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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

TODD SACCANI et al.,

Plaintiffs and Appellants,

v.

GARY SACCANI et al.,

Defendants and Respondents;

SACCANI DISTRIBUTING COMPANY,

Intervener and Respondent.

C078958

(Super. Ct. No.
34-2013-00144735-CU-BT-
GDS)

This dispute concerns ownership of shares in a family-owned business. Plaintiffs Todd and Antonio Saccani, who are grandsons of the founder, brought an action for declaratory relief and contend that their uncle Donald Saccani (now deceased) improperly transferred shares of the business to their other uncle Gary Saccani under the provisions

of a shareholder agreement. The trial court entered summary judgment, finding (1) this is not a proper action for declaratory relief because plaintiffs seek to redress past wrongs and (2), even if this were a proper action for declaratory relief, the transfer did not violate the provisions of the shareholder agreement. Plaintiffs appealed the resulting judgment in favor of defendants. On appeal, we conclude the trial court was correct as to both matters. We therefore affirm.

STANDARD OF REVIEW

A trial court grants summary judgment if (1) there is no triable issue of material fact and (2) the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843, 849-850.) Here, the facts are undisputed, so the only remaining determination is whether defendants, who were the moving parties, were entitled to judgment as a matter of law. On that issue, we exercise our independent judgment. (*Starzynski v. Capital Public Radio, Inc.* (2001) 88 Cal.App.4th 33, 37.)

BACKGROUND

Albert Saccani started Saccani Distributing Company (SDC) in 1933. His desire was that the company would always be kept in the family. When Albert died, each of his sons (Donald, Roland, and Gary) owned one-third of the company.

The contract at issue in this litigation is the “Second Amended and Restated Stock Purchase Agreement,” which we refer to as the shareholder agreement. It was signed on December 30, 1991, by the three brothers (Donald, Roland, and Gary), as well as their wives.

Section 1.01 of the shareholder agreement, labeled “Restriction on Transfer,” provided: “No Shareholder shall gift, sell, pledge, encumber, hypothecate, assign or otherwise dispose of (collectively ‘Transfer’) an interest in [SDC] except as provided in this Agreement. Any attempted Transfer of an interest in [SDC] other than as provided

by this Agreement shall be null and void and of no effect against [SDC] or any other Shareholder.”

Section 1.02 of the shareholder agreement, labeled “Permitted Transfers,” provided that “[n]otwithstanding any contrary provision of this Agreement,” several specific types of transfers were allowed. As relevant to this case, this section permitted: “Donald R. Saccani, Roland E. Saccani and Gary A. Saccani may Transfer Corporate Stock: (i) to one another; (ii) to their respective descendants; and (iii) to estate planning trusts for their respective descendants”

Article 2 of the shareholder agreement, labeled “Lifetime Transfers,” gave SDC the right of first refusal to purchase any stock the shareholders wished to sell in a way not permitted by the shareholder agreement. The same article gave the other shareholders the next right of refusal to purchase the stock if SDC did not purchase it.

Section 3.02 of the shareholder agreement, labeled “Procedures for Transfer at Death or Legal Incapacity,” provided: “On the death or Legal Incapacity of a male Shareholder, the executor, special administrator, conservator, or successor-in-interest shall immediately offer, or be deemed to offer, to sell all of the Corporate Stock of such Shareholder to [SDC] at the Agreement Price and on the Agreement Terms set forth in Article 5 (*unless a ‘Permitted Transfer’ would occur*, in which case no such offer shall be made or deemed to be made).” (Italics added.)

The same section required SDC to purchase all shares offered under that section. If SDC was legally prohibited from purchasing the shares, the remaining male shareholders were required to purchase the shares.

Section 8.16 of the shareholder agreement, labeled “Shareholder Wills,” provided: “Each Shareholder agrees to include in his or her Will a direction and authorization to his or her executor to comply with the provisions of this Agreement and to sell his or her shares in accordance with this Agreement; provided, however, that the failure of any

Shareholder to so direct his or her executor shall not affect the validity or enforceability of this Agreement.”

During his lifetime, Donald and his wife Phyllis, who had no children, transferred their property into a revocable trust. A provision of the trust document provided: “I give to my brother GARY SACCANI the option to purchase my entire interest and my wife’s interest in Saccani Distributing Company, Sacramento, California, at its fair market value on the date of my death.”

In 2007, Donald passed away, and, in 2012, Gary exercised the option and purchased all of the SDC shares held in the trust of Donald and Phyllis.

In 2013, Roland passed away, and his shares passed to his sons, plaintiffs Todd and Antonio.

Alleging that the transfer of Donald’s shares to Gary violated the shareholder agreement, Todd and Antonio sued defendants Gary, Gary’s wife Jill, the trust of Gary and Jill, Phyllis, and the trust of Donald and Phyllis. Plaintiffs’ complaint alleged causes of action for declaratory relief, breach of fiduciary duty, fraud, and specific performance (which is not a cause of action but rather an equitable remedy for breach of contract (*Wong v. Tai Jing* (2010) 189 Cal.App.4th 1354, 1361, fn. 2)). Plaintiffs did not allege a breach of contract cause of action. They claimed: (1) Phyllis should be required to return the money Gary paid for the shares, (2) Gary should be required to return the shares to Phyllis, and (3) Phyllis should be required to sell the shares to SDC.

SDC filed a complaint in intervention.

Plaintiffs dismissed their fraud and breach of fiduciary duty causes of action, leaving only the declaratory relief cause of action.

The trial court granted the summary adjudication motions of defendants and intervener as to the declaratory relief cause of action. The court ruled that (1) declaratory relief is not a proper cause of action to remedy past wrongs and (2) Donald’s granting of the option to Gary was a permitted transfer under the definition of transfer in the

shareholder agreement. Either one of these reasons would have been sufficient alone to grant the motion for summary adjudication.

The trial court entered judgment in favor of defendants and intervener, and plaintiffs appeal.

DISCUSSION

I

Availability of Declaratory Relief

Plaintiffs contend that the trial court erred by determining that this action did not present a proper case for declaratory relief. To the contrary, the trial court was correct because there is no actual, present controversy about which the trial court was required to make a declaration. Instead, the action is to redress alleged breaches of the shareholder agreement in the past.

“The purpose of a judicial declaration of rights in advance of an actual tortious incident is to enable the parties to shape their conduct so as to avoid a breach. ‘[Declaratory] procedure operates prospectively, and not merely for the redress of past wrongs. It serves to set controversies at rest before they lead to repudiation of obligations, invasion of rights or commission of wrongs; in short, the remedy is to be used in the interests of preventive justice, to declare rights rather than execute them.’ [Citations.]” (*Babb v. Superior Court* (1971) 3 Cal.3d 841, 848.)

For example, in *Orcilla v. Big Sur, Inc.* (2016) 244 Cal.App.4th 982 (*Orcilla*), the plaintiffs, who had owned real property, sued the defendants, who were various financial institutions involved in the financing of and foreclosure on the plaintiffs’ real property. The complaint alleged causes of action for wrongful foreclosure and declaratory relief, among other things. The trial court granted the defendants’ demurrers and dismissed the action. (*Id.* at pp. 990-994.) The Court of Appeal reversed as to some of the causes of action at law, but it affirmed as to the declaratory relief cause of action. It wrote: “[The plaintiffs] seek a remedy for a past wrong: the 2010 foreclosure sale. The complaint

lacks any factual allegations indicating that an actual, present controversy exists between the parties. We therefore conclude that the [plaintiffs] have failed to state a cause of action for declaratory relief and defendants' demurrer was properly sustained.

[Citation.]" (*Id.* at p. 1014.)

The circumstances of this case are similar to those in *Orcilla*. Because the stock has been sold to Gary, there is no actual, present controversy between the parties. Instead, the question is whether there was a breach of contract in the past, when Donald granted the option and the stock was sold to Gary, and, if so, how to remedy the breach. This is not a subject for a declaratory relief cause of action because plaintiffs do not seek a declaration to guide the future dealings between the parties under the shareholder agreement. Instead, plaintiffs claim that defendant breached the shareholder agreement, and they want, as a remedy, specific performance of the agreement under their interpretation of the agreement by (1) voiding Donald's granting of the option to purchase to Gary and Gary's subsequent purchase and (2) requiring SDC to purchase Donald's shares.

Plaintiffs disagree. They claim that declaratory relief is appropriate. And for support of their claim they rely on cases involving actual, present controversies. But those cases are unhelpful because the present case does not involve an actual, present controversy.

For example, in *Bertero v. National General Corporation* (1967) 254 Cal.App.2d 126 (*Bertero*), a plaintiff employee sought declaratory relief against the defendant employer for a declaration the employment contract was valid and enforceable, and the trial court granted that relief. (*Id.* at pp. 131-133.) On appeal, the employer claimed the action was not proper for declaratory relief, but the court held: "Plaintiff was a person interested under a contract. He desired a declaration of his rights or duties with respect to another. He and that other had an actual controversy with respect to those rights and duties. He had the privilege of asking for a declaration of rights or duties alone or with

other relief.” (*Id.* at p. 135.) The court further held that the availability of damages for past breach of the contract by the employer did not prevent declaratory relief for the employee because the dispute was an actual and existing controversy between the parties to define their contractual relationship going forward. (*Id.* at pp. 135-136; see also *Gafcon, Inc. v. Ponsor & Associates* (2002) 98 Cal.App.4th 1388, 1404 [“declaratory relief operates prospectively only, rather than to redress past wrongs”].)

Bertero does not help plaintiffs because plaintiffs do not seek guidance on the meaning of the terms of the shareholder agreement going forward. They desire only to remedy what they perceive as a past breach of the agreement. In the trial court, plaintiffs claimed they were seeking guidance on the interpretation of the shareholder agreement for the future because Antonio, like Donald before him, has no children to whom he can pass his interest, but they have abandoned that argument on appeal.

Similarly, two other cases cited by plaintiffs in their attempt to establish that declaratory relief is proper in this case do not help them—*Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th 995 (*Patrick*) and *Caira v. Offner* (2005) 126 Cal.App.4th 12 (*Caira*). In *Patrick*, the relief sought was to determine the trust assets to which the plaintiff was currently entitled. (*Patrick, supra*, at pp. 1015-1016.) And in *Caira*, the relief sought was a declaration about the current ownership of a family business. (*Caira, supra*, at pp. 17, 24.) Those cases did not hold that a declaratory relief action is a proper action to redress a past breach of contract.

We therefore conclude that the trial court did not err by holding that this case was not proper for declaratory relief.

II

Contract Interpretation

In any event, if we were to decide plaintiffs properly seek declaratory relief in this action, the facts do not support declaratory relief. Under the shareholder agreement, Donald was allowed to transfer his shares to one of his brothers during his lifetime.

Applying the broad definition of “transfer” contained in the shareholder agreement, we conclude Donald’s gift to Gary of an option to purchase the shares upon Donald’s death qualified as a transfer. Thus, Gary, possessing an option to purchase the shares upon the death of Donald, lawfully exercised that option to obtain Donald’s shares after his death.

When we interpret a contract, we give effect to the mutual intention of the parties. (Civ. Code, § 1636.) If the language of the contract is clear, we determine the mutual intention of the parties from the language of the contract. (Civ. Code, §§ 1638, 1639.)

Here, section 1.02 of the shareholder agreement “permitted” Donald to “transfer” his shares to Gary. And section 1.01 of the shareholder agreement broadly defined “transfer” as “gift, sell, pledge, encumber, hypothecate, assign or otherwise dispose of.” The agreement does not provide specialized definitions for these terms used in the agreement to define “transfer,” so we use their ordinary meaning (see *Blasiar, Inc. v. Fireman’s Fund Ins. Co.* (1999) 76 Cal.App.4th 748, 754 [common and ordinary meaning used in contract interpretation]). This broad definition of transfer evinces an intent on the part of the contracting parties to apply a broad definition to the word “transfer.” Encumber means to burden or restrict free action. Granting an option on the shares to Gary encumbered Donald’s shares because it gave Gary the right to purchase those shares. Therefore, Donald “transfer[red]” his shares under the broad definition given to that term in the shareholder agreement when he granted an option to Gary to purchase the shares.

Plaintiffs contend this reasoning does not justify the granting of the option under the shareholder agreement because Donald could not grant the option (or do anything else) personally after his death; only the trust surviving him could make the transfer. According to plaintiffs, the shareholder agreement did not allow for the trust to make that transfer because the only permissible use of a trust was to transfer the shares to the shareholder’s descendants. This contention fails because the shareholder agreement (section 3.02) allowed for “permitted transfers” on the death of the shareholder, and one

of those “permitted transfers” under the shareholder agreement (section 1.02) is to one of the other shareholders. Thus, the shareholder agreement allowed Donald to transfer his shares to Gary (by granting the option) upon Donald’s death.

The remainder of plaintiffs’ arguments fail to address the decisive question we have already identified. For example, plaintiffs claim Donald violated the shareholder agreement because Gary cannot be considered a descendant of Donald, and, therefore, the shareholder agreement cannot be interpreted to allow Donald, through his trust, to transfer his shares to Gary as Donald’s descendant. As we explained, and as the trial court ruled, the transfer (through giving an option) to Gary upon Donald’s death was valid under the shareholder agreement because it was a permitted transfer. In other words, whether Gary can be considered a descendant of his brother Donald makes no difference to the outcome of this case, despite plaintiffs’ presentation of this question as their first argument on appeal.

Similarly, plaintiffs argue Donald agreed to make a will when he signed the shareholder agreement. Referring to section 8.16 of the shareholder agreement, they assert this amounted to an enforceable agreement to make a will. (See *Goldstein v. Hoffman* (1963) 213 Cal.App.2d 803, 811-815 [agreement to make a will enforceable].) This argument is without merit because (1) they make it for the first time on appeal (see *Gonzalez v. County of Los Angeles* (2004) 122 Cal.App.4th 1124, 1131[arguments made for the first time on appeal forfeited]) and (2) the manner in which Donald transferred his shares to Gary was permissible under the shareholder agreement regardless of whether the shareholder agreement could be interpreted as an agreement to make a will.

None of plaintiffs’ contentions has merit.

DISPOSITION

The judgment is affirmed. Defendants and intervener are awarded their costs on appeal against plaintiffs. (Cal. Rules of Court, rule 8.278(a).)

NICHOLSON, Acting P. J.

We concur:

HULL, J.

BUTZ, J.