

SUPREME COURT OF VIRGINIA



SUPREME COURT BUILDING
100 NORTH NINTH STREET
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Granted Appeal Summary

Case

MARILYN EHRHARDT, ET AL. v. SUSTAINEDMED, LLC
(Record Number 181003)

From

The Circuit Court of Fairfax County; M. Devine, Judge.

Counsel

Norman A. Thomas (Norman A. Thomas, PLLC) and Jerome C. Baker (The Law Office of Jerome C. Baker, Ltd.) for appellants.

Robert W. Loftin, Richard D. Holzheimer, Jr., and Anastasia P. Cordova (McGuireWoods LLP) for appellee.

Assignment of Error

1. The trial court misinterpreted the Stock Purchase Agreement regarding SustainedMED's due diligence rights and obligations. The court reversibly erred in failing to hold SustainedMED bound by the facts its representatives discovered and should have discovered in conducting pre-closing due diligence.
2. The trial court misinterpreted the Stock Purchase Agreement regarding Sellers' disclosures, representations and warranties. The court reversibly erred in over-broadly interpreting the agreement's provisions to admit parol and irrelevant evidence and to rule that Sellers materially breached the agreement.
3. The trial court reversibly erred in ruling for SustainedMED on its declaratory judgment count and against Sellers on their counterclaims regarding amounts due under the Promissory Notes. SustainedMED's failure to timely pay amounts due to Sellers materially breached the Promissory Notes and the Stock Purchase Agreement.
4. The trial court reversibly erred in failing to set off against SustainedMED's purported indemnity claim losses the amounts received by SustainedMED from licensing payments derived from Cyfluent software.
5. The trial court reversibly erred in ruling that SustainedMED met its burden to prove damages with reasonable certainty.

6. The trial court misinterpreted the Stock Purchase Agreement and failed to follow Virginia law regarding its awards to SustainedMED of attorneys' fees, expenses and costs. The court reversibly erred in making such awards because they exceeded the Stock Purchase Agreement's cap on indemnity claim losses, and the awards were not limited to specific indemnity claims on which SustainedMED succeeded.