STATE OF MICHIGAN

COURT OF APPEALS

AVIS RENT A CAR SYSTEMS, INC.,

Plaintiff-Appellant,

v

LYNETTE FINDLEY and MIA CHAMBERS-FINDLEY,

Defendants-Appellees.

UNPUBLISHED
October 8, 1999

No. 209100
Washtenaw Circuit Court
No. 96-006420 AV

Before: Bandstra, C.J., and Jansen and Whitbeck, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from the circuit court's affirmance on appeal of the district court's grant of summary disposition under MCR 2.116(C)(10) and its award of sanctions in favor of defendants. We affirm in part and reverse in part.

Lynette Findley entered into a rental agreement with plaintiff on July 3, 1992. Mia Chambers-Findley, Findley's sister-in-law, signed an additional driver form so that she could use the automobile. Findley purchased loss damage waiver insurance from plaintiff (who is self-insured) at the rate of $12 a day. During the rental period, on July 5, 1992, Chambers-Findley was driving the automobile in Indiana and was rear-ended by a semi tractor-trailer. The accident caused injury to Chambers-Findley, who was hospitalized, and caused considerable damage to the automobile. There is no dispute that Chambers-Findley was not negligent or in any way culpable for the accident. Chambers-Findley, however, did receive a citation when the police officer found that her license had been suspended because of an unpaid parking ticket. At her deposition, Chambers-Findley testified that she had been unaware of this suspension and had never been notified of it by the Secretary of State.[1] On July 8, 1992, immediately upon her return to the Detroit area, Chambers-Findley had the suspension terminated by paying a fine.

Damage to the automobile amounted to $8,704. On January 13, 1994, plaintiff filed suit in the district court claiming that Findley breached the rental agreement by permitting Chambers-Findley to operate the automobile when Findley agreed to be the sole driver pursuant to the terms of the rental

agreement. Because Chambers-Findley was in fact an authorized additional driver to the rental agreement, plaintiff filed a second amended complaint on July 20, 1994 alleging breach of contract because Chambers-Findley's driver's license was suspended at the time she entered into the rental agreement and that the rental agreement required that additional drivers have a valid driver's license. Specifically, plaintiff relied on the following provisions in the rental agreement:

> **DAMAGE TO THE CAR.** . . . WHETHER OR NOT I ACCEPT LDW [loss damage waiver], OR IF LDW IS NOT PERMITTED, I'M RESPONSIBLE FOR THE LOSS IF I OR AN ADDITIONAL DRIVER, AUTHORIZED OR NOT . . . 5) OBTAINED THE CAR THROUGH FRAUD OR MISREPRESENTATION[.]
>
> * * *
>
> **WHO ELSE MAY DRIVE THE CAR.** ONLY MY SPOUSE, MY EMPLOYER OR A REGULAR FELLOW EMPLOYEE INCIDENTAL TO BUSINESS DUTIES OR SOMEONE WHO APPEARS AT THE TIME OF RENTAL AND SIGNS AN ADDITIONAL DRIVER FORM, MAY DRIVE THE CAR BUT ONLY WITH MY PRIOR PERMISSION. THE OTHER DRIVER MUST BE AT LEAST 25 YEARS OLD AND A CAPABLE AND VALIDLY LICENSED DRIVER. THERE MAY BE A CHARGE FOR EACH ADDITIONAL DRIVER AUTHORIZED TO DRIVE THE CAR WHICH CHARGE IS SHOWN IN BOX 42B ON FRONT UNLESS PROHIBITED BY LAW COVERING THIS RENTAL.

Plaintiff requested damages in the amount of $8,704.

Defendants moved for summary disposition, arguing that Chambers-Findley was a validly licensed driver, despite the fact that her license was suspended, because that term was ambiguous and not defined in the rental agreement. Defendants argued as such because under plaintiff's interpretation of the term, plaintiff considered only an expired license to be invalid. Deposition testimony of Sheila Moore, plaintiff's branch manager at the office where the automobile was rented, indicated that she was trained and informed by plaintiff that an invalid driver's license constituted an expired license only. Thus, it was plaintiff's requirement that a driver's license be inspected to determine whether it had expired. Moore testified that she received the driver's licenses of both Findley and Chambers-Findley, inspected them, determined that they were not expired, and determined that the licenses were valid. Therefore, both defendants were permitted to rent the automobile. Moore further testified that she was not given any training to ask customers whether the license was suspended, whether the customer had accumulated points for moving violations, whether the license was revoked, or whether the license was valid. Moore determined whether the license was valid by examining the expiration date only.

The district court granted defendants' motion for summary disposition, ruling that a suspended driver's license did not constitute an invalid license in light of Moore's own testimony, that Chambers-Findley was not notified of the suspension, and that the case involved an innocent misrepresentation. The district court also assessed attorney fees and costs against plaintiff upon finding that although plaintiff's claim was not frivolous at the time it was filed, it became frivolous during discovery after the

deposition of plaintiff's employee. Consequently, the district court awarded attorney fees to Findley and Chambers-Findley from the point where Moore testified to the definition of a "validly licensed driver" and forward. The circuit court affirmed the district court in all respects.

Plaintiff first argues that the lower courts erred in awarding sanctions against plaintiff, under MCL 600.2591; MSA 27A.2591, because while a claim can only be frivolous if it appears frivolous on its face at the time of the commencement of the action, the lower courts in this case looked at discovery results to determine whether the claim was frivolous. We agree.

To determine whether sanctions are appropriate under MCL 600.2591; MSA 27A.2591, it is necessary to determine whether there was a reasonable basis to believe that the facts supporting the claim were true at the time the lawsuit was filed. *Louya v Beaumont Hospital*, 190 Mich App 151, 162; 475 NW2d 434 (1991). "The ultimate outcome of the case does not necessarily determine" whether the case is frivolous. *Id.* at 164.

In the present case, the lower courts did not focus their inquiry on what plaintiff reasonably believed at the time it commenced the case. Rather, the lower courts found that the claim was not frivolous when the action was filed, but became frivolous after discovery when Moore testified at her deposition that, in her training, she learned to check for a valid driver's license by looking at the expiration date on the face of the driver's license and as long as the license was not expired, it was valid. At the onset of the case, the breach of contract action seemed only to turn on whether a person with a "suspended" driver's license could be considered a "validly licensed driver" under the rental agreement. Therefore, in the present case it is feasible that plaintiff's attorney believed that there was a reasonable basis to believe that the facts underlying plaintiff's legal position were true and that a suspended license would not be a valid license under the rental agreement.

Because the claim was not frivolous when the complaint was filed, it was error for the lower courts to conclude that the action was frivolous and to award costs and attorney fees against plaintiff. Those costs and attorney fees are consequently reversed.

Plaintiff next argues that the trial court erred in granting defendants' motions for summary disposition under MCR 2.116(C)(10). This Court reviews de novo a trial court's decision on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Plaintiff contends that the term "validly licensed driver" is clear, unambiguous, and subject only to one interpretation and that Chambers-Findley did not have a valid driver's license at the time she entered into the rental agreement, therefore she breached the agreement. We disagree.

The parties and the lower courts have expended a considerable amount of energy concerning the definition of "validly licensed driver" and whether that term is ambiguous or unambiguous. It is plaintiff's claim, set forth in the second amended complaint, that Chambers-Findley breached the rental agreement because she did not have a valid driver's license at the time of signing the additional driver form and at the time of the accident. However, there is no breach of contract. Here, Moore testified that she inspected both Findley's and Chambers-Findley's drivers' licenses and that neither were expired. Moore also testified that she was trained by plaintiff to determine only if a driver's license was

expired as the means to determine whether the driver was validly licensed. It is clear that upon inspecting Chambers-Findley's license, Moore was satisfied that Chambers-Findley was a validly licensed driver for plaintiff's purposes under the rental agreement. Therefore, there is no breach of contract because there is no failure of performance by Chambers-Findley since her license was clearly valid as defined by plaintiff.

Moreover, we agree with the lower courts that the entire phrase is somewhat ambiguous. The entire phrase provides that the "other driver must be at least 25 years old and a capable and validly licensed driver." To be a "capable and validly licensed driver" is not really susceptible to a single interpretation. Where language used in a contract is ambiguous or indefinite, the practical interpretation of the parties themselves is entitled to great, if not controlling, influence. *Detroit Greyhound Employees Federal Credit Union v Aetna Life Ins Co,* 381 Mich 683, 685-686; 167 NW2d 274 (1969); *North West Michigan Const, Inc v Stroud*, 185 Mich App 649, 653; 462 NW2d 804 (1990). Therefore, as the drafter of the document, plaintiff's understanding of the term capable and validly licensed driver, as related to defendants, was properly given controlling weight in interpreting the meaning of "validly licensed driver."

The lower courts did not err in construing and interpreting the rental agreement. See *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999) (The construction and interpretation of a contract is a question of law for a court to determine that the appellate court reviews de novo). Further, the lower courts did not err in holding that the phrase "validly licensed driver" included a driver with a suspended driver's license, because that is the definition as given to the phrase by plaintiff. There being no question of fact that Chambers-Findley was a validly licensed driver as defined by plaintiff, summary disposition was properly granted in favor of defendants.

The circuit court's order granting defendants sanctions is reversed and the order granting summary disposition in favor of defendants is affirmed. No taxable costs pursuant to MCR 7.219, none of the parties having prevailed in full.

/s/ Richard A. Bandstra
/s/ Kathleen Jansen
/s/ William C. Whitbeck

[1] The circumstances surrounding the suspension are that on October 1, 1990, Chambers-Findley was issued a ticket for a "registration and/or plate violation." The vehicle was likewise a rental vehicle. Chambers-Findley's driver's license was suspended on December 13, 1990, apparently for failing to pay the ticket previously issued.