9-22-2015

Smith v. Smith Appellant's Reply Brief Dckt. 42621

IN THE SUPREME COURT OF THE STATE OF IDAHO

STAFFORD L. SMITH, Plaintiff and Counterclaim Defendant/Respondent, v. WOODRUFF D. SMITH, Defendant and Counterclaim Plaintiff/Appellant.	)	
WOODRUFF D. SMITH, Defendant/Appellant. Third-Party Plaintiff/Appellant, v. SMITH CHEVROLET CO. INC. and STAFFWOOD PARTNERSHIP, Third-Party Defendants/ Respondent.	)	Case No. CV-2014-1434 Docket No. 42621

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

HONORABLE JON J. SHINDURLING
District Judge

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There is one glaring omission from Respondent Stafford L. Smith's ("Stafford") Respondent's Brief that is central to this appeal—Stafford never once mentions the applicable standard for a motion for a judgment on the pleadings. That standard provides that courts will liberally construe facts in favor of the non-moving party, together with all reasonable inferences from the evidence. The reason Stafford omits that standard seems clear: the trial court found certain facts "troubling" about whether the parties had formed a contract, but failed to resolve those troubling facts in favor of Woody. In fact, the communications between the parties reveal that there are several factual issues suggesting the parties had *not* formed an enforceable contract, all of which must be construed in Woody's favor. Those factual issues include the following:

- Woody's counterproposal in the January 13 Letter that the parties set a refund of rent overpayment at $350,000, instead of performing the audit as Stafford had proposed. (R. Vol. 1, p. 84.)

- Woody's statement in the January 13 Letter that "[f]or purposes of certainty and clarification, we set forth below further detail about our understanding . . ." (R. Vol. 1, p. 83.)

- The series of other counterproposals in the January 13 Letter, only one of which Woody said was not necessary to the agreement. (R. Vol. 1, p. 84.)

- Stafford's January 30 Letter, which stated that "the parties will need to prepare and sign a third Settlement Agreement regarding this matter inasmuch as a number of terms are not covered by the enclosed Addendum." (R. Vol. 1, pp. 90–92.)

- Several new proposals by Stafford in the January 30 Letter. (*Id.*)

- Stafford's statement in the January 30 Letter asking whether Woody would "agree that the parties should prepare and sign a third settlement agreement along the lines proposed herein." (*Id.*)

- Email communications between counsel for the parties asking, "[w]hen do you anticipate getting back to us on our proposal[?]," stating that a "[d]raft of an acceptable Settlement Agreement" was required, and the statement from Stafford's counsel that ***"when trying to finalize agreements between these parties, the 'devil is in the details.'"*** (R. Vol. 1, p. 87–88; R. Vol. 2, p. 352) (emphasis added).

In light of those various factual issues that should have been construed in Woody's favor, the trial court simply misapplied the standard and its orders should accordingly be vacated.

Instead of focusing on that clear standard, Stafford presents various arguments for why this Court should affirm the orders below. This reply memorandum addresses each of those arguments in turn and is divided in four parts. First, it explains why Woody's appeal is not moot. Second, it explains that Stafford's artful arguments do not change the rule that contract formation is a question of fact for the trier of fact. Third, it explains that several genuine issues of material fact preclude judgment on the pleadings in favor of Stafford, particularly when inferences are drawn in Woody's favor. Fourth, it explains why the award of attorneys' fees should be vacated.

I. Woody's Appeal is Not Moot—Woody's Satisfaction of the Judgment Was Involuntary and Woody Has Not Satisfied the Judgment on Attorneys' Fees.

Stafford's initial argument is that Woody's appeal is moot because Woody "proceeded to close on the real estate transactions and cash disbursements contemplated by the Agreements." (Resp. Br. 12–13.) That argument, however, falls short for at least two reasons.

First, Woody only closed on the real estate transactions and cash disbursements because he was under a court order to do so ***within ten days***. That point is notable because "[t]he generally accepted test for determination whether satisfaction of a judgment cuts off the payor's right to appeal is whether the satisfaction was voluntary." *Int'l Bus. Machines Corp. v. Lawhorn*, 106 Idaho 194, 196, 677 P.2d 507, 509 (Idaho Ct. App. 1984). But where, as here, "the satisfaction was involuntary, the appeal remains viable." *Id.* A ten-day deadline for that kind of transaction was exceptionally tight and was notable, among other reasons, because it was so much shorter than Woody's deadline to file a notice of appeal, which was 42 days. (I.A.R. 14(a).) Woody was therefore under a court order to specifically perform at a point that was long before his deadline to file a notice of appeal. Woody's satisfaction of judgment, therefore, was hardly "voluntary" as Stafford alleges.

Stafford cites several cases to argue that Woody's appeal is moot, but those cases are either inapposite or suggest that Woody's appeal is viable. Stafford cites, for example, *Farrell v. Whiteman*, 146 Idaho 604, 200 P.3d 1153 (Idaho 2009), but that decision is notable because this Court determined that the subject appeal was *not* moot. Like the parties in that case, the parties here "have a legally cognizable interest in the outcome" and the appeal is accordingly not moot *Id.* at 610. Stafford also cites *Quillin v. Quillin*, but that decision is distinguishable. (Resp. Br. 12 (citing 141 Idaho 200, 108 P.3d 347 (Idaho 2005)).) *Quillin* did not involve a ten-day order to specifically perform, but instead involved an appellant who "involuntarily paid the majority of [a] judgment in order to avoid execution upon the primary asset awarded him," but then also,

"[w]hile the appeal was pending . . . voluntarily paid the balance owing in full satisfaction of the judgment." *Id.* Notably, the appellant was not under a court order to specifically perform and he voluntarily paid a portion of a judgment even though his appeal was pending, which, this Court determined, "constitutes an accord and satisfaction rendering her cross-appeal moot." *Id.* at 202. *Quillin* is therefore inapposite and does not render Woody's appeal moot. The same is true for the other cases that Stafford cites that are from other jurisdictions and not controlling in any event. Woody's specific performance was involuntary and he has a live and legally cognizable interest in this appeal.

Stafford's arguments about mootness fail for a second reason as well—Woody has not satisfied the judgment awarding Stafford attorney's fees. Stafford has sought to garnish a portion of those fees, but such garnishment is certainly not "voluntary," and the bulk of the attorneys' fee award remains unpaid pending resolution of this appeal. At the very least, therefore, Woody's appeal is not moot with respect to that fee award. Woody's appeal is simply not moot and instead presents cognizable issues related to both the judgment ordering specific performance and the award of attorneys' fees.

II. Contract Formation is a Question of Fact to be Determined by the Trier of Fact; the Parties Did Not Stipulate Otherwise, Nor Could They.

Aside from mootness, Stafford also suggests that this Court should affirm the judgments below because the trial court made *legal determinations* about whether the parties formed contracts, not *factual determinations*. This Court, however, has explained that "[g]enerally the determination of the existence of a sufficient meeting of the minds to form a contract is a

question of fact to be determined by the trier of facts." *Vanderford Co. v. Knudson*, 249 P.3d 857, 865 (Idaho 2011). Stafford goes to great lengths to argue against that straightforward principle, but his efforts are unavailing.

Stafford relies on *Suitts v. First Sec. Bank of Idaho, N.A.*, 125 Idaho 27, 867 P.2d 260 (1993) to argue that where there is no dispute as to what the parties wrote in their various communications, the question whether those communications formed a contract "is a legal issue, not a factual issue." (Resp. Br. 15–16.) One problem with Stafford's reliance on that 1993 decision is that myriad subsequent decisions from this Court have explained that "[w]hether the parties intended to form a contract is a question of fact to be determined by the trier of fact." *Griffith v. Clear Lakes Trout Co.*, 143 Idaho 733, 738, 152 P.3d 604 (2007); *see also Shore v. Peterson*, 146 Idaho 903, 913, 204 P.3d 1114 (2009) ("Whether a contract . . . was formed is a question of fact."); *P.O. Ventures, Inc. v. Loucks Family Irrevocable Trust*, 144 Idaho 233, 237, 159 P.3d 870 (2007) ("Formation of a contract is generally a question of fact for the trier of fact to resolve.") (internal quotation marks and citations omitted). Those cases rebut Stafford's contention that "the issue of contract formation is a legal issue, not a factual issue." (Resp. Br. 15.) In other words, even where there is no dispute about the content of communications between the parties, whether those communications manifested an intent to form a contract is itself a factual question.

Stafford notes that *Shields & Co. v. Green* also provided that "if the evidence is insufficient, undisputed or conclusive as to the existence or terms of a contract, it should not be

submitted to the jury." *Shields & Co. v. Green*, 606 P.2d 983, 986 (Idaho 1980); (Resp. Br. 17.) But that statement simply means that a court may enter a directed verdict or grant summary judgment where no reasonable fact-finder could find otherwise. That statement from *Shields* does *not* rebut or change the well-settled rule that contract formation is a question of fact. Indeed, this Court in *Shields* reversed a directed verdict on the question of contract formation because it found that reasonable minds could disagree. This court concluded that "[c]onstruing [the] evidence most favorably for the nonmoving party, we cannot say that the evidence was so clear and undisputed that reasonable minds could not reach different conclusions." *Id.* at 987. Where, as here, reasonable minds could reach different conclusions on contract formation based on the evidence, judgment on the pleadings is not permissible.

This point about when trial courts can rule on the issue of contract formation is also relevant to Stafford's misguided suggestion that the parties somehow stipulated to have the trial court rule on the issue of contract formation one way or another. (*See* Resp. Br. 14–15.) Stafford argues that "[t]hroughout the proceedings below, the parties agreed and represented that the issues were *ripe* for decision by the district court." (Resp. Br. 14(emphasis added).) Setting aside that *ripeness* relates to whether the facts in the case have matured into an existing substantial controversy and has nothing to do with whether the trial court could permissibly rule on contract formation, the parties never stipulated, agreed, or represented that the trial court could and should rule on contract formation one way or another. Instead, each party through its respective motion simply asked the trial court, in essence, to determine that the evidence was so

clear and undisputed that reasonable minds could not reach a conclusion different from its own. Woody's motion, for example, asked the trial court to determine whether the evidence was so clear and undisputed that the parties had ***not*** formed a contract that reasonable minds could not reach different conclusion. Woody did not ask the trial court to determine whether a contract had been formed one way or another. Each party asked the trial court to either rule in its favor or to simply deny the motion on the basis that there were factual issues and let the case proceed. Had the parties wanted the trial court to be the fact finder, they could have asked for a bench trial, but they did no such thing. Idaho courts make clear that it is the province of the jury, not the trial court, to determine whether the parties intended to form a contract and the judgment on the pleadings in favor of Stafford ran afoul of that rule.

Finally, Stafford discusses the specifics from *Vanderford Co.*, 249 P.3d 857; *Lindsey v. Cook*, 82 P.3d 850 (Idaho 2003); and *J.H. Landworks, LLC v. T. Lariviere Equip. & Excavation, Inc.*, No. 2:11-CV-00488, 2012 WL 4758079 (D. Idaho Oct. 5, 2012), to argue that contract formation is a legal issue. (Resp. Br. 16–19.) Stafford's discussion of those cases, however, is merely an exercise in extrapolation. Stafford cites no specific language from those decisions that provides that contract formation is a legal issue, nor could he. The reason he cannot is because those decisions stand for the opposite proposition. This Court's statement in *Vanderford* could not be more straightforward: "[g]enerally the determination of the existence of a sufficient meeting of the minds to form a contract is a question of fact to be determined by the trier of facts." *Vanderford*, 249 P.3d at 865. The federal district court in *J.H. Landworks* similarly

explained that "the case is not one that is appropriate for summary judgment" and that "[w]hat [the] agreement was is an issue of fact for the jury." 2012 WL 4758079, at *7. And this Court in *Cook* "liberally construe[d] the facts in favor of the non-moving party, . . together with all reasonable inferences from the evidence," and found that "genuine issues of material fact" precluded summary judgment. 139 Idaho at 570.

It is no surprise that Stafford goes to lengths to argue against the well-established principle that contract formation is a question of fact—that principle is simply fatal to Stafford's judgment on the pleadings. The trial court should have left that determination for the jury and when reasonable inferences and conclusions are drawn in Woody's favor there is no question that the judgment on the pleadings should be vacated.

III. Any Inferences About Whether the Parties Formed Enforceable Agreements Must Be Drawn in Favor of Woody and there Are Several Genuine Issues of Material Fact About Whether the Parties Formed Enforceable Agreements.

As mentioned above, Stafford elaborates on the "Applicable Legal Standard for Determining Whether an Enforceable Contract has been Formed." (Resp. Br. 19–20.) But conspicuously absent from Stafford's discussion of "Legal Standard[s]" is the applicable standard of review for a motion for judgment on the pleadings. The standard provides that courts "should liberally construe facts in favor of the non-moving party, together with all reasonable inferences from the evidence." *Lindsey*, 139 Idaho at 570.

This section explains why the orders below should be vacated under that standard and is divided in two parts. First, it explains why issues of material fact related to Woody's January 13

Letter preclude a judgment on the pleadings. Second, it explains why issues of material fact related to the parties' communications *after* January 13 also preclude a judgment on the pleadings.

A. Woody's January 13 Letter Contained a Counterproposal about $350,000, as well as other Counterproposals, Which Require that the Trial Court's Order on Contract Formation be Vacated.

The January 13 Letter contained several counterproposals that rebut the notion that it consummated an enforceable contract. One of those counterproposals is particularly demonstrative of this point. In the December 20 Letter, Stafford had proposed an audit to determine the amount owed to Smith Chevrolet for "funds it has advanced above its lease obligation on behalf of Staffwood." (R. Vol. 1, p. 80.) Instead of agreeing to that audit, however, Woody made a counterproposal in the January 13 Letter. Woody proposed that the "refund of rent overpayment by Smith Chevrolet and other expenses mentioned in [the December 20] letter, will be set at $350,000." (R. Vol. 1, p. 84.) That plain statement was obviously a counter proposal, a point which Woody later re-emphasized by stating, "***Woody proposes*** to set this at $350,000 and be done with it." (R. Vol. 1, p. 84 (emphasis added).)

Stafford contends that the trial court "correctly determined that the totality of the circumstances of the January 13 Letter shows that this was a request for modification." (Resp. Br. 24.) But Stafford fails to mention that the trial court also found that the proposal was "troubling and would normally be seen as a clear counter-offer." (R. Vol. 3, p. 383.) That statement, coupled with the standard for a motion for judgment on the pleadings, establishes that

such a "troubling" finding should have been construed in Woody's favor, but was not. This fact alone calls for the judgment on the pleadings to be vacated.

The January 13 Letter also contained seven other proposed material terms that were not included in the December 20 Letter. Stafford glosses over those terms and instead focuses on the one proposal that Woody made for which Woody "did not require Stafford's agreement." (Vol. 1, p. 83.) But that proposal is a red herring—of course *that* proposal is not a counterproposal that defeats contract formation because that was the one proposal on which Stafford's agreement was not required. But the same is not true for the other myriad proposals in the June 13 Letter, including the proposal about $350,000—those are counterproposals that rebut the notion that a contract was formed.

B. Communications After the January 13 Letter also Create Genuine Issues of Material Fact About Whether the Parties Formed Enforceable Agreements.

In response to the January 13 Letter, counsel for Stafford wrote that "the parties will still need to prepare and sign a third Settlement Agreement regarding this matter inasmuch as a number of terms are not covered by the enclosed Addendum." (R. Vol. 1, pp. 90–92.) That statement alone establishes that the parties had not yet reached an enforceable contract because they had yet to agree on several material terms and because "a written draft [was] contemplated at the final conclusion of the negotiations," but never executed. *Lawrence v. Hutchinson*, 146 Idaho 892, 898, 204 P.3d 532, 538 (2009).

The January 30 Letter also outlined several new proposals for such a "settlement agreement," and asked "whether you [Woody] agree that the parties should prepare and sign a

third settlement agreement along the lines proposed herein." (R. Vol. 1, pp. 90–92.) Stafford adds emphasis to that entire phrase in his brief except for the clause that states "along the lines proposed herein," to support his contention that "[m]emorializing the parties' agreement in a formal settlement would have been helpful, but was not required for enforceability." (Resp. Br. 31.) But the more natural reading of that sentence is that the parties anticipated a formalized "third settlement agreement" and that Stafford's real question was whether Woody would agree to such an agreement "*along the lines proposed herein.*" (R. Vol. 1, pp. 90–92 (emphasis added).) That statement, particularly viewed in a light most favorable to Woody's position, smacks of another set of counterproposals and suggests that the parties had not yet formed an enforceable contract.

Stafford also cites *Ogden v. Griffith*, 236 P.3d 1249 (Idaho 2010), to argue that the "parties similarly agreed on the essential terms to enforce the Bid Properties Purchase Agreement." (Resp. Br. 27.) The problem for Stafford is that *Griffith* is inapposite. The procedural posture in *Griffith* was *not* a *de novo* appeal of a grant of summary judgment or judgment on the pleadings, which requires that inferences be construed in favor of the non-moving party. Instead, *Griffith* involved a motion for "[e]nforcement of a settlement agreement where an evidentiary hearing [had] been conducted." *Id.* at 1252. The trial court in *Griffith* was able to determine whether the settlement agreement was sufficiently definite to allow enforcement because, unlike here, the trial court was the trier of fact. Stafford cites *Griffith* to outline what might be "essential" terms to a contract, but the reality is that which terms are

"essential" or "material" is a fact-intensive inquiry, which turns on the specifics of a given negotiation and the unique interests of the parties.

Communications between counsel for the parties *after* the January 30 Letter similarly establish that the parties had not yet formed a contract. As outlined in Woody's initial brief, in those communications the parties exchanged additional counterproposals, asked "[w]hen do you anticipate getting back to us on our proposal[?]," stated "it seems we are very close to agreement, subject to some clarifications or decisions on the following list of issues," stated that a "[d]raft of an acceptable Settlement Agreement" was required, and, as expressed by Stafford's counsel, that ***"when trying to finalize agreements between these parties, the 'devil is in the details.'"*** (R. Vol. 1, p. 87–88; R. Vol. 2, p. 352) (emphasis added).

In citing the history of the parties as evidence that a definite written agreement was necessary, Stafford's counsel was aware that the two previous settlement agreements between Stafford and Woody had essentially failed because of differing interpretations as to the meaning of the previous settlement agreement. The failure of the first Settlement Agreement resulted in negotiations for and eventually execution of a second Settlement Agreement, and the failure of the second Settlement Agreement resulted in new negotiations to attempt to agreed upon yet a third Settlement Agreement, which in turn departed from the terms of the second Settlement Agreement to attempt to resolve the dispute. In view of the history of the difficulty in "finaliz[ing] agreements between these parties," both counsel contemplated, and indeed Stafford's counsel *insisted,* that there be a new definitive and final Third Settlement Agreement

in which all of the "details" had been thoroughly worked through. That never happened because the trial court cut the process short and found an agreement where none had been finally reached.

In short, as every practitioner has experienced, there is no agreement until there is full agreement. The above statements alone create several genuine issues of material fact about whether the parties had formed an enforceable agreement.

Finally, in a footnote, Stafford argues that Woody made a "binding admission and acknowledgement" in one of those communications "that the parties had entered into a separate settlement agreements as alleged in the Complaint." (Resp. Br. 25.) The specific statement, which was made by counsel for Woody, was "[w]e realize that Stafford has the right to treat this as a sale and exchange of the 3 bid properties under our Settlement Agreements." (R. Vol. 1, pp. 87–88.) But that statement was hardly an admission that the parties had entered an enforceable agreement on the bid properties. Instead, it was a reference to the parties' two previous *formalized settlement agreements* from 2010 and 2012. The bottom line is that after the January 13 Letter, the parties continued their negotiations and series of counterproposals and their communications, at a minimum, present several genuine issues of material fact about whether the parties had formed a contract.

IV. This Court Should Vacate the Award of Attorneys' Fees Because Genuine Issues of Material Fact Precluded Judgment on the Pleadings.

Stafford has never cited any discussion or correspondence between the parties as to attorneys' fees in connection with negotiation of a desired Third Settlement Agreement. That was among the many "details" to be agreed to and included in the definitive Third Settlement

Agreement insisted upon by Stafford's counsel. The trial court erroneously and unfairly applied the attorneys' fee provisions of the Second Settlement Agreement in granting attorneys' fees to Stafford. That approach was wrong because the Third Settlement Agreement was not to *enforce* the Second Settlement Agreement, but to *depart* from it. The parties never agreed in these negotiations for the Third Settlement Agreement that the loser would pay the attorneys' fees, and the trial court erred in applying an attorneys' fee provision from the Second Settlement Agreement.

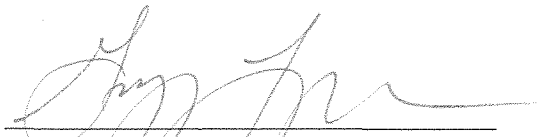
Woody also asks this Court to vacate the award of attorneys' fees on the basis that Stafford should not have been the "prevailing party" in his motion for judgment on the pleadings. Even if this Court were not to vacate the trial court's order of specific performance, which it should, the attorneys' fees that were awarded in wake of that decision were unwarranted and draconian given the circumstances, and should be vacated because genuine issues of material fact preclude a judgment on the pleadings in the first instance. Woody accordingly ask this Court to vacate that award of attorneys' fees for this reason and for the additional reasons discussed at length in Woody's initial brief to this Court.

CONCLUSION

Woody accordingly requests that this Court vacate the judgment on the pleadings and accompanying fee award and remand this matter for further proceeding in the trial court consistent with applicable law regarding contract formation.

DATED this 21st day of September 2015.

RAY QUINNEY & NEBEKER P.C.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 21st day of September 2015, electronically sent a copy of the REPLY BRIEF OF APPELLANT to the Clerk of the Idaho Supreme Court and I also served hard copies of the attached REPLY BRIEF OF APPELLANT via email and hand-delivery to:

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