

STATE OF MICHIGAN  
COURT OF APPEALS

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MATERIALS SOFTWARE SYSTEM, INC.,

Plaintiff-Appellee,

v

NEW WORLD TECHNOLOGIES, INC.,

Defendant-Appellant.

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UNPUBLISHED

June 15, 2004

No. 246526

Wayne Circuit Court

LC No. 01-125134-CZ

Before: Sawyer, P.J., and Gage and Owens, JJ.

MEMORANDUM.

Defendant appeals as of right from a circuit court judgment entered in plaintiff's favor following the grant of plaintiff's motion for summary disposition. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant entered into a contract with a company called Iventex to provide computer consulting services. It then subcontracted the work out to plaintiff. The parties' agreement provided in part that defendant would pay plaintiff "net thirty days after receipt of payment from the Client for the corresponding/related services. No advance payments will be made." Defendant contended that this "pay if paid" clause was a condition precedent, meaning that it was not obligated to pay plaintiff unless it was first paid by Iventex. Plaintiff disagreed, contending that it simply indicated a time for payment. The trial court determined that the contract was ambiguous with regard to whether the clause was intended as a condition precedent. It further found that because conditions precedent are disfavored under the law, the clause had to be construed in plaintiff's favor and plaintiff was thus entitled to judgment.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). "The interpretation of a contract is also a question of law this Court reviews de novo on appeal, including whether the language of a contract is ambiguous and requires resolution by the trier of fact." *DaimlerChrysler Corp v G-Tech Professional Staffing, Inc*, 260 Mich App 183, 184-185; \_\_ NW2d \_\_ (2003).

If the parties to a contract dispute its terms, the "court must determine what the parties' agreement is and enforce it." *G&A Inc v Nahra*, 204 Mich App 329, 330; 514 NW2d 255 (1994). If the language of a contract "is reasonably susceptible to more than one interpretation," it is ambiguous, *Rinke v Automotive Moulding Co*, 226 Mich App 432, 435; 573 NW2d 344 (1997), and parol evidence is admissible to explain the ambiguity. *Meagher v Wayne State Univ*,

222 Mich App 700, 722; 565 NW2d 401 (1997). “If a contract is subject to two interpretations, factual development is necessary to determine the intent of the parties and summary disposition is inappropriate.” *Mahnick v Bell Co*, 256 Mich App 154, 159; 662 NW2d 830 (2003). Once the court finds that a contract is ambiguous, the meaning of the agreement becomes a question of fact for the trier of fact, and it is the trier of fact who may utilize general principles of construction, if necessary, to determine the parties’ intent. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 469-472; 663 NW2d 447 (2003). Therefore, the trial court erred in resolving the ambiguity against defendant and entering judgment in plaintiff’s favor.

Reversed and remanded for further proceedings in accordance with this opinion. Jurisdiction is not retained.

/s/ David H. Sawyer

/s/ Hilda R. Gage

/s/ Donald S. Owens