

STATE OF MICHIGAN
COURT OF APPEALS

RCS ASSOCIATES, INC.,

Plaintiff/Counter Defendant-
Appellee,

v

PULLMAN INDUSTRIES, INC.,

Defendant/Counter Plaintiff-
Appellant.

UNPUBLISHED
October 11, 2002

No. 231956
Oakland Circuit Court
LC No. 99-016258-CZ

Before: White, P.J., and Neff and Jansen, JJ.

PER CURIAM.

Defendant appeals by leave granted an order denying its motion for partial summary disposition and granting partial summary disposition to plaintiff pursuant to MCR 2.116(I)(2). We reverse and remand for further proceedings.

Plaintiff is a manufacturer's representative and represented defendant, an automotive parts supplier. The parties entered into a sales agreement on June 1, 1996. This agreement provided, in part:

2. This Sales Agreement shall continue in full force and effect from the dated execution set forth below until May 1, 1999, and thereafter shall be renewed annually unless, or until, either party advised [sic] in writing that they wish to terminate the Sales Agreement.

* * *

9. Should the contract be terminated during its lifetime, commissions will continue to be paid for the balance of the life of the part or service at the rate of one-half (1/2) of the commissions rate paid under this contract on products on which business was established by Agent before termination.

In an August 25, 1997 letter, defendant notified plaintiff that the contract would not be renewed, extended or continued beyond the May 1, 1999 expiration date. This letter also instructed plaintiff that, "effective immediately, you are no longer to engage in or undertake any sales representation services for Pullman Industries." Defendant informed plaintiff that it would

continue to pay commissions as provided by the contract until May 1, 1999. Defendant paid plaintiff full commissions after August 25, 1997.

On April 8, 1999, plaintiff sent defendant a letter, advising defendant that it was terminating the contract, effective April 8, 1999. Plaintiff stated that because it was terminating the contract during its lifetime, it expected payment of commissions at one-half the commission rate, as provided in paragraph nine of the agreement.

Plaintiff filed this action, seeking life-of-the-part commissions on parts defendant supplied to customers after May 1, 1999. Defendant moved for partial summary disposition, and the trial court granted summary disposition in favor of plaintiff pursuant to MCR 2.116(I)(2). The court determined that the language of the sales agreement was clear and unambiguous and its meaning a question of law. It determined that the agreement could be terminated in the first three years and that defendant had done so through its August 25, 1997 letter, finding that defendant terminated the contract as of May 1, 1999. It found defendant liable for one-half commissions pursuant to paragraph nine of the agreement.

Defendant argues that the court erred in finding the agreement unambiguous and in improperly resolving factual questions. We agree.

The primary goal in interpreting a contract is to give effect to the parties' intent. *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998). When construing the meaning of a contract, the contract is read as a whole. *Old Kent Bank v Sobczak*, 243 Mich App 57, 63; 620 NW2d 663 (2000). If the contract language is unambiguous, it must be enforced as written. *Farm Bureau Mut Ins Co v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1999). Whether the contract is ambiguous is a question of law, which is reviewed de novo. *Port Huron Ed Ass'n v Port Huron Area Sch Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996). "If the contract language is clear and unambiguous, its meaning is a question of law." *Id.* If it is ambiguous or capable of different interpretations, its meaning is a question of fact. *Id.* The language of a contract is construed according to its plain and ordinary meaning; technical or constrained constructions must be avoided. *UAW-GM*, *supra* at 491-492.

We agree with defendant that the contract is ambiguous, and its meaning is a question of fact. The contract can be read as asserted by defendant, i.e., that termination was only contemplated during an annual renewal period, but not during the initial three-year term. Defendant's conduct in paying, and plaintiff's conduct in accepting, full commissions from August, 1997 through May, 1999 is consistent with defendant's interpretation of the contract. Defendant's position that the contract terminated on May 1, 1999, through non-renewal, not termination, should not have been summarily dismissed, and should have been presented to the trier of fact along with plaintiff's interpretation of the contract and the parties' actions.

Further, assuming the contract was terminated during its lifetime, the date of termination and the amount of commissions owed were questions of fact. The court erred in summarily ruling that the contract was terminated as of May 1, 1999, and that full commissions were due until that date and life-of-the-part commissions were owing after that date. The effect of defendant's letter and plaintiff's letter under the contract were questions for the trier of fact.

Reversed and remanded. We do not retain jurisdiction.

/s/ Helene N. White

/s/ Janet T. Neff

/s/ Kathleen Jansen