

STATE OF MICHIGAN
COURT OF APPEALS

BARTHOLAMEW OBRA, trustee of the
Bartholamew Obra living trust, and
BARTHOLAMEW OBRA, individually,

UNPUBLISHED
July 30, 1999

Plaintiffs-Appellants,

v

No. 208542
Macomb Circuit Court
LC No. 94-003326 CB

EASOM ENGINEERING AND
MANUFACTURING CORPORATION, a Michigan
Corporation,

Defendant-Appellee.

Before: Doctoroff, P.J., and McDonald and Wilder, JJ.

PER CURIAM.

Bartholamew Obra is the plaintiff in this case individually and as trustee of the Bartholamew Obra living trust. Defendant is Easom Engineering and Manufacturing Corporation (Easom), a company located in Clinton Township, Michigan. Plaintiff appeals as of right a judgment granting only partial relief on his two-count complaint for breach of contract and breach of royalty agreement. Relevant to this appeal is plaintiff's claim for breach of the parties' royalty agreement, which the trial court resolved in favor of defendant. The judgment was entered following a bench trial held at Easom's place of business. We affirm.

The dispute in this case arises out of a royalty agreement between the parties concerning a device plaintiff invented and patented called a "cymonic drive." Plaintiff began working for Easom in 1950. Shortly after plaintiff became president of the company in 1960, he, Everett Schultz, and Ted Lanfranki formed a three-way partnership in Easom. Plaintiff invented and patented the cymonic drive around 1970.

The parties first entered into a royalty agreement in 1975. Under this agreement, plaintiff agreed to assign his rights and interest in the cymonic drive patent to Easom, and Easom agreed to pay plaintiff 40% of "the gross income to Easom ... derived from the manufacture, use, sale, licensing or sublicensing" of the patent rights. The parties amended their royalty agreement in 1986. The 1986

agreement controls in this case. Under this agreement, plaintiff is entitled to 3% of the “net selling price received by Easom ... derived from the manufacture, use, sale, licensing or sublicensing” of the patent rights. The agreement further provides:

3. “Net Selling Price” for royalty determination hereunder, shall mean the actual invoice price of all cymonic drives sold, including components of cymonic drive assemblies (such as, but not limited to, motors, belts, switches and such other assembly components as shall be set forth in installation drawings and identified by job numbers), F.O.B. the builder’s plant. Royalties shall be payable only upon receipt of payment by Easom ... , including any partial or interim payments by a customer. No royalty shall be due on sales of parts to repair cymonic drives for which a preceding royalty has been paid, and a royalty will be payable only once for each cymonic drive or cymonic drive assembly sold.

The dispute in this case arose after plaintiff retired from Easom in 1991. Plaintiff claims that he has not received royalties on several items for which a royalty is owed. Specifically, plaintiff claims he has not received royalties on brakes, lift and weld tables, drive shafts, and gears, racks and pinions that Easom sold at the same time it sold cymonic drives.¹ Plaintiff has been paid royalties on other items sold along with cymonic drives such as motors, belts, and switches. At trial, plaintiff testified that he feels he is entitled to a royalty on anything Easom sells with the cymonic drive because although the customers could buy components cheaper elsewhere, when they buy them from Easom they are buying a complete package. Defendant’s position is that the disputed items were not sold by Easom at the time of the royalty agreement, that they are not “components” under the royalty agreement, and that plaintiff is not entitled to royalties on them. Plaintiff also claims that he is entitled to receive a royalty on any new parts used when Easom performs a rework on an existing cymonic drive.

The trial court found that plaintiff was not entitled to royalties on the disputed items and that plaintiff was not entitled to royalties on reworks. The trial court found that the assembly drawing identifies all of the component parts of the cymonic drive, to which plaintiff is entitled to a royalty. The trial court also found that plaintiff is not entitled to royalties on all items shown in the installation drawing, which identifies a customer’s entire purchase from defendant.

Plaintiff first argues the trial court erred because it failed to determine for which components or related parts of the cymonic drive that it sells does Easom have to pay plaintiff a royalty. Plaintiff claims the trial court failed to identify what would be considered “other assembly components” under the 1986 agreement. We disagree. While the trial court may not have specifically defined the term “components,” it did determine that the items for which plaintiff sought payment were not “components” under the royalty agreement, and plaintiff was not owed a royalty for those items. This was the necessary determination to resolve plaintiff’s claim. Plaintiff did not bring an action seeking a declaratory judgment, he sued for breach of contract because he was not paid a royalty on items he thought he was entitled to receive a royalty.

Next, plaintiff argues the trial court erroneously found that the disputed items were not “components” for which he was entitled to a royalty under the agreement and erroneously found that he was not entitled to royalties for reworks. Essentially, the question is whether plaintiff is entitled to

receive royalties for all of the items a customer buys when it purchases a cymonic drive from Easom, or whether the royalty agreement only contemplated plaintiff receiving royalties for certain items that are closely associated with the cymonic drive so that they are considered “components” under the agreement. It appears that Easom expanded its product line as technology developed and as the company evolved so that it now sells many more items than it did when the agreement was drafted. These newer items are the disputed items to which plaintiff claims a royalty.

The initial question that must be answered is whether the language of the royalty agreement is ambiguous. Whether a contract is ambiguous is a question of law. *Port Huron Ed Ass’n v Port Huron Area School Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996); *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998). This Court reviews questions of law de novo. *In re Austin Estate*, 218 Mich App 72,74; 553 NW2d 632 (1996). If the contract, though inartfully worded or clumsily arranged, fairly admits of but one interpretation, it is not ambiguous. *Meagher v Wayne State University*, 222 Mich App 700, 722; 565 NW2d 401 (1997). Where a contract might be ambiguous, extrinsic evidence is admissible in order to determine if an ambiguity exists. *L Loyer Construction Co v City of Novi*, 179 Mich App 781, 794; 446 NW2d 364 (1989). Parole evidence is admissible in order to define and explain technical or trade terms contained within a contract. *SSC Associates Ltd Partnership v General Retirement System of the City of Detroit*, 210 Mich App 449, 452; 534 NW2d 160 (1995).

The following language is at issue:

3. “Net Selling Price” for royalty determination hereunder, shall mean the actual invoice price of all cymonic drives sold, including components of cymonic drive assemblies (such as, but not limited to, motors, belts, switches and such other assembly components as shall be set forth in installation drawings and identified by job numbers)

...

The trial court’s opinion does not expressly state whether it found this provision ambiguous. However, we find that the provision is ambiguous in light of the testimony at trial that there are “assembly drawings” and “installation drawings” and that both the drawings show the cymonic drive. After carefully reviewing the record in this case, we believe that the language of the agreement is subject to differing interpretations. The language of the agreement could be interpreted as plaintiff urges, that he is entitled to a royalty on everything a customer buys when it purchases a cymonic drive from defendant. This interpretation is supported by the fact that it seems that when the agreement was drafted, defendant only sold a few things along with a cymonic drive, and that these few things were listed in the agreement as components, i.e. motors, belts, and switches. Now it appears that defendant has expanded its product line as technology developed and the company evolved. A common-sense interpretation would point to paying a royalty for these new items as well. Moreover, plaintiff testified that defendant no longer prepares these installation drawings described in the agreement. However, defendant’s position is equally feasible under the language of the agreement. The cymonic drive and the parts described in the agreement as components, i.e., motors, belts, and switches, is shown in the drawing of the customer’s entire purchase from defendant, but that does not necessarily force the conclusion that the agreement contemplated plaintiff receive a royalty on everything shown in that drawing. Therefore,

defendant's interpretation of the language does not render the reference to "installation drawings" mere surplusage. Moreover, the agreement does say "components of cymonic drive assemblies" (emphasis added). This may be a reference to "assembly" or "subassembly" drawings that show only the cymonic drive and parts that always accompany it, such as motors, belts, and switches.

Because the language of the contract is ambiguous, we disagree with plaintiff's argument that witnesses Lanfranki and Schultz improperly testified regarding their understanding of the term "component." This testimony was properly admitted to determine the intent of the parties.

Where the contract language is unclear or susceptible to multiple meanings, interpretation becomes a question of fact. *Port Huron, supra* at 323; *UAW-GM, supra* at 491. This Court may not reverse a trial court's finding of fact unless it is clearly erroneous. MCR 2.613(C); *Marlo Beauty Supply, Inc v Farmers Ins Group of Cos*, 227 Mich App 309, 325; 575 NW2d 324 (1998). Reversal is permitted only if this Court is left with a definite and firm conviction that the trial court made a mistake. *Id.*

Plaintiff gives several reasons why the trial court's conclusion that the disputed items were not included under the royalty agreement is erroneous. Plaintiff urges this Court to look to the dictionary definition of the word "component" and find that because the disputed items worked with the cymonic drive, they should be considered components. Plaintiff also claims that it is not conclusive that defendant sold the disputed items independently of cymonic drives and that many of them were not in existence at the time the agreement was drafted. However, we are not persuaded by plaintiff's arguments that the trial court's finding that the disputed items were not "components" is clearly erroneous. Not only did the trial court have an opportunity to view the witnesses and judge their credibility, but in this case, the trial court had the unique experience of visiting the site and viewing the machinery at issue in the case and receiving hands on engineering lessons. We are not left with a definite and firm conviction that the trial court made a mistake in this highly technical case.

Next, plaintiff argues the trial court's finding that he is not entitled to royalties on reworks is contrary to the clear language of the contract. We disagree. The contract is clear on this issue. Paragraph three states:

No royalty shall be due on sales of parts to repair cymonic drives for which a preceding royalty has been paid, and a royalty will be payable only once for each cymonic drive or cymonic drive assembly sold.

The trial court properly concluded from this express language that "the parties only intended to pay a royalty once for the sale of a cymonic drive; royalties would not be paid for any subsequent work on a cymonic, regardless of whether it is classified as repair or rework."

Plaintiff also argues that if this Court finds the royalty agreement ambiguous, then the parties past interpretation of the contract controls. Plaintiff claims that because the evidence showed that plaintiff had previously been paid royalties for brakes, he is entitled to a royalty on all of the disputed items. Moreover, plaintiff claims that the fact that he was previously paid royalties for reworks is conclusive that the parties intended for him to be paid royalties on reworks under the agreement. We disagree.

First, we address plaintiff's claim regarding reworks. As we have already explained, the royalty agreement is not ambiguous on this issue. Plaintiff is clearly not entitled to royalties on reworks under the plain language of the agreement. Accordingly, plaintiff's argument is without merit on this issue. Although there was testimony that plaintiff was paid for reworks in contravention of the agreement, this does not make the agreement ambiguous on this issue.

In support of his position that the parties' conduct should be controlling on the issue of interpreting ambiguous language of a contract, plaintiff cites *Detroit Greyhound Employees Federal Credit Union v Aetna Life Ins Co*, 381 Mich 683; 167 NW2d 274 (1969). It is true that "where the language contained in a contract raises doubt or uncertainty in construing a contractual provision, the parties' interpretation is given great, if not controlling, weight." *North West Michigan Construction Co v Stroud*, 185 Mich App 649, 653; 462 NW2d 804 (1990), citing *Detroit Greyhound*, *supra* at 686. However, this Court still reviews the trial court's findings of fact under the clearly erroneous standard. MCR 2.613(C); *Marlo Beauty Supply*, *supra* at 325.

Plaintiff acknowledged at trial that while he was paid a royalty on brakes, Easom did not even sell any of the other disputed items, i.e. lift and weld tables, drive shafts, and racks and pinions (gears), until he had left the company. Plaintiff argues that the fact that he was paid royalties on brakes suggests that royalties were due on the remaining disputed items. The trial court heard all of the testimony regarding the parties' interpretation of the agreement and the testimony that at times their conduct under the agreement varied and concluded that the disputed items were not "components" under the royalty agreement for which plaintiff was entitled to a royalty. This finding was not clearly erroneous.

Finally, plaintiff argues defendant is estopped from changing its position on what items royalties were due because in the past it paid royalties on reworks and "the same or similar components." Plaintiff argues equitable estoppel applies to this case. We disagree.

Equitable estoppel arises where a party, by representations, admissions, or silence intentionally or negligently induces another party to believe facts, the other party justifiably relies and acts on that belief, and the other party will be prejudiced if the first party is allowed to deny the existence of those facts. *Soltis v First of America Bank-Muskegon*, 203 Mich App 435, 444; 513 NW2d 148 (1994). Equitable estoppel rests in broad principles of justice. *Schmude Oil Co v Omar Operating Co*, 184 Mich App 574, 582; 458 NW2d 659 (1990). Since equity is involved, this Court's standard of review is "de novo, with no reversal unless the trial court's findings were clearly erroneous or we conclude that we would have reached a different result had we occupied the lower court's position." *Id.*

Plaintiff has not shown that the elements of equitable estoppel are satisfied in this case. Plaintiff fails to explain what representations defendant made to plaintiff and what facts plaintiff was induced to believe by defendant. The trial court recognized that the parties varied their conduct under the agreement, i.e. plaintiff testified he did not take royalty payments for a period of time because the company needed money and there was testimony that plaintiff was paid royalties on items not covered under the agreement to keep harmony. However, the trial court concluded that the parties did not intend to modify their agreement. This finding is not clearly erroneous and we do not find any reason to reach a different result.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Gary R. McDonald

/s/ Kurtis T. Wilder

¹ At trial, plaintiff also claimed royalties on circular racks and gears, but he is not raising this issue on appeal.