STATE OF MICHIGAN

COURT OF APPEALS

CHARTER TOWNSHIP OF WINDSOR, a Michigan municipal corporation,

Plaintiff-Appellee,

v

RICHARD W. REMSING,

Defendant-Appellant.

UNPUBLISHED
October 28, 2004

No. 249688
Eaton Circuit Court
LC No. 02-001669-CZ

Before: Murray, P.J., and Markey and O'Connell, JJ.

O'CONNELL, J. (*concurring*.)

The English language is multifaceted. The same word in a single sentence can mean two different things. See *Nippa v Botsford Hosp (On Remand)*, 257 Mich App 387, 395 n 8; 668 NW2d 628 (2003); *Cavalier Mfg Co v Wausau*, 211 Mich App 330, 341; 535 NW2d 583 (1995), remanded 453 Mich 953 (1996), affirmed on remand 222 Mich App 89 (1997).

In the present case, the lead opinion uses the word "employee" in its generic sense, and the dissent uses the word in its technical sense. Based upon the reasoning of both sides, it is clear that both the lead opinion and the dissent are correct.

If I ask a handful of real estate agents whom their employer is (who they work for), I would expect them to mention Coldwell Banker, Century 21, Real Estate One, or some other real estate broker. Of course, I would understand that they are referring to their employer in the generic sense: the broker that employs their time and talents to generate profit. The information would probably be apparent from the logo they carry on their business cards and wear on their lapels or possibly from the yellow sport coat they are wearing. The lead opinion would agree with their response. The dissent, reading every legal nuance into the word "employer," would disagree.

Whatever happened to common sense? It is clear that the purpose of the ordinance is to prevent home-based businesses from burgeoning into sprawling enterprises with cars and workers cluttering home-lined suburban lanes. Therefore, the intent behind the ordinance is ill served by scrupulous adherence to nomenclature. An independent contractor hired for financial gain looks, sounds, and behaves just like an employee hired for the same purpose. Therefore, the defendant is the "employer" in this case regardless of the word's special meaning in tax,

insurance, liability, or other legal circles where the dissent's hypertechnical construction actually makes a difference.

As I stated in *Nippa*, *supra* at 393 n 5, judging is an art, not a calculus that can be delegated to computers. While the word "employee" *can* have different meanings, in the context of this ordinance it has only one meaning that makes sense. I affirm the decision of the trial court.

/s/ Peter D. O'Connell