IN THE COURT OF APPEALS OF IOWA

No. 0-887 / 10-0680
Filed February 9, 2011

CRATON CAPITAL, L.P. and
KRUSE INVESTMENT COMPANY,
Petitioners-Appellants,

vs.

NATURAL PORK PRODUCTION II, L.L.P.,
Respondent-Appellee.

Appeal from the Iowa District Court for Shelby County, James M. Richardson, Judge.

In a dispute over partnership rights, two limited partners appeal from the district court's grant of partial summary judgment in favor of the limited partnership. **REVERSED AND REMANDED.**

Rebecca A. Brommel and Michael R. Blaser of Brown, Winick, Graves, Gross, Baskerville and Schoenebaum, P.L.C., Des Moines, for appellant.

John F. Lorentzen and David T. Bower of Nyemaster Goode, P.C., Des Moines, for appellee.

Heard by Sackett, C.J., and Potterfield and Mansfield, JJ.

MANSFIELD, J.

This case requires us to construe a buy-sell agreement that was incorporated into a limited partnership agreement. Two limited partners, Craton Capital, L.P. (Craton) and Kruse Investment Company (Kruse), contend the buy-sell agreement required the partnership, National Pork Production II, L.L.P. (NPP), to repurchase their units once they issued "Dissociation Notices" to the partnership, even if the partnership later declared an "Impairment Circumstance." The partnership maintained, and the district court agreed, that the declaration of an "Impairment Circumstance" after receiving the "Dissociation Notices" suspended any obligation to purchase partnership units. Because we conclude the limited partners' construction of the buy-sell agreement was the correct one, we reverse the grant of partial summary judgment in favor of NPP and remand for entry of partial summary judgment in favor of Craton and Kruse.

I. Facts and Procedural Background.

A. The Partnership and Buy-Sell Agreements.

NPP, which engages in farrowing and raising hogs, is an Iowa limited partnership that was formed in 2002. Four years later, Craton and Kruse purchased limited partnership units in NPP under a June 6, 2006 private placement offering. At that time, both Craton and Kruse executed limited partnership agreements as well as buy-sell agreements. (Each buy-sell agreement was attached to the limited partnership agreement as Exhibit A and incorporated therein by reference.)

Section 5.5 of the partnership agreement, entitled "Dissociation of a Partner," provided that a partner could dissociate from the partnership only by

giving an irrevocable "Dissociation Notice" or as otherwise provided in the buy-sell agreement. A partner who gave such a notice would be liable to the partnership for any damages caused by its withdrawal, but (as discussed below) would be permitted to withdraw and, in effect, "put" its units to the partnership in a forced sale.

The buy-sell agreement covered various situations. It included an Article II relating to "voluntary transfers of units," and an Article III relating to "all other transfers of units of a partner." Section 3.2 within Article III, entitled "Offer to Partnership," provided that upon the occurrence of certain events, the partner was deemed to have offered all its units for sale to the partnership, and the partnership would have an "option" to purchase those units, with sixty days to notify the partner of its acceptance. However, Section 3.2 was expressly made "subject to" the "Mandatory Purchase by Partnership" provisions of Section 3.4, which obligated the partnership to purchase units under certain circumstances.

Thus, Section 3.4, requiring the purchase of units by the partnership in certain situations, stated as follows:

> Section 3.4 - Mandatory Purchase by Partnership on Certain Transfer Events. If the Transfer Event is the event or occurrence which is described in Section 3.1(j) or Section 3.1(k) of this Agreement, the terms and conditions of this Article III and the other applicable terms and conditions of this Agreement shall be fully applicable to such Transfer Event, except only that in any such circumstance the Partnership *shall, subject only to Article VII of this Agreement, purchase all of the Units of the Affected Partner for the Purchase Price within the time period otherwise specified in this Agreement, rather than the Partnership having the option to (but not the obligation to) purchase such Units*.

(Emphasis added.) Section 3.1(j) was defined elsewhere as "the dissociation from the Partnership by a Partner pursuant to Section 5.5 of the Partnership

Agreement and Section 486A.602(1) of the Iowa [Uniform Partnership] Act." Hence, Section 3.4 provided that when a partner furnished a "Dissociation Notice," as happened here, the partnership "shall . . . purchase" all its units "subject only to Article VII" of the buy-sell agreement.

Article VII in turn provided, in its first paragraph, that "both the Partnership's obligation to purchase any Units under Section 3.4 of this Agreement and to make each payment for any Units purchased by the Partnership pursuant to this Agreement" were subject to "any finding or determination by the Managing Partners from time to time that any such purchase or payment would materially impair or otherwise adversely affect the working capital, cash flow or other financial means, condition or operation of the Partnership"—described as an "Impairment Circumstance." The first paragraph also explained that the partnership would have no liability to a partner for failing to purchase or pay for any units to the extent such purchase or payment was subject to an "Impairment Circumstance." In addition, the partnership was required to provide written notice of any "Impairment Circumstance" to any affected partner.

In its next paragraph, Article VII went on to provide that when the partnership was subject to an "Impairment Circumstance," or was otherwise restricted from purchasing any units required to be purchased under Section 3.4, NPP "shall only be obligated to purchase such number of Units as is determined by the Managing Partners given the Impairment Circumstance . . . ." Yet it continued:

> *In the event, however, the Partnership has failed to purchase any Units on such basis or has purchased Units under this Agreement and subsequently becomes subject to an Impairment Circumstance . . . the Partnership shall remain obligated to purchase such unpurchased Units or remain obligated to complete the purchase of the Units, as the case may be,* and shall purchase such Units as otherwise provided herein or shall recommence making such payments within thirty (30) days of the date on which the Impairment Circumstance . . . is no longer applicable.

(Emphasis added.) Thus, Article VII appeared to recognize, in its second paragraph, the possibility that an "Impairment Circumstance" would arise after NPP was already obligated to repurchase a limited partner's units, and it addressed that possibility by providing the obligation would "remain" but any actual purchases would be deferred.

On or about July 6, 2006, Craton and Kruse entered into identical additional agreements with NPP and Gary Weihs, one of NPP's founding partners. These agreements provided, among other things, that Weihs would notify Craton and Kruse respectively before taking distributions from NPP that aggregated in excess of $2 million and that, upon receiving such notices, Craton and Kruse would have options to take distribution of their equity on terms no less favorable than those of Weihs's distributions.

B. The Present Dispute.

On March 28, 2008, Craton and Kruse tendered "Dissociation Notices" to NPP pursuant to Section 5.5 of the partnership agreement. One week later, on April 4, 2008, NPP declared an "Impairment Circumstance" under Article VII of the buy-sell agreement. A wave of "Dissociation Notices" from other investors followed, although Craton and Kruse contend that only two of the other notices were served before NPP's April 4 declaration of an "Impairment Circumstance."

On September 25, 2009, Craton and Kruse filed a petition for declaratory judgment, seeking a declaration that NPP was required to purchase its units and meet certain other obligations under the buy-sell agreement. Craton and Kruse conceded in their petition that NPP did not have to *pay* the purchase price until thirty days after the "Impairment Circumstance" no longer existed. But they asked the court to declare they were entitled to receive promissory notes for the amounts due and belonged in the first category of creditors.

NPP answered and counterclaimed, asking the district court to declare that the partnership had "no obligation to purchase the units offered for sale by [Craton and Kruse] pursuant to their dissociation notices until such time as the managers of [NPP], in their business judgment, determine there is no longer an Impairment Circumstance."

Both parties cross-moved for summary judgment on the issue of whether NPP was obligated to purchase Craton and Kruse's units under Article VII of the buy-sell agreement. The district court granted NPP's motion, holding the partnership was not obligated to purchase the limited partners' units. It reasoned that Section 3.2, in combination with Article VII, governed the situation presented here:

> The clear reading of Article VII is that an Impairment Circumstance suspends the obligation to purchase any Units.
>
> The Units of Craton and Kruse were not purchased by NNP upon receipt of the dissociation letter. Rather, Section 3.2 of the Buy-Sell Agreement gave NNP a 60-day period to accept any offer to purchase Units from a dissociating partner. Simply, an impairment was declared within this time period. NNP has not exercised its option to purchase the Units of Craton and Kruse.
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> The impairment does not discharge the obligation but suspends it until 30 days after the Impairment Circumstance ceases to exist. As of this date, the Managing Partners have not

> determined that the impairment no longer applies. Therefore, the obligation to purchase remains stayed or suspended.

Craton and Kruse filed a motion for reconsideration and new trial pursuant to Iowa Rules of Civil Procedure 1.904(2) and 1.1004(6), (8). They attached to their motion K-1's provided by NPP for 2008 which indicated that neither Craton nor Kruse owned any partnership units at year-end. Their motion was overruled.

Craton and Kruse applied for an interlocutory appeal. Their application was granted by the supreme court, which then transferred the case to our court.

II. Standard of Review.

Normally, when we review declaratory judgment actions, our standard of review depends on whether the case was brought in equity or at law. *Ferguson v. Allied Mut. Ins. Co.*, 512 N.W.2d 296, 297 (Iowa 1994). However, that distinction is inconsequential here because the matter was resolved below on summary judgment. *Id*. Accordingly, our review is for the correction of errors at law. *SDG Macerich Props., L.P. v. Stanek, Inc.*, 648 N.W.2d 581, 584 (Iowa 2002). Our only task is to determine, after reviewing the entire record, whether a genuine issue of material fact exists and whether the district court correctly applied the law. *Ferguson*, 512 N.W.2d at 297.

III. Construction of Article VII.

Our bottom line may be stated simply: We read the buy-sell agreement differently from the district court. In its second paragraph, Article VII clearly contemplates a situation where NPP has become *obligated to purchase* units under Section 3.4, has not *purchased* any yet, and *subsequently* becomes subject to an "Impairment Circumstance." In that case, the payment is

postponed, but "*the Partnership shall remain obligated to purchase such unpurchased Units*." (Emphasis added.) That describes the situation in this case. Craton and Kruse served their "Dissociation Notices" on March 28, 2008, but no "Impairment Circumstance" arose until April 4, 2008.

When Craton and Kruse served their "Dissociation Notices" on March 28, that act immediately triggered a purchase obligation. Section 3.4 of the buy-sell agreement provided that NPP "shall" purchase their units, "rather than the Partnership having the option to (but not the obligation to) purchase such Units." The word "shall" is mandatory. *In re Estate of Best*, 206 Iowa 786, 788, 221 N.W. 369, 370 (1928); *see also* Iowa Code § 4.4(30)(a) (2009) (stating that when used in a statute, unless otherwise specifically provided, the word "shall" imposes a duty). The only qualification was set forth in Article VII of the buy-sell agreement.

But Article VII, as noted above, did not relieve NPP of the obligation to purchase set forth in Section 3.4 if the "Impairment Circumstance" occurs "subsequently." It merely postponed the payment. In our view, Craton and Kruse's construction of the buy-sell agreement was the correct one, and their summary judgment motion should have been granted by the district court.

Seeking to avoid this result, NPP first relies on the provisions of Section 3.2—as did the district court. According to this line of reasoning, Section 3.2 meant Craton's and Kruse's "Dissociation Notices" were simply making an "offer" that needed to be accepted by NPP and was not accepted before the "Impairment Circumstance" was declared. That construction, however, disregards the actual wording of both Section 3.2 and Section 3.4. When Section

3.4 came into play, it overrode the otherwise controlling language of Section 3.2 that gave NPP the choice whether to accept an offer. Section 3.2 says it is "subject to" the "Mandatory Purchase by Partnership" provisions of Section 3.4; likewise, Section 3.4 says when a "Dissociation Notice" has been given, the partnership shall have the "obligation" rather than the "option" to purchase the units in question. The language is clear.

NPP next argues that under the first paragraph of Article VII, not only the obligation "to make each payment for any Units" but even the "obligation to purchase any Units under Section 3.4 of this Agreement," were suspended because each is expressly made subject to any "Impairment Circumstance." But that portion of Article VII does not address the remedy of the shareholder when the obligation to purchase arises before, or even creates the "Impairment Circumstance," resulting in an inability of the partnership to fulfill its mandatory purchase obligation. That particular situation is expressly covered by the next paragraph, and to the extent of any conflict between specific language and general language in a contract, we follow the specific language. *See Iowa Fuel & Minerals, Inc. v. Iowa State Bd. of Regents*, 471 N.W.2d 859, 863 (Iowa 1991) ("[W]hen a contract contains both general and specific provisions on a particular issue, the specific provisions are controlling.").

NPP insists that under the first paragraph of Article VII, an obligation to purchase units would never arise if the purchase "would" materially impair or adversely affect the working capital, cash flow or other financial means, condition or operation of the partnership. But this construction, in our view, unduly compresses the actual language of that paragraph. The actual wording of the

paragraph is that the partnership's obligation to purchase is subject to a *determination* that it would not materially impair or adversely affect the partnership's finances. In other words, there had to be some kind of a "determination" before an "Impairment Circumstance" could be said to exist. And if that determination came *after* the tendering of the "Dissociation Notices," the second paragraph of Article VII makes clear the obligation to purchase remained in effect, even though the requirement to pay for the units was suspended.

Because we hold as a matter of law that Craton and Kruse's construction of the buy-sell agreement was correct, we need not address their argument that, at a minimum, an issue of fact existed based upon NPP's and Weihs's alleged breach of the July 6, 2006 agreement and the K-1's for 2008 that showed Craton and Kruse no longer owned any partnership units.

We reverse the district court's grant of partial summary judgment in favor of NPP and remand for entry of partial summary judgment in favor of Craton and Kruse.

REVERSED AND REMANDED.