

STATE OF MICHIGAN
COURT OF APPEALS

CLAUDE GIRARDI,

Plaintiff-Appellee,

v

CITY OF STERLING HEIGHTS,

Defendant-Appellant.

UNPUBLISHED

March 3, 2000

No. 209640

Macomb Circuit Court

LC No. 96-003277-CK

Before: Jansen, P.J., and Collins and J. B. Sullivan*, JJ.

PER CURIAM.

Defendant City of Sterling Heights appeals as of right from an opinion and order granting plaintiff Claude Girardi's motion for summary disposition pursuant to MCR 2.116(C)(10) and denying defendant's motion for summary disposition in this dispute regarding retirement provisions in a collective bargaining agreement. We affirm.

Plaintiff was an employee of the City of Sterling Heights Police Department from April 27, 1970, until he retired on April 28, 1990. Plaintiff elected to take the early retirement option after twenty years of service as a police officer, as opposed to the standard twenty-five-year retirement option. When plaintiff learned of defendant's decision to deny him health insurance and life insurance benefits, he filed a grievance with his union, the Michigan Association of Police (MAP), on March 13, 1990. By signing the grievance form, plaintiff authorized the MAP to act for him in the disposition of the grievance. The Sterling Heights Police Officers Association (union), a MAP affiliate, wrote a letter to plaintiff stating that it disagreed with defendant's decision, that it would proceed with the grievance up to and including arbitration, but that it would go no further than arbitration if the arbitrator decided against them. On January 19, 1991, before any arbitration and after plaintiff ceased being a member of the union, a memorandum of understanding was entered into between defendant and the union. The memorandum of understanding stated that it was understood and agreed upon by both parties that plaintiff and other similarly situated union members would not be entitled to any health care or life insurance benefits that were provided under the provisions of the collective bargaining agreement. The memorandum was signed by the city manager, the assistant city manager, the union's labor relations specialist, and the

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

union president. During this process, the union did not request ratification from the membership ranks for any modification in contract language, nor did the Sterling Heights City Council vote to ratify and adopt this modification as required under law. On May 1, 1995, plaintiff began to receive his pension benefits, but he did not receive his health insurance or his life insurance benefits. On March 27, 1996, plaintiff filed suit against defendant under a writ of mandamus and alleging breach of contract because defendant refused to provide him with health insurance and life insurance benefits.

Both defendant and plaintiff moved for summary disposition in the trial court. The trial court ultimately granted summary disposition in favor of plaintiff pursuant to MCR 2.116(C)(10), ruling that plaintiff was entitled to health insurance and life insurance benefits under the terms of the collective bargaining agreement. The trial court further ruled that the memorandum of understanding was not binding on plaintiff because its terms had never been ratified as required by defendant's city council. The trial court also stated that plaintiff was entitled to seek relief because he had exhausted all administrative remedies in that it would have been futile for him to pursue the grievance procedure in light of the union's position that he was not eligible for the benefits. The trial court also concluded that plaintiff's complaint was not barred by the doctrine of equitable estoppel because defendant had not detrimentally relied on the memorandum of understanding.

Defendant argues that the court erred when it granted summary disposition in plaintiff's favor because the collective bargaining agreement and the relevant provisions of the Police and Fire Retirement System Act 345 (Act 345), MCL 38.551 *et seq.*; MSA 5.3375(1) *et seq.*, clearly and unambiguously provide that optional early retirees are entitled to their vested pension benefits, but not to full retirement benefits such as health and life insurance. When determining what the parties agreed to in the contract, the contract must be read as a whole and the court must give meaning to all the terms in the contract. *Michigan Twp Participating Plan v Pavolich*, 232 Mich App 378, 382; 591 NW2d 325 (1998). The trial court must give the language in the contract its ordinary and plain meaning. *Id.* Where a contract is clear, the court is bound by the specific language in the contract and it must be enforced as it is written. *Id.* at 382-383.

Article 32.5 of the collective bargaining agreement discusses health insurance for retirees and provides the following:

Health Insurance for Retirees The Employer agrees to provide to **any officer** covered by this Agreement who retires on or after July 1, 1982, Blue Cross/Blue Shield health insurance. [Emphasis added.]

On April 27, 1995, plaintiff was presented with a certificate of retirement from defendant by the Police and Fire Retirement Board. The certificate stated that "Police Officer Claude A. Girardi having served the city faithfully and honorably was retired from the City of Sterling Heights Police Department on the 27th day of April, 1995." Therefore, there is no dispute that plaintiff is a retiree under the agreement. There is also no dispute that plaintiff retired as an officer after July 1, 1982. Therefore, under the clear and plain reading of the agreement, plaintiff was to be provided with health insurance.

Article 34.1 of the agreement discusses life insurance for retirees and provides the following:

Life Insurance for Retirees. Effective July 1, 1991, members of this unit who have retired **shall be** provided Five Thousand (\$5,000.00) Dollars worth of term life insurance. [Emphasis added.]

Therefore, under the clear and plain wording of the agreement, because plaintiff had retired by July 1, 1991, he must be provided with life insurance.

Article 36.2 of the agreement discusses pension benefits for optional retirement and provides:

Optional Retirement. Effective July 1, 1989, . . . optional pension applicable to members with fifteen (15) years service, shall be modified to be applicable to members with ten (10) years of service.

Article 36.5 of the agreement discusses pension plan benefits and provides:

Service Retirement/Voluntary Retirement “25 and out”. A member who has twenty-five (25) or more years of service, may leave the service and receive the full retirement benefits payable throughout their life as provided from their straight life (regular) pension amount.

Defendant argues that because plaintiff does not have twenty-five years of service, he may not receive full retirement benefits, which include health insurance and life insurance benefits. However, nowhere in the agreement are “retirement benefits” defined to encompass health insurance benefits and life insurance benefits. In fact, each benefit has its own specific article and, therefore, it cannot be concluded that the twenty-five-year service requirement under article 36 can be extended to apply to articles 32 and 34. In this case, the court found that the terms of the agreement were facially clear and unambiguous, and therefore, the court did not look to extrinsic evidence of the parties’ intent. Nothing in the agreement excluded a retiree who had retired after 20 years rather than after 25 years from receiving health and life insurance benefits. “In this case, there is only one interpretation that can be made when looking at the language as written.” *Michigan Twp Participating Plan, supra* at 389. Employing the ordinary and plain meaning to the language as written, any casual reader would realize that plaintiff retiree would be entitled to receive health insurance and life insurance benefits. *Id.* Where the contract is clear as written, this Court is bound by the specific language. *Id.*

Defendant also argues that plaintiff’s claim for health insurance and life insurance benefits under the collective bargaining agreement is barred by settlement of a grievance challenging defendant’s denial of such benefits to plaintiff because plaintiff did not adequately plead and did not prove a breach of the duty of fair representation by the union representing plaintiff during the course of the contractual grievance proceedings. In this case, however, even though the agreement contained no language to exclude these benefits from officers who had retired after twenty years rather than taking the standard twenty-five-year retirement, through the memorandum of understanding, defendant denied plaintiff health insurance and life insurance benefits. As discussed above in detail, by the ordinary and plain meaning of the language as written, plaintiff was entitled to both health insurance and life insurance benefits. This

change in the clear and plain reading of the agreement which denied plaintiff health insurance and life insurance benefits constitutes an apparent modification of the agreement. There is no dispute that the memorandum of understanding did not receive “legislative approval” in that its terms, which changed the plain wording of the agreement, had never been ratified by the city council, which has the proper authority to bind the municipality by contract. *Manning v Hazel Park*, 202 Mich App 685, 691; 509 NW2d 874 (1993). Therefore, because the memorandum of understanding was not binding inasmuch as its terms had never been ratified by the city council, the memorandum of understanding did not supersede the agreement and plaintiff, by the plain and clear reading of the agreement, is entitled to health insurance and life insurance benefits from defendant.

Furthermore, defendant contends that plaintiff failed to exhaust his remedies under the grievance procedure before filing suit for breach of the collective bargaining agreement. Article 4 of the collective bargaining agreement governs the grievance procedure applicable to all employees of the bargaining unit. Article 4.6 states that “[n]othing herein shall be construed to eliminate the right of an employee or the Association to apply to the courts to compel compliance with contract terms.” In this case, plaintiff applied to the court to compel defendant to comply with the contract terms. This was plaintiff’s only remaining remedy, given the fact that the union had already entered into an agreement with defendant by their memorandum of understanding.

Defendant further argues that plaintiff’s claim for health insurance and life insurance benefits following his early retirement is barred by the doctrine of equitable estoppel because defendant relied to its detriment upon the prior settlement of plaintiff’s grievance. The elements of equitable estoppel are: “(1) a promise; (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promisee; (3) which in fact produced reliance or forbearance of that nature; and (4) in circumstances such that the promise must be enforced if injustice is to be avoided.” *Marrero v McDonnell Douglas Capital Corp*, 200 Mich App 438, 442; 505 NW2d 275 (1993), quoting *Schipani v Ford Motor Co*, 102 Mich App 606, 612; 302 NW2d 307 (1981). In this case, there was no promise made to defendant either by plaintiff or by the union on behalf of plaintiff such that the promisor (i.e., either the union or plaintiff) should reasonably have expected to induce action of a definite and substantial character on the part of the promisee defendant. There was only a document, signed by defendant and the union, which denied health insurance and life insurance benefits to plaintiff. The benefits that were listed in the memorandum of understanding that would be given to plaintiff were benefits that plaintiff was already entitled to receive as part of his retirement. This agreement cannot be said to have produced forbearance such that the promise must be enforced if injustice is to be avoided because defendant did not give plaintiff anything that plaintiff was not already entitled to receive. Therefore, defendant could not have relied on the document to its detriment.

Lastly, defendant argues that plaintiff’s claim is barred by the six-month statute of limitations set forth in MCL 423.216(a); MSA 17.455(16)(a), a provision in the Public Employment Relations Act. Defendant did not raise this issue in its first motion for summary disposition, filed March 3, 1997, however, defendant raised the issue in its supplemental brief filed May 9, 1997, in relation to the argument that plaintiff failed to claim breach of the union’s duty of fair representation and, thus, plaintiff

should be barred from alleging that the union breached its duty of fair representation. The trial court later allowed plaintiff to amend the complaint and add an allegation that the union breached its duty of fair representation. Defendant's renewed motion for summary disposition, filed September 22, 1997, in relation to the first amended complaint, did not raise the issue of whether the complaint was time-barred. Thus, the issue, as presented on appeal, was never presented in the lower court and the trial court obviously did not address it. Therefore, this issue has not been properly preserved for appellate review.

Accordingly, there being no ambiguity in the collective bargaining agreement and there being no genuine issue of material fact, the trial court did not err in granting summary disposition in favor of plaintiff.

Affirmed.

/s/ Kathleen Jansen

/s/ Jeffrey G. Collins

/s/ Joseph B. Sullivan