**[Cite as *McGonagle v. Somerset Gas Transm. Co., L.L.C.*, 2011-Ohio-5768.]**

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

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|---|---|---|
| Patrick J. McGonagle, | : | |
| Plaintiff-Appellant, | : | |
| v. | : | No. 11AP-156 (C.P.C. No. 08CVA8-11431) |
| Somerset Gas Transmission Company, LLC, | : | (REGULAR CALENDAR) |
| Defendant-Appellee. | : | |

D E C I S I O N

Rendered on November 8, 2011

*Colley Shroyer & Abraham*, *LPA*, and *David I. Shroyer*, for appellant.

*Bricker & Eckler LLP*, *Drew H. Campbell*, and *Bridget Purdue Riddell*, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

**{¶1}** Plaintiff-appellant, Patrick J. McGonagle, appeals from the judgment of the Franklin County Court of Common Pleas granting judgment as a matter of law in favor of defendant-appellee, Somerset Gas Transmission Company, LLC, on appellant's claim for

declaratory judgment. For the reasons that follow, we sustain appellant's first and second assignments of error and reverse the judgment of the trial court.

**{¶2}** Through its subsidiary, North Coast Transmission, LLC ("North Coast"), appellee operates an intrastate natural gas pipeline in Ohio and currently provides natural gas transportation service for various local distribution companies, end-users, and market aggregators in northern Ohio. This litigation arises out of the employment relationship between appellant and appellee that began in June 2002.

**{¶3}** Prior to commencing employment, appellant and appellee's president and CEO, William A. Lang ("Lang"), engaged in discussions regarding appellant's employment with appellee as vice president of marketing and business development. Appellee sent appellant a letter confirming those discussions. The letter is dated May 31, 2002, and states, "RE: Offer of Employment with Somerset Gas Transmission Company, LLC." The second paragraph of the letter indicates that appellant would be entitled to an annual salary of $170,000, a "competitive benefit package," including four weeks of vacation, an annual incentive award, reimbursement of reasonable business expenses, and reimbursement for relocation expenses. Additionally, appellee indicated that appellant would be provided an opportunity to acquire shares of the company. With respect to this option, the letter states:

> Somerset will also provide you the opportunity to participate in the growth of the company through an equity program that provides for the option to acquire shares at an early stage development of the company. Contemporaneously with the closing of the next round of equity financing of the Company, you will be granted options to purchase a number of shares of the Company equal to one percent (1%) of the outstanding shares of the company, on a fully diluted basis taking into account such equity financing and such options. The

> exercise price per share for such options shall be equal to the price per share for the purposes of such equity financing. The options shall vest in four equal installments on January 1, 2003, July 1, 2003, January 1, 2004, and July 1, 2004. The options would vest immediately in the event that the Executive is terminated without cause or if the Executive is terminated within 180 days following a change of control of the Company. It shall not be deemed to be a change of control of the company if the Company goes public or receives an equity investment from financial or strategic investors, unless such investment is tantamount to a sale of the Company. It is understood that the form of the options provided for in this paragraph may be modified to accommodate or reflect the structure of the Company and it[s] business from time to time, provided that the essential economic benefits to the Executive are preserved. Additional option awards may be made from time to time at the discretion of the Board of Directors.

The letter goes on to state in the next paragraph:

> The above terms will be components of a definitive employment agreement which will be provided as part of your employment with SGT. This agreement will contain provisions for termination with cause and without cause. In the event of termination without cause by the company within the first two years of employment, you will be entitled to a severance payment of $100,000, details of which will be detailed in the employment agreement.

**{¶4}** The letter is signed by Lang and provides that to indicate acceptance of the offer, appellant is to sign the letter. Appellant did so and, despite the letter's reference that a definitive employment agreement would be forthcoming, no additional agreements were executed.

**{¶5}** In early 2006, appellee presented appellant with a Management Grant Agreement ("MGA") that included specific terms regarding the stock option. Appellant did not sign the MGA and, instead, left his employment with appellee in June 2007.

**{¶6}** On August 8, 2008, appellant filed a complaint alleging breach of contract and seeking a declaratory judgment with respect to the stock option referenced in the letter. Thereafter, the parties filed cross-motions for partial summary judgment on the declaratory judgment claim. Appellant argued the letter constituted an employment contract that expressly awarded him the opportunity to participate in the stock option. To the contrary, appellee argued there was no meeting of the minds on a number of significant conditions, and, therefore, the letter did not constitute an enforceable contract.

**{¶7}** By decision rendered October 25, 2010, the trial court denied appellant's motion for partial summary judgment and granted the motion for partial summary judgment filed by appellee. The trial court concluded that the letter was not an employment contract, but, rather, was an agreement to further negotiate and then proceed to executing an employment contract. Further, the trial court held that even if the letter was construed as a contract, it would be unenforceable because several significant terms lacked enforceable clarity. Lastly, the trial court concluded that because appellant failed to establish the existence of a clear and unambiguous promise, his argument regarding promissory estoppel failed as a matter of law. Shortly thereafter, the remaining claims were dismissed with prejudice and this appeal ensued.

**{¶8}** Appellant brings three assignments of error for our review:

> [1.] THE TRIAL COURT ERRED BY GRANTING SUMMARY JUDGMENT IN FAVOR OF APPELLEE SOMERSET BECAUSE THE EMPLOYMENT OFFER LETTER AT ISSUE, SIGNED BY PATRICK MCGONAGLE TO SIGNIFY HIS ACCEPTANCE OF ITS TERMS, UNAMBIGUOUSLY MANIFESTS AN EMPLOYMENT CONTRACT THAT ENTITLED MCGONAGLE TO A STOCK OPTION.

> [2.] THE TRIAL COURT ERRED BY GRANTING SUMMARY JUDGMENT IN FAVOR OF APPELLEE SOMERSET BECAUSE THE TERMS OF THE SIGNED EMPLOYMENT CONTRACT PROVIDED FOR A STOCK OPTION TO VEST UNDER CIRCUMSTANCES THAT ACTUALLY OCCURRED IN THIS CASE, GIVING RISE TO SOMERSET'S OBLIGATION TO PAY PATRICK MCGONAGLE UPON HIS EXERCISE OF THE OPTION.
>
> [3.] THE TRIAL COURT ERRED BY GRANTING SUMMARY JUDGMENT IN FAVOR OF APPELLEE SOMERSET BECAUSE EVEN IF THE SIGNED EMPLOYMENT OFFER LETTER IS NOT DEEMED TO BE SUFFICIENTLY COMPLETE AND CLEAR SO AS TO ENTITLE PATRICK MCGONAGLE TO A STOCK OPTION UNDER ITS SPECIFIC TERMS, THESE FACTS MEET THE REQUIREMENTS FOR A FINDING OF PROMISSORY ESTOPPEL BECAUSE MCGONAGLE RELIED UPON PROMISES MADE IN THE LETTER WHEN HE ACCEPTED AND CONTINUED EMPLOYMENT WITH SOMERSET.

**{¶9}** We review the trial court's grant of summary judgment de novo. *Coventry Twp. v. Ecker* (1995), 101 Ohio App.3d 38. Summary judgment is proper only when the party moving for summary judgment demonstrates: (1) no genuine issue of material fact exists, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds could come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, when the evidence is construed in a light most favorable to the non-moving party. Civ.R. 56(C); *State ex rel. Grady v. State Emp. Relations Bd*., 78 Ohio St.3d 181, 1997-Ohio-221.

**{¶10}** Under summary judgment motion practice, the moving party bears an initial burden to inform the trial court of the basis for its motion, and to point to portions of the record that indicate that there are no genuine issues of material fact on a material element of the non-moving party's claim. *Dresher v. Burt*, 75 Ohio St.3d 280, 1996-Ohio-

107. Once the moving party has met its initial burden, the non-moving party must produce competent evidence establishing the existence of a genuine issue for trial. Id.

**{¶11}** Because appellant's first and second assignments of error are premised upon a finding that the letter constitutes an enforceable agreement, we will address these two assignments of error jointly.

**{¶12}** The construction of contracts is a matter of law. *Cent. Funding, Inc. v. CompuServe Interactive Servs., Inc*., 10th Dist. No. 02AP-972, 2003-Ohio-5037, ¶42, citing *Alexander v. Buckeye Pipe Line Co.* (1978), 53 Ohio St.2d 241, paragraph one of the syllabus. When construing a contract, a court's principle objective is to ascertain and give effect to the intent of the parties. *Hamilton Ins. Servs., Inc. v. Nationwide Ins. Cos.*, 86 Ohio St.3d 270, 273, 1999-Ohio-162. "The intent of the parties to a contract is presumed to reside in the language they chose to employ in the agreement." *Kelly v. Med. Life Ins. Co.* (1987), 31 Ohio St.3d 130, paragraph one of the syllabus. A court will only consider extrinsic evidence in an effort to give effect to the parties' intentions if the language of a contract is ambiguous. *Shifrin v. Forest City Ents., Inc.*, 64 Ohio St.3d 635, 638, 1992-Ohio-28. Contract language is ambiguous only where its meaning cannot be determined from the four corners of the contract or where the language is susceptible to two or more conflicting, but reasonable, interpretations. *Covington v. Lucia*, 151 Ohio App.3d 409, 2003-Ohio-346, ¶18.

**{¶13}** It is appellant's position that the letter demonstrates a meeting of the minds because it contains the essential terms of the agreement. To the contrary, appellee suggests the letter cannot constitute a contract because it lacks essential terms and, therefore, lacks enforceable clarity. In support of their respective positions, both parties

rely on this court's decision in *Imbrogno v. MIMRx.Com*, 10th Dist. No. 03AP-345, 2003-Ohio-6108. *Imbrogno* concerned a letter from the defendant to the plaintiff extending an offer of employment. Like appellant, the plaintiff in *Imbrogno* accepted the offered position by signing the offer letter. While outlining various benefits of employment, the letter also indicated "Stock Options commensurate with your position will be offered. The number of options granted to you will be subject to approval by the Company's Compensation Committee or its designee." Id. at ¶3. Five months after beginning employment, plaintiff was terminated and, thereafter, filed a complaint against her former employer alleging breach of contract and fraud. The trial court granted summary judgment in favor of the defendant, and, agreeing that the portion of the offer letter pertaining to stock options was illusory, this court affirmed the judgment of the trial court.

**{¶14}** This court determined that the stock-option portion of the contract was illusory because the decision of whether to grant options and establish the option's price was "unlimited and without restrictions." Hence, because the contract provided the compensation committee with unfettered discretion to effectively deny appellant the stock option in toto, this court agreed with the trial court that such "promise" was illusory.

**{¶15}** This court went on to find that the offer letter "failed to indicate the essential terms of the agreement," such that with respect to the stock options, a meeting of the minds did not occur. Specifically, this court noted that the letter failed to supply essential terms, inter alia, the number of options, the exercise period, the vesting schedule, the strike price or when the options would be issued.

**{¶16}** According to appellant, the letter herein contains all of the factors the court found to be missing in *Imbrogno* because the letter references the number of options, the

vesting schedule, the price, and the effects of termination of employment. In contrast, appellee contends that even though some of the terms found to be missing in *Imbrogno* are present in this case, the letter still fails as a contract because it lacks a designated price for the option, a specific exercise period, the effect of voluntary termination of employment, and a definition of equity financing. Despite that some potentially relevant terms appear to be omitted from the letter, we cannot say that the letter fails to state "the essential terms" of the agreement such that it lacks enforceable clarity.

**{¶17}** The letter indicated that the terms contained therein would be made a part of a definitive employment agreement. However, no such agreement was forthcoming. Instead, we are left with an agreement that includes a non-discretionary promise that appellant would be allowed the option to acquire a certain amount of stock at a certain price. The letter expressly provides that "the closing of the next round of equity financing" is the triggering event that establishes the number of shares and the exercise price. The letter also establishes the vesting schedule and the effect of appellant being terminated without cause or terminated within a specified number of days of a change of control in the company.

**{¶18}** "[I]f a term cannot be determined from the four corners of a contract, factual determination of intent or reasonableness may be necessary to supply the missing term." *Inland Refuse Transfer Co. v. Browning-Ferris Industries of Ohio, Inc*. (1984), 15 Ohio St.3d 321, 322. The parties may rely on evidence extrinsic to the contract to explain what the parties intended the missing term to state. Id.; *Williams v. Spitzer Autoworld Canton, L.L.C*., 122 Ohio St.3d 546, 2009-Ohio-3554, ¶30. The introduction of extrinsic evidence in such a situation is an exception to the parol evidence rule, which prohibits the

admission of understandings or negotiations that occurred before or while the parties reduced their agreement to final written form. *Bellman v. American Internatl. Group*, 113 Ohio St.3d 323, 2007-Ohio-2071, ¶7; *Ed Schory & Sons, Inc. v. Francis*, 75 Ohio St.3d 433, 440, 1996-Ohio-194.

**{¶19}** While the parol evidence rule applies to completely or fully integrated contracts, it does not apply to partially integrated contracts. *Williams* at ¶28, 30; *Miller v. Lindsay-Green, Inc*., 10th Dist. No. 04AP-848, 2005-Ohio-6366, ¶37-38. A contract is partially integrated if the parties adopt it as a final expression of only one portion of a larger agreement, making the contract incomplete. Id. at ¶37. A party may introduce extrinsic evidence to supplement, but not vary or contradict, the written terms of a partially integrated contract. Id. at ¶38; *Williams* at ¶28, 30.

**{¶20}** Here, because the letter expressly omitted additional terms that were later to be provided in an agreement that was never executed, it was only partially integrated, and the trial court could look to extrinsic evidence to determine the effect, if any, of the alleged relevant missing terms. *Pate v. Quick Solutions, Inc.*, 10th Dist. No. 10AP-767, 2011-Ohio-3925 (stock transfer was to be conducted in accordance with "attached guidelines" that were not attached to the agreement; therefore, this court held parol evidence could be used to supplement the terms of the partially integrated contract). The trial court did not consider extrinsic evidence because it found that the letter on its face lacked enforceable clarity and proceeded to grant summary judgment in favor of appellee.

**{¶21}** We agree with appellee that the letter does not indicate the effect, if any, of appellant's voluntary resignation, nor does the letter indicate the duration of the option. However, such does not mean that a contract was not formed. The parties may have

agreed that appellant's voluntary resignation would have no effect on his vested option to acquire stock or perhaps the parties did not reach an agreement on this issue because it was not contemplated by the parties. Similarly, the parties may have intended an option of unlimited duration or failed to contemplate a specified duration for the option. Regardless, we cannot conclude the letter lacks such enforceable clarity such that a factual determination of reasonableness or intent cannot be utilized to supply the relevant terms that are allegedly omitted from the letter. *Inland Refuse Transfer Co*. Additionally, we recognize that the letter does not define equity financing, however, said term is defined as, "[r]aising of capital by corporation by issuing (selling) stock. This is contrasted with 'debt financing' which is the raising of capital by issuing bonds or borrowing money." Black's Law Dictionary (6th ed.1991). According to appellant, equity financing occurred at a time in 2005, but appellee contends that equity financing has yet to occur. Thus, there is a genuine issue of material fact remaining as to whether or not the triggering event, equity financing, has occurred so as to entitle appellant to the stock option.

**{¶22}** Finding that the letter does constitute an enforceable agreement regarding appellant's stock option, but finding that at this time issues of fact remain as to appellant's precise entitlement thereof, we sustain appellant's first and second assignments of error and remand this matter to the trial court for factual determinations of the relevant missing terms and, also, whether equity financing has occurred.

**{¶23}** In his third assignment of error, appellant contends the trial court erred in granting summary judgment in favor of appellee on appellant's claim for promissory estoppel. However, this assignment of error is rendered moot given our conclusion that the letter constitutes an enforceable agreement. *Mansfield Square, Ltd. v. Big Lots, Inc*.,

10th Dist. No. 08AP-387, 2008-Ohio-6422 (promissory estoppel is a quasi-contractual concept where a court in equity seeks to prevent injustice by effectively creating a contract where none existed). Accordingly, appellant's third assignment of error is rendered moot.

**{¶24}** For the foregoing reasons, appellant's first and second assignments of error are sustained, appellant's third assignment of error is rendered moot, and the judgment of the Franklin County Court of Common Pleas is hereby reversed and this matter is remanded to that court for further proceedings.

*Judgment reversed;*
*cause remanded with instructions.*

KLATT and TYACK, JJ., concur.

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