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COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON

STADELMAN FRUIT, LLC,
a Washington limited liability company

Plaintiff / Respondent

v.

JIM D. VOORHIES, a single person; JOHN E. HOWARD, as Personal
Representative for the ESTATE OF FLORENCE E. HOWARD,

Defendants / Appellant

**REPLY BRIEF OF APPELLANT
JIM D. VOORHIES**

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I. INTRODUCTION

It is indeed interesting when the opposing position is based on the “clearly” argument. That’s exactly what we have in this appeal. Stadelman would simply have this Court believe that “clearly” the Grower Agreement says that Voorhies agrees to pay all money advanced back to Stadelman and “clearly” the mortgage he gave covers all such advancements. “Clearly,” the documents do not actually state these facts. If the documents actually said this, Stadelman would cite the language of the agreement. This it has failed to do.

It is undisputed that there is no promissory note in this case. There is no loan agreement. There is a Grower Agreement executed between Stadelman and Voorhies. There is also a mortgage executed between Stadelman and Voorhies given to secure obligations under the Grower Agreement related to crop year 2008. That is the record that exists in this case. Those documents do not “clearly” justify the trial court decision in this case.

II. REPLY STATEMENT OF THE CASE

The reply is straightforward. Attorneys continually stating a concept does not make it so. Stadelman can say the words “loan” and “repayment” on a constant basis, but the Grower Agreement does not actually use those concepts as an obligation for Voorhies. It does have the word “repayment” once.

There are facts the parties do agree upon and that are, indeed, undisputed. The two controlling documents at issue in this case are the Grower Agreement and the Mortgage which were indeed signed by Voorhies.

It is from this point that Stadelman’s recitation of “facts” is only its spin on what it perceives the documents say. Although Stadelman can clearly use the words “loan” or “lend” in its submissions to the court, those words do not appear anywhere in the Grower Agreement. So that we are clear, the word “repayment” appears exactly one time:

7. ADVANCES: Handler may make discretionary advances to Grower to grow and harvest Grower's fruit crop on such terms and conditions as Handler shall, in its sole discretion, determine to be appropriate. If handler has agreed to make an advance to Grower, Grower hereby agrees to execute any

security agreement, promissory note, financing statement, and other documents deemed reasonable and necessary by Handler to ensure the **repayment** of such advances and, in addition, any subordination agreements determined reasonable and necessary by Handler for such purpose. Handler's decision to make advances in any particular instance shall not constitute an obligation or agreement by Handler to provide such advances to Grower in the future, and Grower acknowledges and agrees that such advances are discretionary with Handler.

(CP 77)(emphasis added).

According to Stadelman, this provision “clearly” “explicitly contemplates” the full and complete repayment of all advances. This argument is not well taken. The actual language is quoted above. It will be discussed in the argument section of this brief. The Court’s function is to interpret what is written, not what one party now claims was “explicitly contemplated.”

Stadelman states that the Grower Agreement has an offset provision which is true. Stadelman further notes that the agreement automatically renewed every year if Voorhies still owed Stadelman money. Again true. Voorhies was indeed an involuntary, forced participant so long as Stadelman claimed he owed it money. There is

no evidence of any termination of the agreement because Voorhies could not do so by the terms of the Grower Agreement.

III. ARGUMENT

A. Standards for Summary Judgment in a Contract Interpretation Action

This section of a brief is typically the “throwaway” section since all attorneys and judges know the summary judgment standards. However, in this case, the standards for summary judgment in a contract interpretation situation are indeed dispositive and both the trial court and the plaintiff in this case have failed to enunciate and apply these standards. With a proper application of these standards, there is no question that the trial court’s decision must be reversed.

In interpreting a contract, the court’s function is to ascertain the intent of the parties at the time they entered into the contract. *See Int’l Marine Underwriters v. ABCD Marine, LLC*, 179 Wn.2d 274, 282, 313 P.3d 395 (2013). Washington employs the objective manifestation theory to interpret contracts. *See Hearst Communications, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 503, 115 P.3d 262 (2005).

At this point, the standards become critical to the decision made by the trial court in this case. Recall that the trial court granted Stadelman's motion for summary judgment. However, in the context of interpreting contracts, ascertaining the parties' intent is generally a question of fact. *See W.M. Dickson Co. v. Pierce County*, 128 Wn. App. 488, 493, 116 P.3d 409 (2005). Interpreting the meaning of a contract is generally a question of fact. *See Ledaura, LLC v. Gould*, 155 Wn. App. 786, 798, 237 P.3d 914 (2010). Summary judgment is inappropriate when the written contract, viewed with the parties' other objective manifestations has two or more reasonable meanings. *See Renfro v. Kaur*, 156 Wn. App. 655, 661, 235 P.3d 800 (2010).

The trial court ruled, as a matter of law in this case, that the Grower Agreement called for Voorhies to repay any shortfall on the advances that Stadelman made. However, it is clear that such a decision, as a matter of law in interpreting contracts, can be made only when:

- (1) The interpretation does not depend on the use of extrinsic evidence, or (2) only one reasonable inference can be drawn from the extrinsic evidence. Therefore, summary judgment is proper if the parties' written

contract, viewed in light of the parties' other objective manifestations, has only one reasonable meaning.

Go2Net, Inc. v. C.I. Host, Inc., 115 Wn. App. 73, 85, 60 P.3d 1245 (2003)(citations omitted).

An ambiguity is presented if the language is fairly susceptible to at least two different but reasonable interpretations. *See McDonald v. State Farm Fire & Cas. Co.*, 119 Wn.2d 724, 733, 837 P.2d 1000 (1992). Washington uses the "context rule" when interpreting contracts. *See Go2Net, Inc.*, 115 Wn. App. at 84. Extrinsic evidence may be viewed irrespective of whether the Court initially considers the contract language "ambiguous." *See U.S. Life Ins. Co.*, 129 Wn.2d 565, 569, 919 P.2d 594 (1996).

Any determination of meaning or ambiguity should only be made in the light of the relevant evidence of the situation and relations of the parties, the subject matter of the transaction, preliminary negotiations and statements made therein, usages of trade, and the course of dealing between the parties.

Berg v. Hudesman, 115 Wn.2d 657, 668, 801 P.2d 222 (1990).

Voorhies has presented extrinsic evidence in this case that deals with the course of dealings between the parties. In addition, the "clearly" argument set forth by Stadelman is not the only reasonable

interpretation of the Grower Agreement or Mortgage. In light of this, summary judgment was not appropriate for Stadelman.

B. At the Very Least, Issues of Fact Exist in this Case Precluding Summary Judgment for Stadelman

Framed in light of the above summary judgment standards for contract interpretation, the issue presented to this Court is whether the Grower Agreement has only one reasonable interpretation that it contains an obligation by Voorhies to repay any shortfall in revenue to cover advances made by Stadelman. Such is not the case based on the record presented and the language of the document.

After stripping through the “clearly” argument, Stadelman can point to one, and only one, reference in the grower agreement that even uses the word “repayment.”

7. ADVANCES: Handler may make discretionary advances to Grower to grow and harvest Grower's fruit crop on such terms and conditions as Handler shall, in its sole discretion, determine to be appropriate. If handler has agreed to make an advance to Grower, Grower hereby agrees to execute any security agreement, promissory note, financing statement, and other documents deemed reasonable and necessary by Handler to ensure the **repayment** of such advances and, in addition, any subordination agreements determined reasonable and necessary by Handler for such purpose. Handler's decision to make advances in any particular instance shall not constitute

an obligation or agreement by Handler to provide such advances to Grower in the future, and Grower acknowledges and agrees that such advances are discretionary with Handler.

(CP 77)(emphasis added).

The words loan or lend do not appear anywhere in the Grower Agreement. If this is the basis for Stadelman's argument, one must ask, is Voorhies in default? What were the repayment terms agreed upon? Was it monthly payments? Starting when? Was it a balloon payment in 10 years? Twenty years? What was the interest rate to be charged, if any? Those questions cannot be answered because there was never any discussion nor provision in the Grower Agreement for the terms of any "repayment". This, in and of itself, should create the ambiguity in the Grower Agreement. Not even the "clearly" argument can save Stadelman from this deficiency.

The provisions of the Grower Agreement are more akin to a "nonrecourse" situation where the entity advancing funds would agree to be repaid from a certain source and not seek deficiency relief against the recipient of the funds. The nonjudicial foreclosure of a deed of trust is one such example. As outlined in the opening brief, the Grower Agreement set forth the mechanism for repayment of any

discretionary advances made. It was through the offsetting of grower revenue to pay Stadelman. It did this. Stadelman also charged and made money in the packing and storage of Voorhies apple crop to the level of \$160 per bin on a yearly basis. Stadelman recouped its benefit of the bargain and Voorhies fulfilled his obligations under the agreement. For three years, Stadelman received 100% of all revenue from the apple crop and Voorhies received nothing.

With respect to the one provision that Stadelman cites, it would have been a simple thing for it to require Voorhies to execute a promissory note that addressed any repayment issues. Stadelman chose not to do so. At that point, the parties could have come to an agreement as to any repayment issues. Voorhies would have insisted that there is no such obligation other than the revenue offset. If Stadelman disagreed, there would be no contract (no mutual assent) and there would presumably be no advances. At the very least, issues of fact exist as to the contract terms per the Grower Agreement. Voorhies has set forth a reasonable interpretation of the Grower Agreement which renders summary judgment inappropriate.

Voorhies would further respectfully submit that it is entitled to summary judgment on this issue under the standards set forth above.

C. The Mortgage Cannot Create any Obligation to Pay Amounts Claimed Due. It can only Secure Separate Obligations

So that Voorhies is clear, he did discuss the mortgage issue in the opening brief. There are two issues presented. The first is that Stadelman apparently desires to transform the mortgage into an actual debt instrument. This it cannot do.

A mortgage does not create a debt. Rather it is **security** for a valid, existing debt. *See John R. O'Reilly, Inc. v. Tillman*, 111 Wash. 594, 191 P.866 (1920). Thus, the mortgage at issue in this case does not create any debt. It simply secures any obligation to the extent that such obligation exists. As outlined above, no such debt is created. There is no valid existing debt to be secured.

The Grower Agreement has numerous obligations outlined in it that could be the subject of enforcement and therefore subject to the mortgage. As previously set forth, Voorhies had obligations to deliver his fruit. The Grower Agreement also had a liquidated damages clause that, if valid, would come within the ambit of mortgage. All of

these obligations spring from the Grower Agreement. The mortgage is not self-effectuating. It must secure another obligation. Again, because the Grower Agreement does not have a repayment provision, there is nothing for the mortgage to secure in that regard. Stadelman attempts to bootstrap language from the mortgage into the Grower Agreement. This should not be allowed. Parties can incorporate the terms of other documents into a document but it must be clear that the parties intended and assented to such incorporation. *See Western Washington Corp. of Seventh-Day Adventists v. Ferrellgas, Inc.*, 102 Wn. App. 488, 494-95, 7 P.3d 861 (2000).

Secondly, Stadelman attempts to refute the notion that the language cited by Voorhies does not limit the effect of the mortgage to only 2008. That language was:

To secure the performance of each agreement of the mortgagor herein contained and the payment of all sums due Mortgagee in providing crop financing for the 2008 crop to be grown upon said premises, including all renewals, modifications, and extensions thereof, and also such additional sums as shall be agreed upon.

(CP 85).

The interpretation of a contract should be done such that it gives effect to all of the provisions in the contract and does not render

some of the provisions meaningless. *See GMAC v. Everett Chevrolet*, 179 Wn. App. 126, 135, 317 P.3d 1074 (2014). Yet Stadelman’s proposed interpretation of the mortgage renders the above quoted language “meaningless” because it quotes other language that Stadelman would argue is not limited to 2008. Again, to the extent that there are reasonable interpretations both ways, summary judgment would not be appropriate.

Secondarily, Stadelman’s interpretation of this paragraph is “strained” at best. As Voorhies read the clause and presented it to this Court, Voorhies and Stadelman had to affirmatively agree that this mortgage would secure any obligations after 2008. That was the purpose of Mr. Voorhies’ declaration which said that no such agreement had been reached nor discussed.

Stadelman’s interpretation of this clause is that by accepting additional advances in years after 2008, Voorhies somehow automatically agreed that the mortgage would apply. That’s not what the language says but, again, Voorhies has set forth a reasonable interpretation of the language which would then render summary judgment inappropriate in this case.

D. Issues of Fact Exist as to the Accounting Provided to Voorhies

Stadelman continues to question why issues are raised as to its accounting. That is not the issue presented. It is the timing of the accounting. There is no question that, in the context of the summary judgment motion, Stadelman did provide an accurate recitation of the revenue that was generated by the Voorhies crop. These documents were provided in 2017. All the accountings and paperwork Voorhies received in the normal course were different numbers and did not account for revenue. Those deficiencies were laid out in previous briefing.

Stadelman still cannot account for the interest issue. In the first accounting for crop year 2008, there is an interest charge. Is that “prejudgment interest?” Was payment due? Stadelman admits that there is no provision in the Grower Agreement to charge interest yet it did so in every calculation provided to Voorhies. It was not until the presentment of the judgment in this case that Stadelman finally refined its argument to land on the “prejudgment judgment” issue.

E. The Consumer Protection Act Claim Should Not Have Been Dismissed.

Stadelman makes two primary arguments that the trial court's dismissal of the Consumer Protection Act claim was appropriate. First, it argues that there is no unfair or deceptive act or practice. Such is not the case. The record is littered with examples of the inaccurate accounting provided by Stadelman that short changed and overcharged Voorhies. Revenue for crops were missing. Charges for unauthorized items like interest and attorney fees were made. In a situation like this case where the Grower Agreement cannot be terminated if the grower owes money to Stadelman, it is unfair and deceptive to represent to a grower, such as Voorhies, that money is owed and how much. It deprives the grower of the opportunity to go elsewhere or simply pay off the small amount that might be due and move on.

Secondly, Stadelman attacks the public interest showing. However, Stadelman does so with reference to old case law and without reference to the statutory framework that has been enacted. In 2009, the legislature passed RCW 19.86.093 which set forth the methods that could be used to establish the public interest element.

As is relevant to this case, a claimant may do so if it can show that the act: “(a) Injured other persons; (b) had the capacity to injure other persons; or (c) has the capacity to injure other persons.” RCW 19.86.093(3).

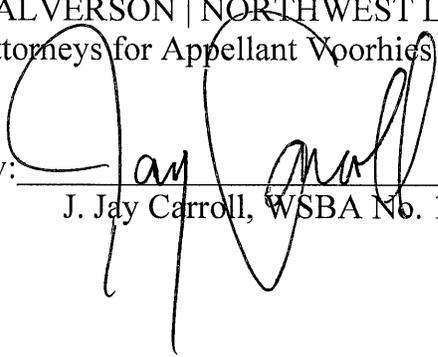
As previously set forth, at the very least issues of fact exist as to whether these accounting practices in light of the obligation to continue to bring fruit if debt is owed, either had or has the capacity to injure others. Summary judgment was inappropriate.

IV. CONCLUSION

For the reasons set forth above, the trial court’s order should be reversed. By applying the proper summary judgment standards, at the very least, issues of fact exist. Additionally, this Court could reverse the trial court and grant Voorhies’ motion since there is no language in the Grower Agreement for repayment of sums advance other than through offset.

DATED this 16 day of November, 2017.

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Attorneys for Appellant Voorhies

By: 

J. Jay Carroll, WSBA No. 17424

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury under the laws of the State of Washington that on the date stated below I served a copy of this document in the manner indicated:

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DATED at Yakima, Washington, this 16th day of November, 2017.



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