

STATE OF MICHIGAN
COURT OF APPEALS

CRAIG A. KLAPP,

Plaintiff-Appellant,

v

UNITED INSURANCE GROUP AGENCY,

Defendant-Appellee.

UNPUBLISHED

February 9, 2001

No. 219299

Van Buren Circuit Court

LC No. 97-043305-CK

CRAIG A. KLAPP,

Plaintiff-Appellee,

v

UNITED INSURANCE GROUP AGENCY,

Defendant-Appellant.

No. 219330

Van Buren Circuit Court

LC No. 97-043305-CK

Before: Neff, P.J., and Murphy and Griffin, JJ.

PER CURIAM.

In Docket No. 219330, defendant United Insurance Group Agency appeals as of right a judgment for plaintiff entered on a jury verdict after the denial of defendant's motion for summary disposition. In Docket No. 219299, plaintiff Craig A. Klapp appeals as of right an order of partial summary disposition dismissing plaintiff's claim for double damages and actual attorney fees pursuant to the Michigan Sales Representative Act, MCL 600.2961; MSA 27A.2961. In regard to defendant's appeal, we reverse and remand for entry of judgment in favor of defendant. We dismiss plaintiff's appeal as moot.

In the first count of the amended complaint, plaintiff claimed that in "March 1990, plaintiff and defendant entered into a written contract entitled 'Agent's Agreement' by which plaintiff was engaged by defendant as an insurance agent." Plaintiff alleged that under the terms of this contract, defendant was obligated to

make commission payments to plaintiff during the term of the contract and after it is terminated. Commissions are payable on approximately the 15th day of each month. Commissions payable after termination of the contract are determined according to the vesting schedule in paragraph 5 of the contract. By March 1997, plaintiff's commissions were 100% vested.

Defendant moved for summary disposition claiming that the terms of the contract clearly required plaintiff to either be sixty-five years old or have worked for defendant for ten years in order for his renewal commissions to be vested. Because plaintiff did not meet either of these requirements, defendant argued that summary disposition was appropriate. Plaintiff argued that defendant's motion should be denied because the contract was ambiguous and because defendant's prior course of dealing indicated that an agent did not have to have ten years of service in order to receive a percentage of his renewal commissions upon retirement.

In denying defendant's motion for summary disposition, the trial court held:

In reviewing all the pleadings, transcripts, and other documents, the court finds that it is an issue for the trier of fact to determine whether or not the language of the contract and actions by the parties render an ambiguous or unambiguous contract. The Plaintiff alleges that the contract, the vesting schedule, and the admitted "mistakes" by the Defendant create a contract that could be considered unclear by its own written terms as to the issue of renewal commissions.

On appeal, defendant argues that the lower court committed clear error by failing to determine, as a matter of law, whether in fact the terms of the contract were ambiguous before allowing extrinsic evidence to be presented by plaintiff to the jury. We agree.

The lower court's denial of defendant's motion for summary disposition was based on the erroneous conclusion that the issue whether terms of a contract are ambiguous is a question of fact for the jury. In *UAW-GM Human Resources Center v KSL Recreation Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998), this Court stated:

The initial question whether contract language is ambiguous is a question of law. If the contract language is clear and unambiguous, its meaning is a question of law. Where the contract language is unclear or susceptible to multiple meanings, interpretation becomes a question of fact. [*Id.*, quoting *Port Huron Ed Ass'n v Port Huron Area School Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996).]

Thus, the trial court clearly erred by holding that the determination whether the language of the contract is ambiguous is an "issue for the trier of fact."

Under the unambiguous contract, plaintiff was not entitled to renewal commissions because he did not "retire" as that term is defined in the contract. Paragraph 5(B) of the "agent's agreement" provides:

Vesting Schedule: In the event of a termination of this Agreement for reasons of death, disability and retirement (as defined in the Agent's Manual), Agent as set forth below on the date of execution hereof shall be entitled to receive a percentage of renewal commissions then payable from premiums on Agent's policies in place, applicable to such amounts as would otherwise have been payable to Agent in accordance with the following vesting schedule.

The actual vesting schedule contains two columns, which are labeled "Agent's Years of Service" and "% of Renewals Vested." The percentage of "renewals vested" increases as the number of years of services increases. For example, an agent with six years of service has ninety percent of his or her renewal commissions vested, and an agent with seven years of service has one hundred percent of his or her renewals vested. The agent's manual provides the following definition:

Retirement: Retirement is understood to be disengagement from the insurance industry. Vestment for retirement is age 65 or 10 years of service whichever is later.

Under this definition, it is clear that an agent becomes vested in and therefore entitled to the contractual privileges of retirement only at age sixty-five or after ten years of service, whichever is later. Therefore, plaintiff did not retire for purposes of the contract because he admittedly had only seven years of service as an agent. Because plaintiff did not retire, die, or become disabled, he was not entitled to a percentage of his renewal commissions after leaving defendant's employment.

Plaintiff argues that the definition of retirement under the contract is disengagement from the insurance industry. Plaintiff claims that the age 65/10 year vesting requirements should not be considered part of the definition of "retirement" under the contract. However, while these requirements are listed in a separate sentence from the statement "retirement is understood to be disengagement from the insurance industry," it is clear that both of these sentences comprise the definition of "retirement" in the agent's manual. A contract should "be construed so as to give effect to every word or phrase as far as practicable." *Mondou v Lincoln Mut Casualty Co*, 283 Mich 353, 358-359; 278 NW 94 (1938). Thus, we conclude that the contract unambiguously states that an agent "retires" when he or she disengages from the insurance industry after ten years of service or at the age of sixty-five, whichever is later.

Contrary to plaintiff's contention, adoption of the agent's manual's complete definition of "retirement" does not create ambiguity in the contract or create a contradiction with regard to the "vesting schedule." It is clear that the entire vesting schedule is relevant for agents who die or become disabled while in defendant's employment. However, given the agent's manual's definition of retirement, only the vesting schedule for beyond ten years of service is relevant for agents who retire. Thus, an agent who becomes disabled and stops working after seven years of service will have one hundred percent of his or her renewal commissions. Yet, an agent who stops working for defendant after seven years for reasons other than death or disability does not "retire," and therefore the vesting schedule is inapplicable. If an agent retires after the minimum requirement of ten years of service, he or she will have 130 percent of renewal commissions vested. The vesting percentage continues to increase up to 150 percent after twelve years of

service. Thus, although the vesting schedule's applicability to retirement situations is limited by the agent's manual's definition of "retirement," there is no ambiguity or contradiction within the contract. Thus, plaintiff did not "retire" for the purposes of the contract and was not entitled to any percentage of his renewal commissions.

We note defendant admitted at the motion hearing and at trial that during the ten years before plaintiff's lawsuit it generally paid renewal commissions pursuant to the vesting schedule without regard to the "ten years of service or age 65" requirement contained in the definition section of the agent's manual. In addition, defendant admitted that it "mistakenly" paid plaintiff renewal commissions under the vesting schedule when he was inactive from January to July 1994. However, the fact that defendant had not fully understood or enforced the terms of the contract in the past does not make its terms ambiguous. This Court has stated that contractual terms are not "subject to judicial interpretation unless they are ambiguous." *Craig v Bossenbery*, 134 Mich App 543, 548; 351 NW2d 596 (1984). In the present case, the terms of the contract in question are not ambiguous. The "ten years of service or age 65" requirement is clearly a part of the contract's definition of "retirement." Thus, the trial court erred in denying defendant's motion for summary disposition.

In view of our disposition that summary disposition should have been granted in favor of defendant on plaintiff's claim of breach of contract, plaintiff's supplemental claim for double damages and actual attorney fees under the Michigan Sales Representative Act is dismissed as moot. We express no opinion regarding whether the act is applicable. Plaintiff's claims under the act are moot because the act is triggered only when a defendant fails to pay commissions that are due. Here, no commissions were due.

Reversed and remanded for entry of judgment in favor of defendant. Defendant, being the prevailing party, may tax costs pursuant to MCR 7.219. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ William B. Murphy
/s/ Richard Allen Griffin