

STATE OF MICHIGAN
COURT OF APPEALS

DAVID P. BAUMGARTNER and
PENNY J. BAUMGARTNER,

UNPUBLISHED
March 16, 2001

Plaintiffs/Counterdefendants-
Appellees,

v

HUDOCO, INC.,

Defendant/Counterplaintiff-
Appellant.

No. 217170
Lenawee Circuit Court
LC No. 96-007111-CK

Before: Murphy, P.J., and Hood and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right an order granting summary disposition in favor of plaintiffs pursuant to MCR 2.116(C)(10) and dismissing defendant's counter complaint. We affirm.

Plaintiffs are the owners of a party store and successors in interest to various agreements concerning the lease and purchase of that business from defendant. One of the documents under dispute is a supply agreement that requires plaintiffs to purchase all of their petroleum products exclusively from defendant. Plaintiffs brought suit to terminate this supply agreement, alleging that the supply agreement was either terminable at will or had expired at the end of five years as stated in the lease agreement. The trial court granted plaintiffs' motion for partial summary disposition and dismissed defendant's counter complaint. The trial court held that the supply agreement's duration was five years, as incorporated by the terms of the lease agreement, and therefore had expired.

On appeal, defendant argues that the trial court improperly held that the supply agreement was limited to a duration of five years and that summary disposition was improperly granted. We disagree. This Court reviews a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim and permits summary disposition when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d 834 (1995).

When deciding a motion for summary disposition, a trial court may determine the meaning of a contract when its terms are clear and unambiguous. *D'Avanzo v Wise & Marsac, PC*, 223 Mich App 314, 319; 565 NW2d 915 (1997). "A contract is ambiguous if the language is susceptible to two or more reasonable interpretations." *Id.* A review of the supply and lease agreements in this case indicates that the terms are clear and unambiguous.

The lease agreement states that the supply agreement was for a term of five years. Paragraph P of the supply agreement provides that the terms and conditions of the lease agreement are incorporated by reference "as if set forth fully herein." While the supply agreement fails to state a term of duration, the lease agreement indicates a term of five years. The law is clear that "[w]here one writing references another instrument for additional contract terms, the two writings should be read together." *Forge v Smith*, 458 Mich 198, 207; 580 NW2d 876 (1998). Furthermore, this Court "must look for the party's intent within the contract where the words of a written contract are not ambiguous or uncertain." *Id.* In this case the contractual terms are clear, making further construction or interpretation unnecessary. Therefore, summary disposition was properly granted.

Since summary disposition in plaintiffs' favor was proper, defendant's other issues need not be addressed.

Affirmed.

/s/ William B. Murphy

/s/ Harold Hood

/s/ Jessica R. Cooper