

STATE OF MICHIGAN
COURT OF APPEALS

DURWOOD ROLLER,

Plaintiff-Appellee,

v

CHRYSLER CORPORATION, INC.,

Defendant-Appellant.

UNPUBLISHED

August 20, 2002

No. 227523

Oakland Circuit Court

LC No. 94-473978-CK

ON REHEARING

Before: Zahra, P.J., and Neff and Saad, JJ.

NEFF, J. (*dissenting*).

I respectfully dissent. For the reasons stated in our now-vacated opinion in this case, *Roller v Chrysler*, unpublished opinion per curiam of the Court of Appeals, issued June 7, 2002 (Docket No. 227523), (Appendix A), I would reverse and remand for a new trial.

/s/ Janet T. Neff

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Before: Zahra, P.J., and Neff and Saad, JJ.

PER CURIAM.

This case, involving employee stock option rights, is before this Court for a fourth time, having been the subject of an interlocutory appeal,¹ an appeal following a jury trial,² a decision on remand from the Supreme Court,³ and a remand to the lower court for a new trial concerning plaintiff's right to exercise stock options after his separation from employment with defendant. Defendant now appeals as of right the trial court's grant of summary disposition for plaintiff on remand. We reverse and remand for a new trial.

I

Plaintiff was employed by defendant in several upper-management positions beginning in 1983, during which time he acquired stock options as a benefit of employment. In 1991, plaintiff requested early retirement after learning of his transfer to defendant's Missouri plant. Because plaintiff could not meet the age and ten-year service requirements for early retirement eligibility, the parties entered into a special separation agreement, under which plaintiff was laid off from work from March 1992 until March 1993, when he became eligible for early retirement.

¹ This Court denied defendant's delayed application for leave to appeal and motion for peremptory reversal of the trial court's decision to exclude parol evidence of the validity of plaintiff's stock option agreements.

² *Roller v Chrysler Corp, Inc*, unpublished opinion per curiam of the Court of Appeals, issued January 27, 1998 (Docket No. 194756) ("*Roller I*").

³ *Roller v Chrysler Corp, Inc*, 459 Mich 976 (1999); *Roller v Chrysler Corp, Inc (On Remand)*, unpublished opinion per curiam of the Court of Appeals, issued September 3, 1999 (Docket No. 194756) ("*Roller II*").

Following the separation agreement, defendant declined to honor plaintiff's stock option agreements acquired during his employment. Plaintiff filed a lawsuit alleging breach of contract and unjust enrichment regarding the stock option agreements. Following a jury trial, plaintiff was awarded damages of \$513,482.50.

Defendant appealed, alleging error in the jury instructions and in the admission of parol evidence concerning the validity of the stock option agreements. This Court found no error with regard to the admission of parol evidence, but reversed and remanded for a new trial on the basis of error in the jury instructions that charged the jury with determining whether the parties' stock option agreement was ambiguous. *Roller I*, *supra* at 4.

Defendant sought leave to appeal this Court's decision that the admission of parol evidence was proper, and our Supreme Court, in lieu of granting leave to appeal, remanded the case for reconsideration of that issue:

In lieu of granting the applications for leave to appeal, that part of the Court of Appeals judgment remanding the case for a new trial is vacated, and the case is remanded to that Court for reconsideration in light *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486[; 579 NW2d 411] (1998). MCR 7.302(F)(1). In the event the Court concludes that the trial court abused its discretion in admitting parol evidence, it is to remand the case to the circuit court for a new trial. If the Court determines that the trial court properly admitted the evidence, it is to remand the case to the circuit court for a determination whether, as a matter of law, ambiguity exists in the stock option agreements. If the circuit court determines that ambiguity exists, the judgment is to be reinstated. Jurisdiction is not retained. [*Roller, supra*, 459 Mich 976.]

On remand, this Court, in *Roller II*, determined that parol evidence had, in fact, been improperly admitted at trial because the separation agreement contained an integration clause and was not incomplete on its face. The *Roller II* panel determined that because "both the separation agreement and the stock option agreement are enforceable despite the lack of any reference to the stock options in the separation agreement," the separation agreement is not incomplete on its face,⁴ and parol evidence is therefore inadmissible on the issue of plaintiff's rights under the stock option agreement after the separation agreement. *Id.* at 2. The *Roller II* panel remanded this case to the trial court for a new trial in accordance with the Supreme Court's directive, stating:

plaintiff's rights under the stock option agreement must be determined in light of his employment status under the written terms of the separation agreement without consideration of any parol evidence. [*Id.*]

On remand, the trial court requested that the parties brief the significance of the *Roller II* decision. The trial court thereafter issued an opinion ordering "that the testimony related to the alleged oral assurances regarding the stock options must be stricken on retrial pursuant to" this

⁴ Nor were there any allegations of fraud. *UAW-GM Human Resource Center, supra* at 502.

Court's decision in *Roller II*. In its opinion and order, the trial court noted both parties' positions that a new trial may be unnecessary. Accordingly, the court accepted defendant's suggestion that the court consider a motion for summary disposition before retrying the case, based on plaintiff's rights under the stock option agreement in light of his employment status under the separation agreement.

The parties filed cross-motions for summary disposition. The trial court subsequently issued an order and opinion giving consideration to the parties' arguments for summary disposition and granting summary disposition in favor of plaintiff.

As summarized by the trial court, defendant's view was that the unambiguous language of the separation agreement extinguished plaintiff's stock options when he went on layoff, i.e., plaintiff was terminated by the layoff, which unambiguously ended his eligibility to exercise his stock options under the terms of the stock option plan. It was plaintiff's view that pursuant to the unambiguous language of the stock option agreement and the separation agreement, plaintiff's employment terminated due to his retirement, entitling him to exercise his stock options within five years of his retirement. Further, plaintiff was entitled to summary disposition because the admission of parol evidence was harmless.

In its opinion, the trial court noted that this Court in *Roller II* found that the separation agreement and the stock option agreement are enforceable and that the court must determine plaintiff's rights under the stock option agreement in light of his employment status under the written terms of the separation agreement without consideration of any parol evidence. The court essentially concluded as a matter of law that under the unambiguous language of the separation agreement, plaintiff's separation from employment with defendant was via retirement, not a layoff and, therefore, he was entitled to exercise his rights under the stock option agreements for a period of five years. The trial court ordered that the prior jury verdict, which had been reversed by this Court, be reinstated.

Defendant now appeals, arguing that summary disposition should have been granted in its favor or, in the alternative, that a new trial was warranted based on the prior opinion of this Court and the prior order of the Supreme Court. See *Roller, supra*, 459 Mich 976. We agree with the latter conclusion, that a new trial was warranted.

II

In this subsequent decision, we are constrained by the prior decisions of the Supreme Court and this Court in this case. The decision of an appellate court is controlling at all subsequent stages of litigation, so long as it is unaffected by a higher court's opinion. *Reeves v Cincinnati, Inc (After Remand)*, 208 Mich App 556, 559; 528 NW2d 787 (1995).

The trial court correctly framed this Court's decision in *Roller II* and the issue on remand. The *Roller II* panel determined that both the stock option agreement and the separation agreement were enforceable and that plaintiff's rights under the stock option agreement must be determined in light of his *employment status* under the written terms of the separation agreement without consideration of any parol evidence. *Roller II, supra* at 2 (emphasis added). The terms

of the stock option agreement dictated plaintiff's rights to exercise his stock options on the basis of his employment status. Section 8 of the stock option agreement⁵ provides in relevant part:

All the rights of an Option Holder under his option shall lapse if his employment with the Corporation or a subsidiary is terminated for any reason other than those referred to in this paragraph 8 or in paragraph 9 [Death of an Option Holder] of this Plan.

If the employment of an Option Holder with the Corporation or a subsidiary is terminated (a) by reason of retirement or permanent total disability, or (b) at or after age 55 under circumstances which the Committee, in its discretion, deems equivalent to retirement, and in either case he has been in the employ of either the Corporation or a subsidiary continuously from the date of granting the option until the termination of his employment, the Option Holder may exercise the option ... after such termination of employment at any time within the five year period commencing on the date of termination of his employment, but not beyond the term of his option, and only to the extent that he would on the date of exercise have been entitled under paragraph 7 of this Plan to exercise the option ... if he had continued to be employed by the Corporation.

If the employment of an Option Holder with the Corporation or a subsidiary is terminated by the Corporation under mutually satisfactory conditions, and he has been in the employ of either the Corporation or a subsidiary continuously from the date of granting the option until termination of his employment, the Committee, in its discretion, may permit the Option Holder to exercise the option ... after such termination of employment at any time within the one year period commencing on the date of termination of his employment, but not beyond the term of his option, and only to the extent that he would on the date of exercise had been entitled under paragraph 7 of this Plan to exercise the option ... if he had continued to be employed by the Corporation.

The issue on remand, then, was whether plaintiff's employment was *terminated* via retirement or via layoff. The court erred in determining this issue as a matter of law. The question of plaintiff's employment status was one of fact unless the language of the parties' agreement was clear and unambiguous. "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 meaning, interpretation becomes a question of fact." *UAW-GM, supra* at 491, quoting *Port Huron Ed Ass'n v Port Huron Area School Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996). We disagree that the import of plaintiff's layoff with respect to his employment status is clear and unambiguous under the terms of the separation agreement.

⁵ There were various stock option agreements involved in this case. The agreement cited was offered as an example and apparently does not differ from the other agreements with regard to the substantive provisions at issue.

The provisions of the separation agreement stated that plaintiff would receive layoff benefits, that layoff would occur on or about March 31, 1992, and that Special Early Retirement would be effective March 31, 1993; that plaintiff would receive Health Care and Group Insurance coverage, distribution of assets from the Salaried Employees Savings Plan upon retirement, and payment of unused vested vacation; and that plaintiff would have eligibility during layoff under the Employee Car Lease Program and during retirement under the Retired Employee Car Lease Program. The separation agreement further stated:

Roller will be laid off by Chrysler on or about March 31, 1992 (an exact date to be determined by Chrysler). Roller irrevocably agrees to retire on March 31, 1993.

The separation agreement does not refer to a termination of employment nor does it state that plaintiff's employment is terminated or is not terminated upon layoff. Defendant's letter accompanying the separation agreement refers to plaintiff's "voluntary separation." Whether plaintiff's employment terminated by layoff or by retirement is unclear; the language of the agreement is subject to multiple interpretations. Thus, plaintiff's employment status is a question of fact to be determined on retrial as ordered by the Supreme Court, *Roller, supra*, 459 Mich 976, and as directed by this Court in *Roller II*. We find no change of circumstances that would justify determining this issue on remand as a matter of law. *South Macomb Disposal Authority v American Ins Co*, 243 Mich App 647, 654; 625 NW2d 40 (2000).

We reverse the trial court's grant of summary disposition in favor of plaintiff. In accordance with the Supreme Court's directive, *Roller, supra*, 459 Mich 976 (1999), and this Court's prior decision, *Roller II*, we remand for a new trial to determine plaintiff's rights under the stock option agreements on the basis of his employment status upon termination, i.e., whether his termination was by retirement or by layoff for purposes of the stock option agreements. Defendant's remaining issue on appeal with regard to the trial court's reinstatement of the prior jury verdict is moot.⁶

Reversed and remanded for a new trial. We do not retain jurisdiction.

/s/ Brian K. Zahra
 /s/ Janet T. Neff
 /s/ Henry William Saad

⁶ We also find no merit in plaintiff's argument that the applicable statute of frauds, MCL 440.8319 (since repealed by 1988 PA 278) was violated because the statute required that contracts for the sale of securities be in writing. There was no contract for the sale or disposition of securities in this case, and we cannot agree that plaintiff held securities that were transferred by the separation agreement.