

No. 24645 -- Lonnie Alan Brewer and Vivian Brewer v. Hospital Management Associates, Inc., a Kentucky Corporation qualified to do business and doing business in the State of West Virginia, Health Management Associates of West Virginia, Inc., a West Virginia Corporation, Russell A. Salton, III, and Robert L. Salton as Co-Executors of the Estate of Russell A. Salton, M.D., deceased, Alice K. Tchou, Administratrix of the Estate of Robert J. Tchou, M.D., deceased, and Williamson Memorial Hospital, a Partnership

Workman, J., dissenting:

This court has consistently held that a valid written agreement using plain and unambiguous language is to be enforced according to its plain intent and should not be construed. *See Clint Hurt & Associates, Inc. v. Rare Earth Energy, Inc.*, 198 W.Va. 320, 480 S.E.2d 529 (1996), *Dawson v. Norfolk and Western Ry. Co.*, 197 W.Va. 10, 475 S.E.2d 10 (1996), *VanKirk v. Green Const. Co.*, 195 W.Va. 714, 466 S.E.2d 782 (1995), *Watts v. West Virginia Dept. of Health and Human Resources/Division of Human Services*, 195 W.Va. 430, 465 S.E.2d 887 (1995), *HN Corp. v. Cyprus Kanawha Corp.*, 195 W.Va. 289, 465 S.E.2d 391 (1995), *Raines v. White*, 195 W.Va. 266, 465 S.E.2d 266 (1995), *Akers v. West Virginia Dept. of Tax and Revenue*, 194 W.Va. 456, 460 S.E.2d 702 (1995), *Scyoc v. Holmes*, 192 W.Va. 87, 450 S.E.2d 784 (1994), *Fraley v. Family Dollar Stores of Marlinton, West Virginia, Inc.*, 188 W.Va. 35, 422 S.E.2d 512 (1992), *Billiter v. Melton Truck Lines, Inc.*, 187 W.Va. 526, and 420 S.E.2d 286 (1992), *Sally-Mike Properties v. Yokum*, 175 W.Va. 296, 332 S.E.2d 597 (1985).

This agreement is not ambiguous.

As part of the terms of the Agreement of Sale, HMA contracted to assume “all accounts payable and other liabilities of Hospital, represented to be in the approximate amount of One Hundred Thousand Dollars[.]” (emphasis added)

As the trial court indicated, it was not a very wise agreement.¹ But there it is in plain English: All liabilities. The phrase “represented to be in the approximate amount of One Hundred Thousand Dollars” is just what it says: a representation by one of the parties to the contract, although (it turns out) an incorrect one.

However, if the trial court believed this agreement was ambiguous, then it should have permitted the parties to have presented evidence with regard to their intentions at the time of the making of the contract. We have found that:

If an inquiring court concludes that an ambiguity exists in a contract, the ultimate resolution of it typically will turn on the parties’ intent. Exploring the intent of the contracting parties often, but not always, involves marshaling facts extrinsic to the language of the contract document. When this need

¹The trial court at hearing transcript pages 12-13, said:

I can’t imagine that a hospital today would buy the assets and liabilities of a hospital, or a partnership where you have a couple of surgeons, and nobody knows what you are buying if you buy those liabilities It just doesn’t make good sense to me that a modern business entity, which is what a primary hospital is, would do something that foolish.

arises, these facts together with reasonable inferences extractable therefrom are superimposed on the ambiguous words to reveal the parties' discerned intent.

Fraternal Order of Police v. City of Fairmont, 196 W.Va. 97, 468 S.E.2d 712, 716 n.7 (1996).

In this case, after noting that the contract "could be clearer," the trial court nevertheless went on to interpret the contract without inquiring into the intent of the parties.

It appears that the court here determined that there was an ambiguity in order to render what the court believed to be a fairer result. Perhaps it was fairer. But that is not the proper role of a court. Both of these parties were represented by lawyers in the negotiation of this agreement, and presumably the hospital's lawyer was able to have included in the written agreement the provision which the court imposed, if that was the intention of the parties at the time of the making of the agreement. Courts should not be in the clean-up business for lawyers.

I am authorized to state that Justice Starcher joins in this dissent.