STATE OF MICHIGAN

COURT OF APPEALS

OAKLAND COMMERCE BANK,

Plaintiff/Counter-Defendant[1]-Appellant,

v

FRANKLIN BANK, N.A.,

Defendant/Counter-Plaintiff-Appellee.

UNPUBLISHED
November 5, 2002

No. 232978
Wayne Circuit Court
LC No. 99-940429-CK

Before: Fitzgerald, P.J., and Bandstra and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's grant of summary disposition in favor of defendant, pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff argues that the trial court erred by granting summary disposition, claiming that defendant's representative breached the unambiguous language of the parties' confidentiality agreement. We find that the confidentiality provision was unambiguous and that, therefore, summary disposition was proper.

> In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4). [*Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).]

[1] Defendant's counter-claim was dismissed with prejudice by the trial court and is not the subject of this appeal.

As both parties concede, the essential facts in this case are undisputed. The parties settled a former federal lawsuit after entering into a settlement agreement. The settlement agreement contained a confidentiality clause, stating, in part: "It is further agreed that the Permitted Disclosees . . . shall be strictly prohibited from disclosing that the litigation was dismissed pursuant to a settlement or otherwise disclose the fact of settlement." Several weeks after the agreement was signed, defendant's chairman of the board of directors, David Simon, received a phone call from a reporter. In the course of their conversation, the reporter asked about the federal lawsuit. Simon informed the reporter that the lawsuit had been dismissed, that he could not comment further because of a confidentiality agreement, and that defendant had recovered about half of its losses. Soon afterward, the reporter published an article stating that Simon declined comment on the settlement. Plaintiff claimed that Simon's remarks violated the settlement agreement.

A settlement agreement is a contract, and must be construed and applied as a contract. *Gramer v Gramer*, 207 Mich App 123, 125; 523 NW2d 861 (1994). "A trial court may grant summary disposition of a breach of contract claim only if the terms of the contract are not subject to two or more reasonable interpretations." *BPS Clinical Laboratories v Blue Cross & Blue Shield of Michigan (On Remand)*, 217 Mich App 687, 700; 552 NW2d 919 (1996). The fact that parties to a contract dispute its meaning does not, in itself, establish an ambiguity. *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 14; 614 NW2d 169 (2000). Therefore, this Court must evaluate the confidentiality clause as a matter of law to determine if it is ambiguous. *Brucker v McKinlay Transport, Inc*, 225 Mich App 442, 447-448; 571 NW2d 548 (1997).

We conclude that the confidentiality clause is not ambiguous. By its clear terms, agents for defendant, like Simon, were prohibited from disclosing that the federal litigation had been dismissed pursuant to a settlement or the fact of such a settlement. Simon did not disclose any such information here. He merely said that the lawsuit had been dismissed, that he could not comment on that dismissal and that defendant had recovered approximately half of its losses. Nothing in those statements in any way disclosed that a settlement had been reached by which plaintiff had agreed to make payment to defendant thus acknowledging any responsibility for the check kiting scheme that gave rise to the federal litigation. Simon did not mention any settlement, much less a settlement with plaintiff, which was only one of the defendants in the federal litigation. Nor did Simon infer in any way that plaintiff was the source of any recovery that defendant had made.

No reasonable factfinder could conclude that Simon disclosed the fact of any settlement with plaintiff in any manner. It is irrelevant that the reporter to whom Simon made his circumspect comments drew conclusions that went beyond the disclosures made.

We affirm.

/s/ E. Thomas Fitzgerald
/s/ Richard A. Bandstra
/s/ Hilda R. Gage