

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Eugene Cornett (“Eugene”) filed a complaint in Hamilton Superior Court for declaratory judgment requesting interpretation of a joint venture agreement between himself, Adaline Cornett (“Adaline”) and Dr. Wayne Miller (“Miller”). The trial court rejected Eugene’s argument that under the agreement he is entitled to a three percent (3%) management fee from the gross proceeds of the sale of certain real estate. Eugene appeals and argues that the unambiguous language of the agreement provides that he is entitled to a three percent (3%) management fee on “any gross income derived from the real estate.” We affirm.

Facts and Procedural History

In 1971, Eugene and his former wife Adaline entered into a joint venture agreement with Miller. Per the agreement, the parties purchased a one hundred and eighty acre farm in Hamilton County, Indiana. In pertinent part, the agreement provides:

2. Sale or Encumbrance. No party hereto shall sell or encumber any interest in said Real Estate without the written consent of the other parties here to so long as this Joint Venture Agreement is in full force and effect.
3. Management. Eugene P. Cornett shall have the rights and responsibility to manage said real estate on behalf of the other parties hereto, including the right to secure the services of a farm manager, tenant farmer or other services as shall be required for the proper conduct and operation of the business to be conducted on the Real Estate. Said management rights and responsibilities shall include, without limiting the generality thereof, negotiated leases, selling of crops, negotiating any and all sales, as well as acting in a general management capacity.
4. Management Fee. The management fee for said management services to be rendered by Eugene P. Cornett hereof shall be 3% of any gross income derived from the Real Estate. Such management fee shall be paid prior to the return of any investments or capital gains as described in paragraphs 5 and 6.

5. Distribution of Operating Income. All income derived from the Real Estate, other than income resulting from the sale of all or any portion thereof, shall be distributed on a 90% to Dr. Miller and a 10% to Cornetts ratio, such distributions to occur after deduction of the management fee described in paragraph 4, and after the payment of all other costs of securing farm manger, tenant farmer, or other services required for the proper conduct and operation of the business to be conducted on the Real Estate.

6. Distribution of Sale Proceeds. Any funds derived from the sale of all or any portion of the Real Estate herein described shall be allocated in the following manner:

Until Dr. Miller and Cornetts have recovered their respective total investments to date, 90% of all net income from sales after the deduction of the management fee shall be paid to Dr. Miller and 10% of all such income shall be distributed to Cornetts. At such time as the parties hereto have recouped all their investment, the monies from the sale of the Real Estate or portions thereof shall be distributed in the following manner: 75% of all net income from sales shall be distributed to Dr. Miller and 25% of all such income shall be distributed to Cornetts.

Appellant's App. pp. 19-20.

On or about December 2, 2005, the parties sold approximately 140 acres of the real estate to the City of Noblesville for \$2,800,000. On April 21, 2006, Eugene filed a complaint for declaratory judgment asserting that under the agreement he is entitled to a three percent (3%) management fee from the gross proceeds of the sale of the real estate. In response, Adaline and Miller filed counterclaims requesting judgments in their favor as to the issues raised in Eugene's complaint.

A hearing was held on August 16, 2006, and the trial court issued its findings of fact and conclusions of law on September 13, 2006, which provide in pertinent part:

8. . . . Paragraph 3 of the Agreement provides that [Eugene] was given the rights and responsibility to manage the Real Estate on behalf of the other parties. However, that same paragraph limits [Eugene's] management responsibilities to the proper conduct and operation of the business to be conducted on the Real Estate.

9. Paragraph 5 of the Agreement, which addresses the distribution of “operating income”, also refers to the business which is to be conducted “on the Real Estate.”

12. Counsel for Dr. Miller and Counsel for [Adaline] argued that the express language of Paragraph 3 identifies that [Eugene] was to manage the business to be conducted “on the Real Estate,” which clearly indicates the parties’ intent that [Eugene’s] scope of responsibilities as the General Manager was limited and, as discussed supra, specifically did not include the ability to sell the Real Estate. Nor do General Managers typically have the right to sell the property they manage. The Court concurs with this interpretation and concludes that the parties intended for [Eugene] to be compensated from the income that he generated in his management capacity but not from the proceeds when the Real Estate was sold.

Appellant’s App. p. 9 (emphasis in original). Therefore, the trial court concluded that the “Agreement does not provide that [Eugene’s] management fee include[s] three percent (3%) of the proceeds received from the sale of the Real Estate (or any future sales proceeds from the Real Estate), but is limited to three percent (3%) of the gross income generated from the business conducted on the Real Estate.” Id. at 12 (emphasis in original). Eugene now appeals.

Discussion and Decision

Eugene argues that the “trial court’s conclusion that [his] management fee should be limited to income derived from his management of farming operations is contrary to the clear and unambiguous language of the Joint Venture Agreement.” Br. of Appellant at 4. He asserts the agreement provides that he is entitled to a three percent (3%) fee of any gross income derived from the real estate.

Interpretation of a contract is a pure question of law and is reviewed de novo. Whitaker v. Brunner, 814 N.E.2d 288, 293 (Ind. Ct. App. 2004), trans. denied. “The unambiguous language of a contract is conclusive upon the parties to the contract and

upon the courts.” Id. When the contract language is unambiguous, the parties’ intent will be determined from the four corners of the contract. Id. at 293-94. When interpreting a written contract, we attempt to determine the intent of the parties at the time the contract was made by examining the language used in the instrument to express their rights and duties. Id. at 294. We read the contract as a whole and attempt to construe the contractual language so as not to render any words, phrases, or terms ineffective or meaningless. Id. “We must accept an interpretation of the contract that harmonizes its provisions, rather than one that places its provisions in conflict.” Id.

Paragraph Three of the contract entitled “Management” defines Eugene’s rights and responsibilities as the manager of the property. These duties and responsibilities are directed towards the real estate’s continued use as a farm until the parties sell the real estate. Specifically, Eugene has “the rights and responsibility to manage said real estate . . . including the right to secure the services of a farm manager, tenant farmer or other services as shall be required for the proper conduct and operation of the business to be conducted on the Real Estate.” Appellant’s App. p. 19. Accordingly, we agree with the trial court’s conclusion that Paragraph Three “limits [Eugene’s] management responsibilities to the proper conduct and operation of the business to be conducted on the Real Estate.” Appellant’s App. p. 9 (emphasis in original).

Paragraph Three also states, “[s]aid management rights and responsibilities shall include, without limiting the generality thereof, negotiating leases, selling of crops, negotiating any and all sales, as well as acting in a general management capacity.” Appellant’s App. p. 19 (emphasis added). Eugene asserts that the emphasized language

gives him the authority to manage the sale of the real estate. Reading this language in the context of the section of the agreement in which it appears does not lead us to that conclusion. That language merely grants to Eugene the authority to negotiate any sales that might arise by virtue of the real estate's continued use as a farm.

Paragraph Four of the agreement provides that Eugene will receive three percent (3%) of "any gross income derived from the real estate" for management services rendered. Appellant's App. p. 20. In light of Eugene's management responsibilities enumerated in Paragraph Three of the agreement, we conclude that the phrase "any gross income derived from the real estate" refers only to gross income acquired from business operations conducted on the real estate. This conclusion is bolstered by the provision providing for distribution of operating income, which provides:

All income derived from the Real Estate, other than income resulting from the sale of all or any portion thereof, shall be distributed on a 90% to Dr. Miller and a 10% to Cornetts ratio, such distributions to occur after deduction of the management fee described in paragraph 4, and after the payment of all other costs of securing [a] farm manager, tenant farmer, or other services required for the proper conduct and operation of the business to be conducted on the Real Estate.

Appellant's App. p. 20 (emphasis added).¹

Accordingly, we conclude that the agreement does not provide that Eugene's management fee includes three percent (3%) of the proceeds received from the sale of the real estate, and therefore, the judgment of the trial court is affirmed.

Affirmed.

¹ We agree with the trial court's conclusion that the reference to the management fee in Paragraph Six of the agreement (concerning the sale of the real estate) "makes clear that the sale proceeds would first be used to pay any management fees still due and owing before those proceeds were divided among the parties." Appellant's App. pp. 10-11.

DARDEN, J., and KIRSCH, J., concur.