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Order on Motion for Summary Judgment
(O'BRIEN)

Elizabeth E. Long
Fulton County Superior Court

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

FILED IN OFFICE
FEB 08 2012
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

Randy Pirotin

COPY

JOY W. O'BRIEN, Executrix of the Estate)
of Randy Pirotin, Deceased)

Plaintiff,)

v.)

Civil Action File No.
2010-CV-188721
BUS 2

JOSEPH CONZA, PAUL GWIN,)
GEORGIA ENTERPRISES, INC., FINNA,)
LP, NICKCO GENERAL, INC., and)
PEACH STATE FRANCHISE)
CONCEPTS, LP,)

Defendants.)

ORDER ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

On February 7, 2012, counsel appeared before the Court to present oral arguments on Plaintiff's Motion for Summary Judgment Against Joseph Conza. Upon consideration of the motion, the briefs submitted on the motion, the arguments of counsel and the record before the Court, this Court finds as follows:

Defendant Joseph Conza ("Conza") and Randy Pirotin ("Pirotin"), now deceased, were partners in Defendant Finna LP ("Finna"), one of several entities through which Pirotin and Conza carried out their duties as Area Developers of the Blimpie franchise system in Georgia. On May 1, 2003, Pirotin and Conza executed an Equityholders Agreement relating to their interest in Finna. On July 27, 2008, Pirotin died. Plaintiff contends that the Equityholders Agreement requires Conza to purchase the ownership interest held by Pirotin in Finna for \$1,096,851.66 pursuant to a formula set forth in Section 2(b) of the Equityholders Agreement.

Section Two of the Equityholders Agreement provides as follows:

In the event of and upon the death of any Equityholder, the Ownership Interest held by the deceased Equityholder shall continue to be held by the heirs and assigns of such Equityholder until the sale of the deceased Equityholder's Ownership Interest pursuant to this Agreement....

[T]he purchase price to be paid for the Ownership Interests (the "Purchase Price") shall be a sum of money which is calculated by multiplying the proportionate interest of the selling, deceased Equityholder by four (4) times the annual income of Georgia Enterprises, Inc. ("GEI")...less the surviving Equityholder's portion of the principal and interest owed to Patrick Pompeo ("Pompeo") under that certain Promissory Note dated May 1, 2003, in the principal amount of \$1,568,999.39 (the "Note")... .

The Equityholders agree to cause the price of any and all Ownership Interests sold under the provisions hereof to be ascertained, and the transaction closed, with all reasonable speed and within a period of not more than sixty days following the sending of notice by the surviving Equityholder to the deceased Equityholder's estate.

Plaintiff moves the Court for summary judgment against Conza for the amount of \$1,096,851.66, contending that this is the amount he owes the Estate under the express terms referenced above.

A court should grant a motion for summary judgment pursuant to O.C.G.A. § 9-11-56 when the moving party shows that no genuine issue of material fact remains to be tried and that the undisputed facts, viewed in the light most favorable to the non-movant, warrant summary judgment as a matter of law. Lau's Corp., Inc. v. Haskins, 261 Ga. 491, 491 (1991).

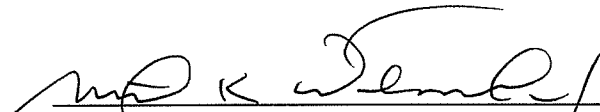
Construction of a contract is a matter of law for the court so long as the contract is unambiguous. CNL APF Partners, LP v. Department of Transp., 307 Ga. App. 511 (2010). Agreements are generally enforced as written, and the intent of the parties taken from the agreement itself. Brooks v. Gwinnett Community Bank, 311 Ga. App. 806 (2011). Disagreement as to the intent of the parties to a contract is an evidentiary, factual matter for

resolution by jury and not a matter of law for determination by the court. Rolan v. Glass, 305 Ga. App. 217 (2010).

Upon review of the Equityholders Agreement, the Court finds that the express language of the contract imposes no obligation on Conza to purchase Pirotin's interest in Finna. Nowhere in the Equityholders Agreement is the surviving Equityholder mandated to purchase the deceased Equityholder's interest. Thus the intent of the parties is an issue of fact for a jury.

Additionally, both parties have pointed to alleged "scrivener's errors" in the provision setting forth the calculation of the purchase price of the deceased Equityholder's interest. Thus the Court finds that Plaintiff has failed to carry her burden of establishing that no issues of fact exist regarding the interpretation of the Equityholders Agreement. Accordingly, Plaintiff's motion is **DENIED**.

SO ORDERED this 8th day of February, 2012.


MELVIN K. WESTMORELAND, SENIOR JUDGE
for ELIZABETH E. LONG, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

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