Western Caroline Trading Co. v. Philip, 13 ROP 28 (2005)

WESTERN CAROLINE TRADING COMPANY,
Appellant,

v.

GODWIN PHILIP, ROSE MOSES,
NONA NAITO, WILLIANA SHIPRIT,
IGNACIO FRANZ, JULIA HARUO,
FULDA NAITO, and GWEN IGNACIO,
Appellees.

CIVIL APPEAL NO. 04-032
Civil Action No. 00-190

Supreme Court, Appellate Division
Republic of Palau

Decided: November 2, 2005[1]

Counsel for Appellant: David Shadel

Counsel for Appellee: Honora Rudimch

Appeal from the Supreme Court, Trial Division, the Honorable KATHLEEN M. SALII, Associate Justice, presiding.

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice, LARRY W. MILLER, Associate Justice; LOURDES F. MATERNE, Associate Justice.

PER CURIAM:

In the action below, Western Caroline Trading Company ("WCTC") obtained a judgment against Godwin Philip, Rose Moses, Nona Naito, Williana Shiprit, Ignacio Franz, Julia Haruo, Fulda Naito, and Gwen Ignacio (hereinafter referred to as "debtors") for $7,942.79 arising from an unpaid promissory note. None of the debtors have appealed the judgment. Instead, the sole issue on appeal is whether the trial court erred in failing to award WCTC, the prevailing party, attorney fees and costs.

Both parties acknowledge that attorney fees are governed by a clause contained in the note, which states:

> In the event of commencement of suit to enforce payment of ⊥29 this note, the undersigned agrees to pay such additional sums as attorney fees as the court in

[1] The parties waived oral argument, and the Court agrees that oral argument would not materially advance the resolution of this appeal.

such action may judge reasonable.

WCTC contends this language mandates an award of reasonable attorney fees, regardless of whether, as found by the trial court, the debtors had a good faith basis for failing to repay the loan. Accordingly, WCTC argues that it was an error for the trial court to deny attorney fees completely.[2]

We disagree. In our opinion, WCTC's interpretation places too much emphasis on the phrase "attorney fees," and ignores other important surrounding language in the clause. The clause does not say the debtors "shall pay reasonable attorney fees" or that a court "must determine reasonable attorney fees".[3] Indeed, we find "reasonable" actually modifies "additional sums." Under our interpretation, the debtors contractually bound themselves to pay whatever "additional sums" – meaning an amount greater than the outstanding debt plus interest – as attorney fees a court "may judge reasonable." *See Eller v. ROP* , 10 ROP 122, 128 (2003) (the word "may" connotes discretion); *Black's Law Dictionary* 1265 (6th ed. 1990) (defining "reasonable" as "fair, proper, or *suitable under the circumstances* ") (emphasis added). Consequently, we find the clause, by its own language, allows a court to determine whether it is reasonable to award *any* sum more than the contracted amount. *See, e.g., Forrester v. Craddock*, 317 P.2d 1077, 1083 (Wash. 1957) ("statute is not mandatory, but, by its terms, permissive, leaving the matter of allowing attorneys' fees, as well as the amount thereof, to the discretion of the superior court."). In this case, we infer the trial court found it would be *unreasonable*, presumably because the debtors did not "have ill will or otherwise act improperly" and that they "presented reasonable legal arguments." Summary Judgment at 5. While we might have decided the issue differently, we ⊥30 nonetheless hold that the trial court did not abuse its discretion in completely denying WCTC's request for attorney fees. *Estate of Novolich* , 500 P.2d 1297 (Wash. 1972) (trial court has "broad discretion" in determining the amount of attorney's fees).[4]

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[2] Despite WCTC's argument to the contrary – that it had a contractual property right under the promissory note protected by the due process clause – there is no constitutional issue for us to decide. The issue of attorney fees is solely a matter of contractual interpretation, and WCTC does not have a constitutional right to have a contract interpreted in its favor.

[3] In its brief, WCTC relies in large part on *Singleton v. Frost* , 742 P.2d 1224 (Wash. 1987). However, we find that significant factual differences in that case make it inapposite to the immediate matter. In holding that a judicial power "does not extend to allow the complete denial of attorney's fees where the contract provides for their award," *id*. at 1228, the court in *Singleton* relied on the fact that both "the promissory note and [the controlling statute] which apply in the present case contain mandatory language providing that the prevailing party '*shall* be entitled to reasonable attorney's fees.'" *Id*. at 1227 (emphasis in original). *See also Bennett v. Baugh*, 985 P.2d 1282 (Or. 1999) ("promisor shall be liable for attorney fees and costs to the prevailing party"); *In re Marriage of Pfennings*, 989 P.2d 327 (Mont. 1999) ("the court should award attorney fees and costs to the prevailing party"); *Farm Credit Bank v. Wissel* , 836 P.2d 511 (Idaho 1992) ("Lessee hereby agrees to pay the Lessor's attorney fees and costs incurred in said suit or action"). In contrast, we find the language of the promissory note does not contain any mandatory language. Furthermore, although it is not controlling, it is nonetheless noteworthy that 14 PNC § 702 permits a court "in its discretion" to award reasonable attorney's fees, but only if it finds the complaint to be "groundless, frivolous, or brought in bad faith."

[4] WCTC is correct in arguing that the standard of review for a trial court interpretation of a document is *de novo*. *Palau Marine Indus. Corp. v. Pac. Call Invs., Ltd* , 9 ROP 67 (2002). However, because the contractual language is permissive, we review the amount of attorney fees awarded by the

For the same reasons, we find that, under 14 PNC § 702 and ROP R. Civ. P 54(d), [5] the trial court did not err in denying an award of costs. It has been recognized that "courts' discretion allows them to make decisions about costs on basis of circumstances and equities of each case." *Kulas v. Becheserrak* , 7 ROP Intrm. 106 (1998) (citing *Federal Practice and Procedure* § 2668 (1983)). Again, we infer from the trial court's reasoning that it denied costs because it found the debtor's failure to repay the debt was not unreasonable or based on bad faith. Summary Judgment at 5. We hold that this decision is also not an abuse of discretion. *See also* 20 Am. Jur. 2d *Costs* § 94 ("[T]he award of costs is within the sound discretion of the trial court, and its discretion will not be overturned on appeal absent an abuse of discretion, that is, on a clear showing that the trial court's determination was arbitrary, capricious, or manifestly unreasonable, or that it stemmed from an improper motive.").

CONCLUSION

For the foregoing reasons, the trial court's denial of attorney fees and costs to WCTC is AFFIRMED.

NGIRAKLSONG, Chief Justice, concurring:

I concur with the majority opinion because its reading of the disputed language of the promissory note regarding attorney fees is reasonable, given the ambiguity of the language of the note. "Ambiguity exists when (language) is capable of being understood by reasonably well-informed persons in two or more different senses." 2A Norman J. Singer, *Statutes and Statutory Construction* § 45.02 at 11-12 (6th ed. 2000). I write separately, however, because I believe there is an equally, if not more, reasonable reading of the language of the note.

The clause in the note giving rise to the dispute reads:

> In the event of commencement of suit to enforce payment of this note, the undersigned agrees to pay such additional sums as attorney fees as the court in such action may judge reasonable. (emphasis added).

I read the word "reasonable" as referring to the amount of the attorney fees and not ⊥31 whether or not it is "reasonable" to award attorney fees. A word "gathers meaning from the words around it." *Jarecki v. G.D. Searle & Co*., 81 C.Ct.1579, 1582 (1961). "[T]he meaning of doubtful words may be determined by reference to their relationship with other associated words or phrases." 2A Norman J. Singer, *Statutes and Statutory Construction* § 47:16 at 265 (6th ed.2000). The note

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trial court under the abuse of discretion standard. *Palmo Corp. v. American Airlines, Inc* ., 983 F.2d 681, 688 (5th Cir. 1993) (abuse of discretion is the standard of review of an award of attorneys' fees),

[5] 14 PNC § 702 states: "The court *may* allow and tax any additional items of cost or actual disbursement which it deems just and finds have been necessarily incurred for services which were actually and necessarily incurred." (emphasis added).

ROP R. Civ. P 54(d) reads: "[C]ost shall be allowed as a matter of course to the prevailing party *unless the court otherwise directs* . . ." (emphasis added).

first states that defendants below "agree to pay" attorney fees. The words "additional sums" may be confusing unless you treat them as superfluous. The word "reasonable" comes at the end of the clause which I read to modify the amount of attorney fees.

Hence, my reading of the note is that in case of a court action to collect a debt, the debtor "agrees to pay" attorney fees, but the amount shall be what the court may deem "reasonable." The majority reads the language to mean that the court may award attorney fees if it deems reasonable to do so. I disagree, but since the language is ambiguous (*Noah v. ROP*, 11 ROP 227, 233 (2004)), I would resolve the ambiguity against the drafter of the note, the appellant, by concurring with the majority. "[A] contract will be construed most strongly against the party who supplied a form for the agreement . . . ." 17A Am.Jur. 2d *Contract* § 343 (2004).