Filed 8/4/17 Run Management v. Meridian Health Services Holdings CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

RUN MANAGEMENT LLC et al., Plaintiffs and Respondents, v. MERIDIAN HEALTH SERVICES HOLDINGS, INC., Defendant and Appellant.	B272221 (Los Angeles County Super. Ct. No. BC557200)

APPEAL from a judgment of the Superior Court of Los Angeles County. Gregory W. Alarcon, Judge. Affirmed.

Law Offices of Keith F. Simpson and Keith F. Simpson for Defendant and Appellant.

Theodora Oringher, Antony E. Buchignani and Michelle L. Ellis for Plaintiffs and Respondents.

In this breach of contract case, appellant Meridian Health Services Holdings, Inc. (Meridian) appeals from the judgment in favor of respondents Run Management LLC (Run), Darshan Shah and Rajal Shah (collectively, Respondents) on their complaint for breach of contract. In particular, Meridian appeals the trial court's summary adjudication, which concluded both that Meridian owed a duty to Respondents to pay quarterly interest on Meridian bonds despite Meridian's alleged financial difficulties and that Meridian breached that duty.

As an initial matter, because Meridian failed to provide an adequate record on appeal, we must presume the trial court considered and made findings consistent with its summary adjudication ruling. Moreover, because the case turns on the interpretation of a stock and bond purchase agreement and a debenture, both of which Meridian drafted and entered into with Respondents, we conduct an independent review of the agreements and conclude summary adjudication was proper. Thus, we affirm the judgment.

BACKGROUND

The following facts are undisputed.

1. Stock and Bond Purchase Agreement

In late 2007 or early 2008, Nehal and Urvi Patel, Run's predecessors in interest, and the Shahs each invested in Meridian by executing a substantially identical purchase agreement with Meridian (Purchase Agreement). Under the terms of the Purchase Agreement, each investor paid $122,500 to Meridian in exchange for $22,500 in Meridian shares and $100,000 in Meridian corporate bonds.

In its recitals, the Purchase Agreement explained Meridian sought to raise capital by offering preferred stock and corporate

bonds to investors such as Respondents. The recitals also stated the investors sought to "assist [Meridian] with its growth and potentially profit from such investment."

Section 1.3 of each Purchase Agreement addressed "Sale Price, Dividends and Interest" and provided in relevant part: "The Corporate Bonds carry a coupon rate of 12%. . . . Corporate Bond interest payments must be paid before any dividends are paid to Investors. Any and all unpaid interest accrues and will be paid to the extent of [Meridian's] ability to pay, or upon sale as noted below."

2. Debenture

In connection with the executed Purchase Agreements, Meridian issued stock certificates and substantially identical debentures to the Patels and the Shahs (Debenture). Under section 1.1 of the Debenture, Meridian promised to pay each investor their $100,000 principal sum "on or prior to December 1, 2017 or such earlier date as this Debenture . . . is required to be repaid as provided hereunder . . . and to pay interest to the [investor] on the principal sum at the rate of 12% per annum [or $12,000 each year] while this Debenture is outstanding."

Section 1.2 of the Debenture required Meridian to pay interest "quarterly on March 31, June 30, September 30 and December 31." And section 1.4 provided that "[a]ll overdue, accrued, and unpaid interest and other amounts due hereunder shall bear interest at the rate of 2% per annum (to accrue daily) from the date such interest is due."

Section 2 defined an "Event of Default" under the Debenture. Relevant here, Meridian would be in default if it "fail[ed] to pay when due any amount of principal hereof, or interest hereon or other amount payable hereunder, and such

failure continues unremedied for fifteen (15) days after receipt of notice by [Meridian] of such failure under this Section." That section also provided, "If any Event of Default occurs and is continuing, [the investor] may, by notice to [Meridian], (i) declare the entire unpaid principal of this Debenture, all interest accrued and unpaid hereon and all other amounts due hereunder to be forthwith due and payable, and (ii) exercise all rights and remedies available to [the investor] under this Debenture and applicable law."

3. Meridian stops paying quarterly interest under the Debenture and Respondents file suit.

In compliance with the terms of the Debenture, Meridian made interest payments to the Shahs and the Patels (and then Run)[1] from 2008 through 2010. In 2011, however, Meridian paid Run and the Shahs each only $7,000 in interest. And since 2011, Meridian has not made any interest payments under the Debenture to Respondents.

In August 2014, Respondents provided written notice to Meridian that all unpaid principal and interest owed under the Debenture was due and payable immediately. Despite Respondents' demand, Meridian did not make any interest or principal payments to Respondents.

In September 2014, Respondents filed suit against Meridian seeking, among other things, all payments due under the Debenture. The operative pleading is the first amended complaint, which alleges causes of action for breach of contract and common count.

---

[1] The Patels transferred their interests in Meridian to Run in January 2010.

4. Summary Adjudication and Judgment

Respondents filed a motion for summary judgment or summary adjudication. Relying solely on the Debenture, Respondents argued Meridian owed a contractual duty to pay both Run and the Shahs interest under the terms of the Debenture and that Meridian breached that duty.[2]

In opposition, Meridian did not dispute any of the material facts on which Respondents relied in support of their motion. Instead, Meridian argued Respondents' position was flawed because they ignored the Purchase Agreement. According to Meridian, Civil Code section 1642 required the court to read the Purchase Agreement together with the Debenture, as they were part of one transaction between the parties. Meridian interpreted section 1.3 of the Purchase Agreement to "[indicate] that interest payments on the debenture were subordinate to Meridian's ability to pay" and "renders the payment of bond interest subordinate to [Meridian's] ability to pay it or conditions such duty on the financial health of [Meridian]."

In support of its opposition, Meridian's president, James Preimesberger, submitted a declaration in which he stated that, starting in mid-2011, Meridian began to experience financial difficulties which made it unable to pay interest under the Debenture. He said Meridian continued to face those financial difficulties through the date of his declaration (June 2015). Preimesberger included six letters he sent to investors between July 2011 and July 2012. The letters informed Meridian investors, including Respondents, of the financial difficulties the

---

[2] Respondents raised other arguments in their motion but they are not relevant here.

company was facing, the steps the company was taking to address its financial problems, and that Meridian would have to "modify" its interest and stock dividend payment schedule.

The trial court granted summary adjudication in favor of Respondents on the issues of (i) Meridian's duty to pay Respondents interest under the Debenture and (ii) Meridian's breach of that duty. No court reporter was present at the hearing on the motion and the record on appeal does not include a formal order by the trial court. The trial court issued a short minute order reflecting its ruling and noting Meridian expressly did not dispute any of the material facts relevant here. In the notice of ruling, Respondents stated the court held Meridian owed a contractual duty under the Debenture to pay Respondents $100,000 plus 12 percent annual interest and that Meridian breached its duties to Respondents by failing to make the required payments under the Debenture.

On February 22, 2016, the trial court entered judgment in favor of Respondents and against Meridian. The trial court ordered Meridian to pay Run and the Shahs each a total of $152,756.46,[3] which amount was comprised of the unpaid principal due under the Debenture, the unpaid interest due under the Debenture, late fees due under the Debenture, and prejudgment interest.[4] Meridian appealed.

---

[3] The judgment reflects an award of 152,756.**5**6 to the Shahs, but that appears to be a typographical error.

[4] The judgment addresses other issues raised below but they are not relevant here.

DISCUSSION

Meridian argues the trial court erred because it failed to read the Debenture together with the Purchase Agreement. When the agreements are interpreted together, Meridian asserts it is clear the Purchase Agreement conditions Meridian's obligation to pay interest on the bonds upon Meridian's "ability to pay." Meridian claims that, beginning in 2011, it had no "ability to pay" and, therefore, no duty to pay interest on the bonds because of continuing financial difficulties. Meridian also argues its failure to pay interest was not an "event of default" as defined by the Debenture. We disagree and affirm the judgment.

1. Standard of Review and Presumptions on Appeal

"A party is entitled to summary adjudication of a cause of action or an issue of duty if there is no triable issue of material fact and the matter can be adjudicated as a question of law. (Code Civ. Proc., § 437c, subds. (c), (f)(1).) The court must view the evidence and reasonable inferences from the evidence in the light most favorable to the opposing party, as on a motion for summary judgment. [Citation.] The ruling on a motion for summary adjudication presents a question of law, so therefore, our review is de novo." (*American Alternative Insurance Corp. v. Superior Court* (2006) 135 Cal.App.4th 1239, 1244–1245 (*American Alternative Insurance Corp.*).)

On appeal, including an appeal from a summary adjudication, the appellant has the burden of demonstrating by an adequate record prejudicial error. (*Byars v. SCME Mortgage Bankers, Inc.* (2003) 109 Cal.App.4th 1134, 1140; *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295 (*Maria P.*) [burden is on appellant "to provide an adequate record to assess error"].) We do not presume error. To the contrary, a " 'judgment or order of

the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' " (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 (*Denham*); *Holmes v. Petrovich Development Co., LLC* (2011) 191 Cal.App.4th 1047, 1058 ["we must presume the judgment is correct, and the appellant bears the burden of demonstrating error"].)

2. Contract Interpretation

When interpreting a contract, courts seek to give effect to the mutual intention of the parties as it existed at the time they entered into the contract. (*Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1264; see also Civ. Code, § 1636.) That intent is interpreted according to objective, rather than subjective, criteria. (*Wolf v. Walt Disney Pictures & Television* (2008) 162 Cal.App.4th 1107, 1126.) When the contract is clear and explicit, the parties' intent is determined solely by reference to the language of the agreement. (See Civ. Code, §§ 1638 ["language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity"]; 1639 ["When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible"].) The words are to be understood "in their ordinary and popular sense" (Civ. Code, § 1644) and the "whole of [the] contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other" (Civ. Code, § 1641).

However, " '[i]f the contract is capable of more than one reasonable interpretation, it is ambiguous [citations], and it is the court's task to determine the ultimate construction to be placed on the ambiguous language by applying the standard rules of interpretation in order to give effect to the mutual intention of the parties [citation].' " (*People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.* (2003) 107 Cal.App.4th 516, 524–525.) "Whether contractual language is ambiguous is a question of law that we review de novo. . . . The interpretation of a contract, including the resolution of any ambiguity, is solely a judicial function unless the interpretation turns on the credibility of extrinsic evidence." (*American Alternative Insurance Corp.*, *supra*, 135 Cal.App.4th at p. 1245.)

"If the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it." (Civ. Code, § 1649.) "Words in a contract which are wholly inconsistent with its nature, or with the main intention of the parties, are to be rejected." (Civ. Code, § 1653.) "In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist." (Civ. Code, § 1654.) And when two agreements are read together, to the extent they are inconsistent, the later agreement supersedes the earlier one. (*Tremayne v. Striepeke* (1968) 262 Cal.App.2d 107, 113–114 (*Tremayne*).)

3. Whether or not the trial court interpreted the Debenture separately or together with the Purchase Agreement, summary adjudication was proper.

a. Meridian failed to provide an adequate record on appeal.

Meridian's main argument on appeal is that the trial court erred by interpreting the Debenture separate and apart from the Purchase Agreement and that the determination whether to read the two agreements together was a disputed issue of fact that precluded summary adjudication. Importantly, and as an initial matter, however, we do not know whether the trial court actually interpreted the two agreements separately. Indeed, Meridian acknowledges this in its opening brief on appeal when it states "the trial court did not provide any statement regarding" Meridian's argument that the two agreements should be read together. Nonetheless, based solely on the fact the trial court ruled against Meridian, Meridian concludes "it is obvious that the court rejected" its argument.

We do not see the obviousness in that conclusion. Because the record on appeal does not include a reporter's transcript or suitable substitute from the summary adjudication hearing and the trial court's minute order is silent on the issue, we do not know whether the trial court read the Debenture separately or together with the Purchase Agreement. It is possible the trial court read the two agreements together, as Meridian argued the court should do, but nonetheless concluded summary adjudication was proper. It is Meridian's burden as appellant to provide an adequate record on appeal so that we may meaningfully assess any alleged error. (*Maria P.*, *supra*, 43 Cal.3d at p. 1295.) Meridian has failed to do so here, and we will

not presume error. Instead, we must invoke the fundamental rule of appellate review that " '[a]ll intendments and presumptions are indulged to support [the judgment] on matters as to which the record is silent.' " (*Denham*, *supra*, 2 Cal.3d at p. 564.) Thus, based on the record before us, we conclude the trial court understood the parties disputed whether the Debenture and Purchase Agreement should be read together and determined that dispute was not material. As explained below, we agree and turn to the interpretation of the Debenture—whether read alone or together with the Purchase Agreement—which is a matter of law for our independent review. (*American Alternative Insurance Corp.*, *supra*, 135 Cal.App.4th at p. 1245.)

b. When read together, the relevant provisions of the Purchase Agreement and Debenture are ambiguous or inconsistent.

Citing Civil Code section 1642, Meridian argues the Debenture must be read together with the Purchase Agreement and, when they are read together, Meridian claims it had no duty to pay quarterly interest to Respondents once financial difficulties rendered Meridian unable to pay. Section 1642 provides: "Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together." As Meridian points out, whether section 1642 applies and the Debenture and the Purchase Agreement should be "taken together" is a question of fact (*Versaci v. Superior Court* (2005) 127 Cal.App.4th 805, 815; *Brookwood v. Bank of America* (1996) 45 Cal.App.4th 1667, 1675), which the parties dispute. However, this is not a material issue of disputed fact requiring reversal of the trial court's summary adjudication. That is, whether the two agreements are read

together, as Meridian urges, or separately, summary adjudication was proper.

When the Purchase Agreement and the Debenture are read together as one integrated agreement, an ambiguity or inconsistency arises with respect to Meridian's duty to pay interest on the bonds. On the one hand, the Debenture includes detailed provisions governing Meridian's obligation to pay interest. Section 1.2 of the Debenture requires Meridian to pay interest quarterly, on March 31, June 30, September 30, and December 31. And section 1.4 of the Debenture states unpaid interest "shall bear interest at the rate of 2% per annum," which will accrue daily. On the other hand, section 1.3 of the Purchase Agreement states "unpaid interest accrues and will be paid to the extent of [Meridian's] ability to pay." Neither party submitted extrinsic evidence regarding the proper interpretation of the agreements, and we interpret them de novo. (*American Alternative Insurance Corp.*, *supra*, 135 Cal.App.4th at p. 1245.)

Meridian argues section 1.3 of the Purchase Agreement acts as a condition precedent to its duty to pay interest on the bonds. In other words, the detailed interest payment provisions of the Debenture are not triggered unless and until Meridian has the "ability to pay." The ambiguity in this interpretation is obvious. The Purchase Agreement does not define the phrase "ability to pay" and does not address who decides whether Meridian has the "ability to pay." Meridian believes it can decide when it has the "ability to pay" and that financial difficulties (as opposed to, for example, bankruptcy) suspend its "ability to pay" and, therefore, its obligation to pay. But there is no indication Respondents or other bondholders intended Meridian to have such broad, and almost unlimited, discretion over its obligation to

pay interest on the bonds. Indeed, given the detailed interest payment provisions of the Debenture, it is objectively more reasonable to conclude the bondholders, including Respondents, intended and believed Meridian would pay interest according to the Debenture provisions and not when Meridian alone decided it had the "ability to pay."

Additionally, section 1.3 of the Purchase Agreement does not define "accrue" and, therefore, is ambiguous with respect to how unpaid interest accrues. In contrast, section 1.4 of the Debenture states unpaid interest bears interest at the rate of 2 percent per annum, which accrues daily. Again, it is objectively more reasonable to conclude the bondholders intended unpaid interest to "accrue" in accordance with the specific provisions of the Debenture and not the vague undefined provision of the Purchase Agreement.

We conclude, when read together, the Purchase Agreement and Debenture are ambiguous or inconsistent with respect to Meridian's duty to pay interest on the bonds. (*American Alternative Insurance Corp.*, *supra*, 135 Cal.App.4th at p. 1245 [whether contractual language is ambiguous is a question of law].) Because Meridian drafted the Purchase Agreement and the Debenture, we read the ambiguities most strongly against Meridian. (Civ. Code, § 1654.) Moreover, to the extent the two agreements are inconsistent, the Debenture—as the later agreement—supersedes the Purchase Agreement. (*Tremayne*, *supra*, 262 Cal.App.2d at p. 113 ["a later instrument supersedes an earlier one whenever they are inconsistent"].) Accordingly, we conclude the specific provisions of the Debenture—and not the vague provision of the Purchase Agreement—govern Meridian's duty to pay interest on the bonds. And, as the trial court

correctly found on the undisputed facts, Meridian breached its duty to pay Respondents quarterly interest on the bonds. Thus, assuming Civil Code section 1642 applies and the Purchase Agreement and Debenture must be read together, summary adjudication was proper.

c. When read separately, the Debenture is not ambiguous and the undisputed facts demonstrate Meridian breached its duty to pay quarterly interest on the bonds to Respondents.

Similarly, and in the alternative, we conclude summary adjudication was proper when the Debenture is interpreted separate from the Purchase Agreement. Meridian does not dispute that, if the Debenture is interpreted separate and apart from the Purchase Agreement, Meridian not only owed a duty to pay quarterly interest on the bonds but also breached that duty. The record before us demonstrates Meridian did not dispute any of the material facts relevant here that Respondents submitted below in their separate statement of facts supporting their motion for summary adjudication. Instead, Meridian expressly stated each listed material fact was "Undisputed." Similarly, on appeal, Meridian does not dispute any of those material facts. Thus, when the Debenture is read as a separate document, it is evident summary adjudication was proper as a matter of law on undisputed facts.

d. Failure to pay quarterly interest is an "event of default."

Finally, Meridian argues its failure to pay interest on the bonds was not an event of default as defined by the Debenture. We are not persuaded.

Under section 2 of the Debenture, Meridian is in default if it "fails to pay when due any amount of principal hereof, or interest hereon or other amount payable hereunder, and such failure continues unremedied for fifteen (15) days after receipt of notice by [Meridian] of such failure." This section is clear. If Meridian fails to pay when due any amount of the principal *or interest* on the bonds and does not remedy its failure to pay once notified, Meridian is in default. As the trial court found and the undisputed facts demonstrate, for years Meridian failed to pay quarterly interest when due and did not remedy its failure after receiving notice from Respondents. As such, Meridian was in default and Respondents were entitled to accelerate its payments under the terms of the Debenture.

Meridian's argument to the contrary is based on inferences made from other sections of the Debenture and a grammatical argument, all of which we find unpersuasive.

DISPOSITION

The judgment is affirmed. Respondents are entitled to their costs on appeal.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.