

Loyd v. Griffin, 2023 NCBC 92.

STATE OF NORTH CAROLINA  
IREDELL COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
20 CVS 2394

ASHTON K. LOYD,

Plaintiff,

v.

JAMES MICHAEL GRIFFIN and  
GRIFFIN INSURANCE AGENCY,  
INC.,

Defendants.

**FINAL ORDER AND JUDGMENT**

1. **THIS MATTER** was designated as a mandatory complex business case by Order of the Chief Justice of the North Carolina Supreme Court pursuant to N.C.G.S. § 7A-45.4 and assigned to the undersigned on 26 October 2020. (ECF Nos. 1–2.)

2. This case came on for trial before a jury on Monday, 27 November 2023 in the Superior Court of Iredell County. Plaintiff Ashton K. Loyd’s (“Ashton Loyd”) claims for breach of fiduciary duty, constructive fraud, conversion, and unjust enrichment, and Defendants James Michael Griffin (“Mike Griffin”) and Griffin Insurance Agency, Inc.’s (“GIA,” and together with Mike Griffin, “Defendants”) claims for breach of fiduciary duty and breach of contract, were tried to the jury.

3. The Court granted in part Defendants’ motion for directed verdict at the close of Plaintiff’s evidence and dismissed Ashton Loyd’s unjust enrichment claim. The Court otherwise denied all motions for directed verdict.

4. On Thursday, 7 December 2023, the jury returned its verdict on all issues of liability and damages submitted as follows:

Issue Number 1: Did Mike Griffin, as the majority shareholder of GIA, breach a fiduciary duty that he owed Ashton Loyd?

YES

Issue Number 2: Did Mike Griffin seek to benefit himself through his breach of fiduciary duty?

YES

Issue Number 3: Did Mike Griffin cause GIA to convert Ashton Loyd's 345 shares in GIA?

YES

Issue Number 4: What was the value, if any, of Ashton Loyd's shares in GIA as of September 2, 2020?

\$3,527,433.00

Issue Number 5: Is Mike Griffin liable to Ashton Loyd for punitive damages?

YES

Issue Number 6: What amount of punitive damages, if any, does the jury in its discretion award to Ashton Loyd against Mike Griffin?

\$1,000,000.00

Issue Number 7: Is GIA liable to Ashton Loyd for punitive damages?

NO

Issue Number 8: What amount of punitive damages, if any, does the jury in its discretion award to Ashton Loyd against GIA?

N/A

Issue Number 9: Did Ashton Loyd, as an officer of GIA, breach a fiduciary duty that he owed GIA?

YES

Issue Number 10: What amount of damages, if any, is GIA entitled to recover from Ashton Loyd for breach of fiduciary duty?

\$120,000.00

Issue Number 11: Is Ashton Loyd liable to GIA for punitive damages?

YES

Issue Number 12: What amount of punitive damages, if any, does the jury in its discretion award to GIA against Ashton Loyd?

\$10,000.00

Issue Number 13: Did Ashton Loyd breach Section 9 of the Agency Associate Agent/Office Staff Agreement dated July 1, 2012 by failing to comply with applicable insurance laws or regulations?

YES

Issue Number 14: What amount of damages, if any, is GIA entitled to recover from Ashton Loyd for breach of the Agency Associate Agent/Office Staff Agreement?

\$1.00

Issue Number 15: Was the Shareholders Agreement amended by the addition of Andrew Patton as a shareholder of GIA?

YES

Issue Number 16: Did GIA properly demand Ashton Loyd's performance of Section 3 of the Shareholders' Agreement?

N/A

Issue Number 17: Did Ashton Loyd breach the GIA Shareholders' Agreement dated June 25, 2018 by not selling his shares in GIA back to it?

N/A

(Verdict, ECF No. 186.)

5. Defendants counterclaimed for breach of contract seeking specific performance of the terms of GIA's Shareholders' Agreement. While all factual issues were submitted to the jury, "[i]n a contract dispute between two parties, the trial court may interpret a plain and unambiguous contract as a matter of law[.]" *Premier, Inc. v. Peterson*, 232 N.C. App. 601, 605 (2014), because courts "have the power to interpret the terms of contracts[.]" *McKinnon v. CV Indus.*, 213 N.C. App. 328, 333 (2011). Accordingly, the Court writes separately to determine in this Final Order and Judgment whether specific performance is an appropriate remedy, given that the jury determined that the GIA Shareholders' Agreement was amended by the addition of Andrew Patton as a shareholder of GIA.

6. When examining the language of a contract, the trial court seeks to determine the "intent of the parties when the contract was issued." *N.C. State Bar v. Merrell*, 243 N.C. App. 356, 370 (2015) (citation omitted). "The language in the contract is given its natural and ordinary meaning, because it is strongly presumed that the parties knew what they agreed and have chosen fit and proper words to express that agreement in its entirety." *Crescent Univ. City Venture, LLC v. AP Atl., Inc.*, 2019 NCBC LEXIS 46, at \*31 (N.C. Super. Ct. Aug. 8, 2019) (cleaned up). In determining the parties' intent, the Court must construe the contract "in a manner that gives effect to all of its provisions," if such can be reasonably done. *Johnston Cty. v. R.N. Rouse & Co.*, 331 N.C. 88, 94 (1992).

7. The GIA Shareholders' Agreement dated 25 June 2018 (the "Shareholders' Agreement") provides, in relevant part:

3. Corporate Purchase. Upon . . . (iii) the termination of the Shareholder's employment with the Corporation for any reason (collectively referred to as a "Triggering Event"), the Shareholder or his estate will sell, and the Corporation will purchase, at the Purchase Price . . . all of the shares owned by the Shareholder at the time of the Triggering Event[.]

\* \* \* \*

4. Purchase Price. Purchase Price [is determined by formula stated herein, and] may be reviewed periodically by all of the Shareholders and may be revised upon each review on the basis of the then existing business and financial condition and prospects of the Corporation. The good faith decision of a majority in interest of such Shareholders upon each such review shall be conclusive; and each such decision shall be noted in writing and endorsed by each such Shareholder.

\* \* \* \*

11. Limitations on Sale. No purchase or sale shall be effective hereunder if any of the following occurs: . . . (c) The Shareholders have amended this Agreement.

12. Amendment. All provisions of this Agreement shall be effective until changed by the mutual consent of all the Shareholders, except as otherwise provided by law.

(Pl.'s Ex. 97 at 2–3, 5, ECF No. 189.33.)

8. What has largely been at issue in this litigation is the meaning of the word "effective" as used in Sections 11 and 12. Definitions of "effective" include:

1. [I]n operation at a given time. A statute, order, or contract is often said to be effective beginning (and perhaps ending) at a designated time.
2. Performing within the range of normal and expected standards.
3. Productive; achieving a result.

*Effective*, *Black's Law Dictionary* (10th ed. 2014). Using these definitions to understand the meaning of Sections 11 and 12, the Court interprets Section 12 to mean that all provisions of the Shareholders' Agreement are to be in operation—

having effect and consequence—until changed by the mutual consent of all shareholders. Such a change constitutes an amendment to the Shareholders’ Agreement. Logically following from that, the Court interprets Section 11 to mean that, if there is an amendment to the Shareholders’ Agreement as provided for in Section 12, no purchase or sale contemplated in Section 3 shall be achieved under the Shareholders’ Agreement unless the amendment to the Shareholders’ Agreement expressly provides that those sale provisions remain valid and enforceable.

9. Therefore, the Court interprets the plain, unambiguous language of the Shareholders’ Agreement to mean that no purchase of shares by GIA pursuant to Sections 3 and 4 would be “effective,” meaning mandate a conveyance of shares from the shareholder to the corporation, if the Shareholders’ Agreement was amended. If GIA’s shareholders, Ashton Loyd and Mike Griffin at the time this document was executed, intended for Sections 3 and 4 to survive an amendment or modification of the Shareholders’ Agreement, Section 11(c) would have been excluded from the agreement.

10. To the extent there is any ambiguity as to the meaning of the term “effective,” it is well settled that any ambiguities are to be resolved against the drafter. *See Novacare Orthotics & Prosthetics E., Inc. v. Speelman*, 137 N.C. App. 471, 476 (2000) (“[W]hen an ambiguity is present in a written instrument, the court is to construe the ambiguity against the drafter--the party responsible for choosing the questionable language.”). It is undisputed that Defendants, or their counsel at the time, drafted the Shareholders’ Agreement. Therefore, even if the term “effective”

was unclear or ambiguous in this context, the Court resolves the meaning in a manner which favors Ashton Loyd.

11. Having construed the language of the Shareholders' Agreement, the Court turns to whether Ashton Loyd could have breached the agreement.

12. "The elements of a claim for breach of contract are (1) existence of a valid contract and (2) breach of the terms of that contract." *Poor v. Hill*, 138 N.C. App. 19, 26 (2000).

13. The jury, as finder of fact, determined the issue of fact concerning whether the parties to the Shareholders' Agreement modified its terms by mutual consent. The jury answered this issue "YES." Thus, the jury unanimously determined that there was mutual consent of all parties to modify the Shareholders' Agreement to add Andrew Patton as a shareholder. The evidence before the jury was uncontroverted that, following the execution by Mike Griffin and Ashton Loyd of the Shareholders' Agreement in June 2018, Andrew Patton became a shareholder of GIA with no new shareholders agreement being executed by the parties. Because no new shareholders' agreement was executed following the addition of Andrew Patton as a shareholder, and the addition of Andrew Patton as a shareholder resulted in an amendment of the Shareholders' Agreement, Sections 11 and 12, read together, terminated the effectiveness of Sections 3 and 4.

14. The Court instructed the jury that, if they answered Issue Number 15 "YES," they should not answer the remaining two issues on the Verdict Sheet. This was because, based on the Court's interpretation of the Shareholders' Agreement,

Ashton Loyd could not have breached the Shareholders' Agreement by refusing to sell back his shares in GIA because his performance under Section 3 was no longer required following an amendment. *See Millis Constr. Co. v. Fairfield Sapphire Valley, Inc.*, 86 N.C. App. 506, 509 (1987) (providing that "when performance of a duty under contract is presently due any nonperformance constitutes a breach," leading to the conclusion that if there is no duty of performance, nonperformance cannot constitute a breach). In other words, there was no obligation of performance by Ashton Loyd under Section 3 of the Shareholders' Agreement if the addition of Andrew Patton as a shareholder constituted an amendment of the agreement, because Section 11(c) specifically removed that obligation.

15. Since the jury answered Issue Number 15 "YES", and given the evidence of record, the Court concludes that the Shareholders' Agreement was amended without renewal or restatement of Sections 3 and 4. Therefore, Ashton Loyd had no contractual obligation to sell his shares in GIA back to the corporation. As a result, GIA is not entitled to specific performance as a remedy for its counterclaim since it cannot make out the elements of breach of contract. *See McKinnon*, 213 N.C. App. at 333 (citation omitted) ("For a court to award specific performance, there must be a breach of a valid contract.").

16. **IT IS THEREFORE ORDERED**, based on the verdict of the jury and the Court's conclusions of law as set forth herein, that:

- a. Judgment is entered for Plaintiff Ashton Loyd against Defendants Mike Griffin and GIA, jointly and severally, as to Ashton Loyd's claims for



breach of fiduciary duty, constructive fraud, and conversion in the amount of \$4,527,433.00, representing a total sum comprised of both actual and punitive damages as found by the jury.

b. Judgment is entered for Defendant GIA and against Plaintiff Ashton Loyd as to GIA's claim for breach of fiduciary duty in the amount of \$130,000.00, representing a total sum comprised of both actual and punitive damages as found by the jury.

c. Judgment is entered for Defendant GIA against Plaintiff Ashton Loyd as to GIA's claim for breach of the Agency Associate Agent/Office Staff Agreement in the amount of \$1.00, representing nominal damages as found by the jury.

d. The foregoing represents a complete and final disposition of all claims in this case.

e. Counsel have informed the Court by email communication that each side will bear their own costs in this action.

**IT IS SO ORDERED**, this the 29th day of December, 2023.

/s/ Michael L. Robinson  
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Michael L. Robinson  
Special Superior Court Judge  
for Complex Business Cases