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SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO. A-o

In the Matter of the
General Assignment For
the Benefit of Creditors of:

ARCADIA GROUP, INC.,

Assignor-Respondent,

to

MORRIS S. BAUER,

Assignee-Respondent.

August 5, 2014

Argued February 25, 2014 – Decided

Before Judges Espinosa and O'Connor.

On appeal from Superior Court of New Jersey,
Chancery Division, Probate Part, Middlesex
County, Docket No. 236619.

« Citation
Data

Robert R. Fuggi, Jr., argued the cause for
appellant KAP Properties, Inc. (Fuggi Law
Firm, P.C., attorneys; Mr. Fuggi, on
the brief).

Michele M. Dudas argued the cause for
respondent Arcadia Group, Inc. (Trenk DiPasquale,
attorneys; Ms. Dudas,
on the brief).

Larry K. Lesnik argued the cause for
respondent Morris S. Bauer (Norris McLaughlin &
Marcus, P.A., attorneys;
Mr. Lesnik, on the brief).

PER CURIAM

Arcadia Group, Inc., (AGI), conveyed its property to an assignee to hold in trust for the benefit of creditors. KAP Properties, Inc. (KAP) appeals the denial of its motion to revoke that assignment. KAP also appeals an order granting the assignee's motion to sell AGI's assets to a third party. We affirm.

I

In 2008, AGI owned two restaurants in the Ocean County Mall in Toms River, and sought to obtain a liquor license. In April 2008, KAP agreed to sell AGI a liquor license, for \$850,000. The entire cost to purchase the liquor license was financed by KAP; AGI and its two principals, Hassanali Halani and Shahanez Halani, executed a mortgage note (note) to pay KAP \$6337.37 per month for twenty years.

As collateral for the loan, the Halanis signed a stock pledge agreement that provided that, in the event of a default, all of AGI's stock and a form signed by Hassanali Halani (Halani) stating he resigned as the director and officer of AGI (resignation form) would be transferred to KAP. In accordance with the terms of the stock pledge agreement, the Halanis transferred all of their AGI stock certificates and the resignation form to the escrow agent, who was to hold these documents until the note was paid. The escrow agent was Kim A. Pascarella, Esq., the principal of KAP.

The escrow agent also held the bill of sale for the liquor license. The escrow agreement, signed only by Pascarella, stated that the bill of sale would be held in escrow until the note was paid and, in the event of a default, would revert to KAP under the conditions set forth in the stock pledge agreement.

At the Halanis' request, the note stated that, even if a monthly payment were thirty days late, the Halanis and AGI would not be deemed in default unless KAP had given them written notice that they had fifteen days to cure the default. If the Halanis did not cure the default, then the payments under the note would accelerate and become due.

The stock purchase agreement also contained notice requirements that KAP and the escrow agent had to fulfill before the Halanis could be found in default. KAP was obligated to provide the escrow agent with an affidavit, a copy of which had to be sent to the Halanis by certified mail, that set forth: (1) why KAP believed there was a default under note; (2) that KAP had given the Halanis written notice they had fifteen days to cure the default; and (3) that the default had not been cured. If within ten days of receiving the affidavit the Halanis failed to provide proof to the escrow agent that a default had not occurred or, if it did, the default had been cured, and the default took place within five years of closing, KAP could elect to have the escrow agent transfer the pledged stock to it. The stock purchase agreement also provided that the terms in the agreement could be changed only by a written instrument signed by the party against whom such change was sought to be enforced.

II

On February 12, 2012, Halani met with Pascarella and told him the restaurants

were closing. Within "days" of that meeting, Pascarella had the AGI stock released from escrow and transferred to KAP, along with the resignation form. Pascarella also filed an application with the municipality to have AGI's liquor license transferred to KAP. It is not disputed that AGI did not make any payments under the note after the meeting on February 12, 2012.

On April 20, 2012, Halani executed a deed of general assignment on behalf of AGI transferring all of its assets to Morris Bauer, Esq., assignee, in trust for the benefit of AGI's creditors, pursuant to N.J.S.A. 2A:19-1 to -50. An appraisal of AGI revealed the assets were the liquor license, fixtures, and restaurant equipment.

On June 6, 2012, KAP filed a motion to revoke the assignment or have it declared void ab initio. In his certification in support of KAP's motion, Pascarella claimed that, because AGI and the Halanis had defaulted on the note, the stock certificates to AGI and the resignation form were released from escrow and transferred to KAP, vesting ownership of AGI — including the liquor license — in KAP. Pascarella further argued that once Halani was no longer a director or officer of AGI, not to mention that KAP owned AGI, Halani lacked the authority to act on AGI's behalf, including executing the deed of assignment transferring AGI's assets to a third party. Pascarella further reasoned that, as all assets of AGI had been transferred to KAP by the time the deed of assignment was made, AGI did not have any assets to transfer.

KAP did not dispute that, when AGI stopped paying under the note, KAP failed to provide any of the notices it was required to give under the note and stock purchase agreement. Pascarella did claim, however, that the parties orally modified the note and stock purchase agreement to allow the transfer of the AGI stock and the liquor license to KAP.

The trial court conducted a plenary hearing on whether there had been an oral modification of the note or stock purchase agreement. Pascarella testified that when he and Halani met on February 12, 2012, they agreed that, in exchange for KAP waiving all claims against the Halanis, AGI would release its stock and return the liquor license to KAP, free of all tax or liquor bill liens.

Halani testified that he did tell Pascarella on February 12, 2012, that he was

closing the restaurants, but he also said that there was no discussion about AGI returning the liquor license or releasing AGI's stock to KAP. At the conclusion of the hearing, the trial court found that there had been no oral modification to the note and stock purchase agreement, or any oral agreement made between the parties.

The court further found that KAP had not complied with any of the notice provisions in the note and stock purchase agreement; therefore, the escrow agent should not have released any documents from escrow and transferred them to KAP. The court denied the motion to revoke the assignment of AGI's assets to assignee Bauer. Implicit in the court's ruling was that, as none of AGI's assets had been properly removed from its possession, AGI had the power to assign its assets to Bauer.

On appeal, KAP claims that Halani did not have the authority to transfer AGI's assets to Bauer and that, because AGI defaulted, the liquor license reverted to KAP.

While "[t]he interpretation of a contract is subject to de novo review by an appellate court," see Kieffer v. Best Buy, 205 N.J. 213, 222 (2011), the factual findings of a trial court are accorded substantial deference on appeal, and cannot be overturned if supported by adequate, substantial and credible evidence. Manahawkin Convalescent v. O'Neill, 217 N.J. 99, 115 (2014). Here, the trial court's factual findings are clearly supported by the evidence. Thus, we cannot disturb the trial court's findings that there was no oral agreement AGI would release from escrow and transfer to KAP its stock and the resignation form absent compliance with the notice provisions in the note and stock purchase agreement. Further, there was no oral agreement AGI would transfer its liquor license to KAP.

The trial court correctly interpreted the written agreements, which required that, before AGI or the Halanis could be deemed in default, they were entitled to receive the notices detailed in these agreements. Further, the trial court properly enforced these notice provisions. See Dunkin' Donuts of America, Inc. v. Middletown Donut Corp., 100 N.J. 166, 183 (1985) ("[A]s a rule a court of equity will follow the

. . . obligations of contract."). Accordingly, as none of the assets of AGI had been transferred to KAP at the time AGI transferred its assets to assignee Bauer, KAP's motion to revoke the assignment was properly denied.

III

After AGI's assets were assigned to Bauer, Simon Property Group, Inc., (Simon), the owner of the Ocean County Mall, filed a proof of claim alleging AGI owed it over three million dollars and that the claim was growing, as AGI had not paid its approximately \$45,000 monthly lease payment to Simon for several months. Simon then approached Bauer and offered to purchase all of AGI's assets for \$375,000 and waive all claims it had against AGI.

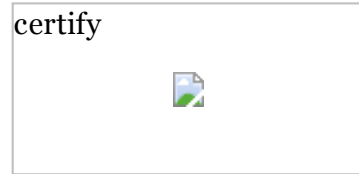
Finding Simon's offer reasonable, Bauer filed a motion pursuant to N.J.S.A. 2A:19-19 for authority to dispose of AGI's personal property in the manner Simon proposed. KAP filed an objection to the motion and offered to pay \$340,000 for AGI's assets and waive its claims against AGI, which KAP calculated to be \$1,686,609.

After hearing extensive oral argument, the court wrote a comprehensive written opinion addressing why it approved the sale of AGI's assets to Simon, finding its proposal to be reasonable and the most cost-effective manner of liquidating the assets for the benefit of AGI's creditors.

KAP raises for the first time on appeal that the court did not permit testimony on which of the two offers was the better one, and did not allow KAP to obtain an expert's report to challenge Simon's claim that AGI owed it three million dollars. KAP's arguments are devoid of any merit. The record reveals that at no time did KAP request time to secure an expert's report on any issue or suggest there was a need for an evidentiary hearing. More to the point, the court never suggested it would not permit testimony or deny KAP the opportunity to secure an expert's report.

After carefully considering the record and the briefs, we conclude KAP's remaining arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.



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