc., 1998 ME 134, ¶ 13, 711 A.2d 1306, 1309
- Richardson v. Winthrop Sch. Dep't, 2009 ME 109, ¶ 9, 983 A.2d 400, 403
- Villas by the Sea Owners Ass'n v. Garrity, 2000 ME 48, ¶ 9, 748 A.2d 457, 461
- Estate of Barrows, 2006 ME 143, ¶¶ 13, 18, 23, 913 A.2d 608, 611, 613-14
- Madore v. Kennebec Heights Country Club, 2007 ME 92, ¶¶ 7-9, 926 A.2d 1180, 1183-84
- Spottiswoode v. Levine, 1999 ME 79, ¶ 16, 730 A.2d 166, 172
- Seashore Performing Arts Ctr., Inc. v. Town of Old Orchard Beach, 676 A.2d 482, 484 (Me. 1996)
- Lee v. Scotia Prince Cruises Ltd., 2004 ME 24, ¶ 9, 843 A.2d 753, 756