

Rel: 09/02/2010

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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2010

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Prasad Vankineni

v.

**Santa Rosa Beach Development Corporation II
and Renasant Bank**

**Appeal from Madison Circuit Court
(CV-08-900500)**

WOODALL, Justice.

On June 3, 2008, Prasad Vankineni sued Santa Rosa Beach Development Corporation II ("Santa Rosa") in the Madison Circuit Court. On March 17, 2009, the trial court dismissed the case based upon an outbound forum-selection clause in a

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contract between Vankineni and Santa Rosa. Vankineni timely appealed to this Court. We reverse and remand.

Santa Rosa is the developer of a condominium community in Santa Rosa County, Florida. On January 5, 2005, Vankineni entered into a written contract to purchase a condominium unit in that community from Santa Rosa. The purchase contract provided, in pertinent part: "This contract shall be construed, applied, and enforced in accordance with the laws of the State of Florida. Any action to enforce a provision of this agreement shall be in the appropriate court located in Santa Rosa County, Florida." (Emphasis added.)

Vankineni's complaint contained three counts. The first count alleged that Santa Rosa had violated the Alabama Securities Act, § 8-6-1 et seq., Ala. Code 1975 ("the Act"). For the alleged violations of the Act, Vankineni sought to recover the consideration he had paid to Santa Rosa, plus interest, attorney fees, and court costs. The second count sought the rescission of the purchase contract, thereby requiring Santa Rosa to return the consideration paid by Vankineni.¹ Similarly, the third count sought a declaratory

¹The rescission claim was based upon Vankineni's allegation that Santa Rosa had misled him "regarding the

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judgment "[f]inding the contract is invalid and unenforceable" and "[r]equiring Santa Rosa ... to return to ... Vankineni all consideration flowing to [it] by virtue of the [purchase] contract."²

On December 12, 2008, Santa Rosa filed a motion to dismiss Vankineni's complaint, based, in pertinent part, upon the outbound forum-selection clause in the purchase contract. Santa Rosa argued that the "case [was] due to be dismissed for improper venue because the parties agreed that any dispute arising out of the contract [would] be brought in the appropriate court located in Santa Rosa County, Florida." In response, Vankineni argued, in relevant part, that the forum-selection clause did not apply because, according to him, he had not brought "an action to enforce" the purchase contract. The trial court granted Santa Rosa's motion, and Vankineni appealed.

nature of the interest in the unit he was contracting to purchase, as well as the date on which said interest would be delivered." It was not based upon any alleged contractual right of rescission.

²Vankineni named Renasant Bank as a necessary party to his request for a declaratory judgment. Renasant Bank's involvement in financing Vankineni's purchase of the condominium unit is not relevant to any issue presented by this appeal, and it has not filed a brief.

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We must determine whether the trial court exceeded its discretion in enforcing the forum-selection clause. "[T]he review of a trial court's ruling on the question of enforcing a forum-selection clause is for an abuse of discretion." Ex parte D.M. White Constr. Co., 806 So. 2d 370, 372 (Ala. 2001).

The trial court stated in its order dismissing Vankineni's action that it was enforcing the outbound forum-selection clause because it had concluded that Vankineni had "not met his burden of showing that enforcement of the clause would be unfair, unreasonable or seriously inconvenient." It is true that this Court has "adopt[ed] the majority rule that a forum selection clause should be enforced so long as enforcing it is neither unfair nor unreasonable under the circumstances." Professional Ins. Corp. v. Sutherland, 700 So. 2d 347, 351 (Ala. 1997). However, the dispositive issue in this case is not whether the enforcement of the outbound forum-selection clause would be unfair, unreasonable, or seriously inconvenient; instead, the dispositive issue is whether Vankineni's action falls within the scope of the clause.

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The outbound forum-selection clause in the purchase contract applies to "[a]ny action to enforce a provision" of the contract. (Emphasis added.) This contractual language is "plain and free from ambiguity"; therefore, "there is no room for construction, and it is the duty of the court to enforce it as written." Kinnon v. Universal Underwriters Ins. Co., 418 So. 2d 887, 888 (Ala. 1982); see also Ex parte Cintas Corp., 958 So. 2d 330, 333 (Ala. 2006). "'A court may not make a new contract for the parties or rewrite their contract under the guise of construing it.'" Turner v. West Ridge Apartments, Inc., 893 So. 2d 332, 335 (Ala. 2004) (quoting Ex parte Dan Tucker Auto Sales, Inc., 718 So. 2d 33, 35-36 (Ala. 1998)).

The word "enforce" means "[t]o give force or effect to [or] to compel obedience to." Black's Law Dictionary 569 (8th ed. 2004). Thus, the enforcement of a contract is the opposite of the rescission of a contract, because "[t]he effect of rescission is to extinguish the contract." Clark v. Wilson, 380 So. 2d 810, 812 (Ala. 1980).

Vankineni argues that his action does not fall within the scope of the outbound forum-selection clause, because, he

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says, he "does not seek enforcement of the contract, or any provision thereof." Vankineni's brief, at 33. We agree. Vankineni's claim under the Act seeks the "return [of] the consideration paid by him" and does not seek compensatory damages for any alleged breach of the contract. His other counts seek the rescission of the contract and a declaratory judgment "[f]inding that the contract is invalid and unenforceable." (Emphasis added.) None of these claims involves the enforcement of any provision of the purchase contract.

Santa Rosa argues "that the forum-selection clause encompasses all of [Vankineni's] claims." Santa Rosa's brief, at 12. However, it does not explain how Vankineni may be considered to be seeking to enforce any provision of the purchase contract. Instead, Santa Rosa argues that "[t]he purchase agreement and its interpretation [are] central to each of the actions raised by [Vankineni and that] each of [his] claims flows from the existence of the contract." Santa Rosa's brief, at 13. However, in order to accept Santa Rosa's arguments, we would have to rewrite the forum-selection clause, under the guise of construing it, to extend its scope

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to actions arising under or relating to the purchase contract or the relationships created by it, and this we may not do.

For these reasons, we reverse the judgment of the trial court and remand the case for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

Lyons, Stuart, Smith, Bolin, Parker, Murdock, and Shaw, JJ., concur.

Cobb, C.J., dissents.

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COBB, Chief Justice (dissenting).

I respectfully dissent. In my view, this is a close case. However, looking at the allegations of the complaint, as well as the claims asserted therein, I am not convinced that the trial court erred in determining that this is an action to enforce a provision or provisions of the purchase contract and that, therefore, the outbound forum-selection clause applied.

Generally speaking, when examining a contract, this Court looks to the substance of the document as a whole, giving the terms in the contract their ordinary, plain, and natural meaning unless a more narrow, technical definition is indicated.³ In addition, complaints and other pleadings are not viewed critically but are generally viewed through a wider lens, looking to the substance in order to do substantial

³Homes of Legend, Inc. v. McCollough, 776 So. 2d 741, 746 (Ala. 2000) ("Under general Alabama rules of contract interpretation, the intent of the contracting parties is discerned from the whole of the contract. Where there is no indication that the terms of the contract are used in a special or technical sense, they will be given their ordinary, plain, and natural meaning. If the court determines that the terms are unambiguous (susceptible of only one reasonable meaning), then the court will presume that the parties intended what they stated and will enforce the contract as written." (citations omitted)).

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justice. See Rule 8(f), Ala. R. Civ. P. Thus, in determining whether Prasad Vankineni's action is one "to enforce a provision" of the purchase contract within the intended meaning of the outbound forum-selection clause in the contract, a trial court should consider all the provisions of the contract, and then compare those provisions to the substance of the allegations, the causes of action, and the requests for relief in the complaint.

Venkineni seeks to rescind the contract.⁴ The purchase

⁴Factual averments stating that the condominium unit was not completed by the contracted-for date are incorporated by reference in the portion of Vankineni's complaint setting forth a claim for rescission. In full, the claim for rescission states:

"21. Dr. Vankineni adopts and incorporates by reference the averments of the preceding paragraphs, as if fully set forth herein.

"22. Dr. Vankineni was mis[led] by Santa Rosa ... regarding the nature of the interest in the Unit he was contracting to purchase, as well as the date on which said interest would be delivered.

"23. Santa Rosa has failed and refused to deliver the Unit, or any interest therein, to Dr. Vankineni for over three (3) years, yet it has had and continues to have the benefit of Dr. Vankineni's cash deposit during that time. Within the fifteen (15) days preceding the date of the filing of this Complaint, [Debra] Ciano[, who acted as a broker in the transaction,] has advised Dr. Vankineni of further delays in the completion of the Unit.

"24. Upon information and belief, if and when the Unit is completed, its value will be far less than the purchase price set forth in the Contract. Had the Unit been completed and delivered as required by the Contract, Dr. Vankineni could have sold his interest therein at a profit or at a substantially higher price than the Unit will bring if and when completed. Worse still, even when the Unit is completed, the Development as a whole will remain substantially incomplete which, upon information and belief, will substantially limit the prospects for renting the Unit to third-parties. Forcing Dr. Vankineni to consummate the transaction contemplated by the Contract would require him to purchase the Unit at a greatly inflated price, and would

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contract itself sets forth conditions under which the buyer may rescind the contract. For example, the purchase contract is "voidable by buyer within fifteen days after the date of receipt from the developer of any amendment which materially alters or modifies the offering in a manner that is adverse to the buyer." The estimated completion date in the purchase contract for the condominium unit was October 15, 2006, but this date was "subject to amendment by Seller should Seller's progress or plans be altered by conditions unforeseen by or outside the control of Seller, and any such amendment shall not require formal or specific notice by Seller to Buyer."

inequitably force him to bear the burden of Santa Rosa's delay in completing the Unit.

"25. Dr. Vankineni's hands are clean and he is prepared to do equity.

"26. On the basis of the foregoing, Dr. Vankineni hereby rescinds the Contract and is prepared to restore to Santa Rosa ... any and all interest in the Unit to which he is entitled, as well as any and all other consideration flowing to him pursuant to the Contract.

"WHEREFORE, Dr. Vankineni prays the Court will enter an Order rescinding the Contract and requiring Santa Rosa and/or Fictitious Defendants A-C to restore to Dr. Vankineni all consideration flowing to them under the Contract, along with the costs of this action and any other relief at law or equity to which Dr. Vankineni may be entitled."

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One of the foundational allegations of the complaint is that the condominium has not been "completed by the date set forth in the contract, to-wit: October 15, 2006," and that Vankineni has therefore been deprived of the use and enjoyment of the unit since that time. The complaint asserts that Santa Rosa has continually delayed (i.e., amended) the contracted-for date of completion, and this is one basis of Vankineni's claim for rescission.⁵

Vankineni's claim for rescission is not specifically described as a "contractual" claim for rescission. Neither, however, does Vankineni state that he seeks rescission only as

⁵As the majority points out, Vankineni alleges, among other factual allegations, that he was "misled" as to the date the unit would be finished. ___ So. 3d at ___ n.1. However, the only allegedly "misleading" statement as to the date of completion referenced in the complaint is the completion date stated in the purchase contract. See Rule 9(b), Ala. R. Civ. P. ("In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity."). In addition, I recognize, as the majority points out in note 1 of this Court's opinion, that Vankineni, a medical doctor, also alleges that he is entitled to rescission because he was orally "misled" regarding the nature of his interest in the unit; he says he believed that he was entering into a contract for an "ownership" interest in the condominium unit, but, since signing the written contract, he has discovered that the purchase contract conveys only a "leasehold" interest. In my view, these averments do not negate the fact that, with his claim for rescission, Vankineni seeks relief available "at law" as well as in equity.

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an equitable remedy; rather, the claim is one for "any" relief "at law or in equity" that would be available to Vankineni should he prove the averments of his claim for rescission. Therefore, I read the complaint as seeking the remedy of rescission under an equitable theory (per the rather weak averments of having been "misled") or under any theory that would entitle Vankineni to relief "at law." The allegations of the complaint, if proven, would be sufficient to support a claim for rescission under the terms of the contract. Thus, although Vankineni may be seeking noncontractual relief, he is also, at least in the alternative, seeking the remedy of rescission under "any" legal theory available -- including enforcement of Vankineni's legal rights under the express provisions of the purchase contract.

Further, in an express invocation of his contractual rights, in conjunction with his request for a declaratory judgment, Vankineni seeks not only a judgment as to the enforceability of the contract, but also "the Court's judgment as to the validity, legitimacy and enforceability of the Contract, and as to his rights and obligations, as well as those of the interested parties, with respect to the

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Contract." (Emphasis added.) When that count is fairly construed, it appears that Vankineni seeks a declaration of his contractual rights, including those available to him in the event that the purchase contract is rescinded or declared unenforceable. Moreover, in conjunction with his request for a declaratory judgment, Vankineni seeks an order "[a]warding Dr. Vankineni such other and further relief, at law or equity, to which he may be entitled." In the context of the allegations of the complaint, which include an allegation that the contract was not fulfilled by the date contemplated in the purchase contract, this, too, could reasonably be considered a request for any relief due Vankineni at law pursuant to the contract.

In addition, other relief requested in the complaint is available under the rights and obligations stated in the purchase contract as being available in the event of an action such as this one. Paragraph 16(a) of the purchase contract states: "If Buyer properly terminates the contract pursuant to its terms ... all deposits shall be returned to the Buyer with interest." The contract also states, in paragraph 38(f): "In the event of any litigation or arbitration concerning this

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transaction, the prevailing party shall be entitled to recover its reasonable costs and attorney's fees, inclusive of Court costs and attorney's fees incurred in any appellate proceeding." In paragraph 34(b) of the complaint, in conjunction with his request for a declaratory judgment "as to [the] rights and obligations" of the parties "with respect to the contract," Vankineni seeks an order "[r]equiring Santa Rosa ... to return to Dr. Vankineni all consideration flowing to [it] by virtue of the Contract including, without limitation, the cash deposit paid by Dr. Vankineni in January of 2005." Similarly, in conjunction with the claim for rescission, Vankineni states: "WHEREFORE, Dr. Vankineni prays the Court will enter an order rescinding the Contract and requiring Santa Rosa ... to restore to Dr. Vankineni all consideration flowing to [it] under the Contract, along with the costs of this action and any other relief at law or equity to which Dr. Vankineni may be entitled."

Finally, I note that a reversal should be based on arguments supported in law. See Rule 28, Ala. R. App. P. Vankineni's arguments for reversal are not compelling. As acknowledged on page 11 of Vankineni's brief, the contract

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states that it "shall be construed, applied, and enforced in accordance with the laws of the State of Florida." However, all Vankineni's arguments seek to apply Alabama rules of contract construction to the forum-selection clause, with no acknowledgment of Florida law.

In short, I am not convinced that Vankineni's claim for rescission or his request for a declaratory judgment can be resolved without resort to, and enforcement of, contractual provisions -- not only those governing the date for completion and delivery of the condominium unit, but also those governing the right to rescind the contract, and the remedies specified in the purchase contract in the event of rescission by Vankineni on the ground that Santa Rosa failed to perform its contractual obligations. Therefore, I view Vankineni's complaint as falling within the confines of the outbound forum-selection clause.

I am not convinced that the trial court erred in determining that this is an action to enforce one or more provisions of the purchase contract, or that the trial court erred in enforcing the outbound forum-selection clause. Accordingly, I respectfully dissent.