MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Stacy Smith,
Appellant-Defendant,

v.

Michael Hensel,
Appellee-Plaintiff

March 13, 2023

Court of Appeals Case No. 22A-PL-1643

Appeal from the Shelby Superior Court

The Honorable R. Kent Apsley, Judge

Trial Court Cause No. 73D01-2009-PL-31

Memorandum Decision by Judge Mathias
Judges Bradford and Kenworthy concur.

Mathias, Judge.

[1] Stacy Smith appeals the Shelby Superior Court's entry of summary judgment on Michael Hensel's complaint for declaratory judgment in which Hensel

sought to have the parties' agreement declared invalid. Smith raises a single issue for our review, namely, whether the parties' contract is ambiguous such that a trier of fact must resolve its meaning. We reverse and remand for further proceedings.

Facts and Procedural History

[2] Hensel is the sole member of Hensel Construction, LLC. Hensel's company is in the masonry business. In 2015, Hensel sought capital to grow his company. Smith was interested in providing a short-term investment without becoming a member, and Hensel agreed to accept Smith's investment and "repay [Smith] on terms that will allow [Hensel] to retain control of [the c]ompany without outside influence." Appellant's App. Vol. 2, p. 9.

[3] Accordingly, on June 18, 2015, Smith and Hensel entered into a written investment agreement. Pursuant to that agreement, Smith would provide an "investment amount [of] $10,000." *Id.* The original draft of the agreement added that "[Smith] shall provide [Hensel] the [$10,000] in immediately available funds upon the execution of this Agreement." *Id.* However, before executing the agreement, the parties agreed to strike that language. *See id.* The agreement provided that Hensel would accept the $10,000 and use it "to promote Company growth and for no other purpose." *Id.* In exchange for the $10,000, Smith would receive 50% of the fair market value of the company as of June 18, 2020.

[4] Over the next few years, Smith contributed $4,500 in cash to the company. He also contributed "equipment in excess of $10,000 in value[,] which was desperately needed by the company." *Id.* at 21. Similarly, he "provided the use of a forklift for [one] year at $1500.00 rental value per month for [a] total of $18,000 at no charge to the company." *Id.* The equipment provided by Smith was "necessary for the operation of the company in order to be able to bid on and complete the masonry contracts that the company needed . . . in order to grow." *Id.*

[5] In June and July of 2020, Hensel and Smith began to discuss "the value of the company for the purposes of the payoff required under the agreement." *Id.* at 22. However, Smith "would not agree with Hensel's value." *Id.* Hensel then filed his complaint for declaratory judgment. In his complaint, he asked the court to declare the agreement unenforceable due to an alleged breach by Smith, namely, his failure to provide $10,000 in cash under the agreement. Thereafter, Hensel filed his motion for summary judgment. In response, Smith designated an affidavit in which he described his contributions to the company, namely, the $4,500 in cash along with the $28,000 in equipment.

[6] The trial court held a hearing on Hensel's motion for summary judgment. The court then concluded that the parties' agreement unambiguously called for a $10,000 cash investment by Smith, which Smith did not provide. The court thus entered summary judgment for Hensel. This appeal ensued.

Discussion and Decision

[7] Smith appeals the trial court's entry of summary judgment for Hensel. Our standard of review is well-established:

> [w]e review summary judgment de novo, applying the same standard as the trial court: "Drawing all reasonable inferences in favor of . . . the non-moving parties, summary judgment is appropriate 'if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.'" *Williams v. Tharp*, 914 N.E.2d 756, 761 (Ind. 2009) (quoting T.R. 56(C)). "A fact is 'material' if its resolution would affect the outcome of the case, and an issue is 'genuine' if a trier of fact is required to resolve the parties' differing accounts of the truth, or if the undisputed material facts support conflicting reasonable inferences." *Id.* (internal citations omitted).
>
> The initial burden is on the summary-judgment movant to "demonstrate [ ] the absence of any genuine issue of fact as to a determinative issue," at which point the burden shifts to the non-movant to "come forward with contrary evidence" showing an issue for the trier of fact. *Id.* at 761-62 (internal quotation marks and substitution omitted). And "[a]lthough the non-moving party has the burden on appeal of persuading us that the grant of summary judgment was erroneous, we carefully assess the trial court's decision to ensure that he was not improperly denied his day in court." *McSwane v. Bloomington Hosp. & Healthcare Sys.*, 916 N.E.2d 906, 909-10 (Ind. 2009) (internal quotation marks omitted).

Hughley v. State, 15 N.E.3d 1000, 1003 (Ind. 2014) (omission and some alterations original to *Hughley*).

[8] Hensel's motion for summary judgment turns on the interpretation of the parties' agreement. When a court is asked to interpret a contract, the court must determine the intent of the parties when they made the agreement. *Tender Loving Care Mgmt., Inc. v. Sherls*, 14 N.E.3d 67, 72 (Ind. Ct. App. 2014). The court examines the plain language of the contract, reads it in context and, whenever possible, construes it so as to render every word, phrase, and term meaningful, unambiguous, and harmonious with the whole. *Id.* Construction of the terms of a written contract is generally a pure question of law. *Id.* If, however, a contract is ambiguous, the parties may introduce extrinsic evidence of its meaning, and the interpretation becomes a question of fact. *Broadbent v. Fifth Third Bank*, 59 N.E.3d 305, 311 (Ind. Ct. App. 2016), *trans. denied*. "A word or a phrase is ambiguous if reasonable people could differ as to its meaning." *Id.*

[9] We conclude that the manner in which the parties' agreement called for Smith to invest the $10,000 into the company is ambiguous. The contract does not provide that the investment is to be made only in cash, nor does it provide any timeframe in which such a cash investment should be made over the five-year life of the agreement. Indeed, the original draft of the agreement stated that the $10,000 was to be contributed "in immediately available funds," but the parties struck that language before they signed the agreement. Appellant's App. Vol. 2, p. 9. Elsewhere, the agreement provided that the purpose of the investment was "to promote Company growth." *Id.* That purpose could be achieved in investments other than cash.

[10] Still, Hensel asserts that the use of the dollar sign and the agreement's reference to "seeking capital for Company growth" demonstrate a clear intent by the parties for the investment to be made in cash. *See id.* Hensel also notes that the agreement does not provide additional terms to better understand what the parties may have understood to be acceptable non-cash investments.

[11] We conclude, however, that the agreement's use of the dollar sign and reference to "capital" speaks only to the stated purpose of the agreement: to acquire $10,000 "to promote Company growth." *Id.* Without more, we cannot say that acquiring equipment or other assets that would meet that value and achieve that purpose was not within the parties' intent. Further, while the agreement does not say that non-cash investments were acceptable, it likewise does not demand a cash-only investment.

[12] Accordingly, we agree with Smith that the parties' agreement is ambiguous regarding how Smith could provide his investment. As the agreement is ambiguous, the parties may introduce extrinsic evidence to discern its meaning, and Smith's affidavit in opposition to summary judgment sufficed to establish a genuine issue of material fact on the question of the parties' intended meaning of their agreement. We therefore reverse the trial court's entry of summary judgment for Hensel and remand for further proceedings.

[13] Reversed and remanded.

Bradford, J., and Kenworthy, J., concur.