# STATE OF MICHIGAN

# COURT OF APPEALS

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| TECHNICAL AID CRYSTAL, INC. d/b/a TAC AUTOMOTIVE GROUP,<br><br>Plaintiff-Appellant,<br><br>v<br><br>VOLKSWAGEN OF AMERICA, INC., DAKO SERVICES, INC., and TTI,<br><br>Defendants-Appellees. | UNPUBLISHED<br>June 10, 2008<br><br>No. 278908<br>Oakland Circuit Court<br>LC No. 2007-080656-CK |

Before: Zahra, P.J., and Cavanagh and Jansen, JJ.

PER CURIAM.

Plaintiff appeals by right the circuit court's grant of defendants' motions for summary disposition. We affirm.

I

Plaintiff is a contract employer agency, also known as a "staffing company." In September 2004, plaintiff contracted with defendant Volkswagen of America (VW), agreeing to temporarily assign certain of its employees to VW. Paragraph 7 of the contract between plaintiff and VW, entitled "DIRECT HIRE POLICY," provided:

> Assignments are made with the understanding that [VW] shall neither employ nor otherwise utilize directly or indirectly [plaintiff's] assigned personnel who were identified and recruited by [plaintiff] until the individual's current assignment to [VW] exceeds one hundred eighty (180) days of employ. After one hundred (180) days of employment [VW] is free to hire assigned personnel without costs or penalty.

Paragraph 9 of the contract provided that "[e]ither party may . . . terminate this Agreement in whole or in part at its convenience by written notice that is effective thirty (30) days from the date of said notice."

Under the parties' contract, plaintiff placed approximately 55 of its employees at VW as independent contractors. In September 2005, VW sent correspondence to all these employees, notifying them that there had been "an immediate change in business direction with regard to

contract staffing labor," informing them that VW would begin contracting exclusively with Dako rather than with plaintiff for staffing services, and requesting that they consider working for Dako instead of plaintiff. Further correspondence sent by VW to plaintiff's employees stated that "effective February 1, 2006, all employees provided by [plaintiff] to [VW] will be offered employment as [VW] temporary employees. If you choose to remain with [plaintiff], which you certainly may do, please contact [plaintiff's] representative regarding other employment opportunities, as [plaintiff] will no longer be supplying employees to [VW]." The correspondence went on to state, "Please understand that the current plan, (which of course may change), is to assign you to another contract employer agency after 6 months."

Effective February 2006, VW hired all of plaintiff's employees that had worked at VW for at least 180 days. VW employed these employees for six-month periods "and then facilitated their hire by Dako and TTi."[1]

Plaintiff sued defendants VW, Dako, and TTi. Plaintiff set forth a claim of breach of contract against VW. Plaintiff also set forth claims of "conspiracy" and "tortious interference" against VW, Dako, and TTi. Plaintiff acknowledged that VW had been entitled to hire its employees after 180 days in accordance with ¶ 7 of the parties' contract, but alleged that VW had not truly "hired" its employees in this case because they were employed only temporarily before being "sp[u]n off" to Dako and TTi. Plaintiff alleged that VW had engaged in "a sham hire" and that VW's actions constituted a "sham transaction." Plaintiff asserted that all three defendants had tortiously planned and conspired to steal its employees through this alleged "sham hire" process.

VW answered the complaint and moved for summary disposition pursuant to MCR 2.116(C)(8). Defendant TTi filed a companion motion for summary disposition, seeking dismissal under either MCR 2.116(C)(8) or (C)(10).

The circuit court heard oral argument on the motions for summary disposition. The court examined ¶ 7 of the parties' contract and observed that VW had been entitled to "hire" plaintiff's employees after 180 days. Plaintiff argued that the word "hire" in the parties' agreement was ambiguous and susceptible to multiple interpretations. Plaintiff's counsel argued:

> I'm going to give you some authority and I'm going to tell you what hire doesn't mean. Hire doesn't mean that you can take [plaintiff's] employees, park them on your payroll for six months and flip them over to Dako on a preconceived plan. That isn't what the parties intended, there's an affidavit from Mr. Cowper[2] which says that.

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[1] Defendants Dako and TTi are lower-priced staffing companies that compete with plaintiff.

[2] Plaintiff submitted the affidavit of Jim Cowper in response to VW's motion for summary disposition. Cowper is plaintiff's Senior Vice President. Cowper averred that ¶ 7 of the parties' contract "was intended by the parties to allow VW the flexibility of converting a worker from a staffing company independent contractor status to a VW full time employment status." Cowper (continued…)

Plaintiff's counsel went on to argue that parol evidence of trade usage should be admitted to show that the term "hire" was intended to mean only "[a] good faith intent to employ for bona fide reasons." Counsel argued that VW had never intended in good faith to "hire" plaintiff's employees, but had intended all along to merely "spin off" the employees to lower-cost staffing companies.

VW's counsel pointed to the dictionary definition of the word "hire." VW argued that it had "hired" plaintiff's employees within the meaning of the parties' agreement, and that it had consequently *not* breached the contract. The circuit court ruled from the bench:

> The Court understands that the only issue is the interpretation of the word hire and everything else is built upon or founded upon that . . . .
>
> The Court does find that the word hire is subject to singular interpretation and notwithstanding the allegations of bad faith, which may or may not indeed be there, the Court does find that it is constrained and must yield to the definition of hire and that the defendant Volkswagen did comply with the contract and everything else falls by the wayside.
>
> Likewise, the Court must dismiss the case as to TTi for the same reasons without having to address the issue of whether there's questions of fact about tortious conduct or not.
>
> That resolves the matter respectfully with respect to [defendants] Volkswagen and TTi; there's still a case pending between plaintiff and Dako that raises questions procedurally, but nevertheless that's the posture of this case.

Thereafter, the court entered an order granting VW's and TTi's motions for summary disposition and dismissing plaintiff's claims against those two defendants. Pursuant to a stipulation of the parties, the court treated Dako as having concurred in VW's motion for summary disposition and dismissed the remaining claims against Dako as well.

II

We review de novo the circuit court's grant of summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). We acknowledge that VW sought summary disposition under MCR 2.116(C)(8) only. However, because it appears that the circuit court may have considered evidence outside the pleadings, we will review the motion as having been granted pursuant to MCR 2.116(C)(10). *Driver v Hanley (After Remand)*, 226 Mich App 558, 562; 575 NW2d 31 (1997). "A motion for summary disposition may be granted pursuant to

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averred that ¶ 7 of the contract "was not intended by the parties to allow VW to 'hire' [plaintiff's] employees on a temporary basis with the inten[t]ion of returning them to a staffing company independent contractor status with a competitor of [plaintiff]." Cowper averred that VW's "scheme" to temporarily hire plaintiff's employees and then transfer them to lower-cost staffing companies "does not constitute a 'hire' as that term is understood by the parties to the . . . contract."

MCR 2.116(C)(10) when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Id.*

The construction of a contract presents a question of law subject to de novo review. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003). We review de novo whether the language of a contract is ambiguous and requires resolution by the trier of fact, *DaimlerChrysler Corp v G Tech Pro Staffing, Inc*, 260 Mich App 183, 185; 678 NW2d 647 (2003), and whether extrinsic evidence should be used to interpret the contract, *In re Kramek Estate*, 268 Mich App 565, 573; 710 NW2d 753 (2005).

III

Plaintiff argues that the circuit court erred by granting summary disposition of its breach of contract claim. We disagree.

The primary goal in the construction or interpretation of any contract is to honor the intent of the parties. *Klapp*, *supra* at 473. A contract is clear and unambiguous if, however inartfully worded or clumsily arranged, it fairly admits of but one interpretation. *Farm Bureau Mut Ins Co of Michigan v Nikkel*, 460 Mich 558, 567; 596 NW2d 915 (1999). "A fundamental tenet of our jurisprudence is that unambiguous contracts are not open to judicial construction and must be *enforced as written.*" *Rory v Continental Ins Co*, 473 Mich 457, 468; 703 NW2d 23 (2005) (emphasis in original). We acknowledge that the trier of fact must interpret an ambiguous contract. However, when the language of a contract is clear and unambiguous, construction of the contract is a question of law for the court, and no factual development is necessary to determine the intent of the parties. *Meagher v Wayne State Univ*, 222 Mich App 700, 721-722; 565 NW2d 401 (1997). In such a case, summary disposition should be granted to the proper party. *Rossow v Brentwood Farms Development, Inc*, 251 Mich App 652, 658; 651 NW2d 458 (2002).

In general, "[t]he determination as to whether ambiguity exists must be made without reference to any source other than the contract itself." 5 Corbin, Contracts, § 24.7, p 33. We readily concede that parol evidence of trade usage may be admitted to prove the existence of a latent ambiguity. *McCarty v Mercury Metalcraft Co*, 372 Mich 567, 575; 127 NW2d 340 (1964). However, this is only true when "some extrinsic fact creates the possibility of more than one meaning." *In re Woodworth Trust*, 196 Mich App 326, 328; 492 NW2d 818 (1992).

Plaintiff argues that the word "hire" as used in ¶ 7 of the parties' contract was ambiguous and susceptible to more than one reasonable interpretation. But a contractual word or phrase is not rendered ambiguous merely because the parties ascribe different meanings to it, see *Henderson v State Farm Fire and Cas Co*, 460 Mich 348, 354-355; 596 NW2d 190 (1999), or because it has more than one dictionary definition, *Cole v Auto-Owners Ins Co*, 272 Mich App 50, 54; 723 NW2d 922 (2006). To determine whether a contract provision is ambiguous, the court must give the language its ordinary and plain meaning to see if the words may reasonably be understood in different ways. *Rossow*, *supra* at 658. As defendants correctly observe, the word "hire" means "to engage the services of for wages or other payment," or "to engage the temporary use of at a set price . . . ." *Random House Webster's College Dictionary* (1997). Contrary to plaintiff's argument, the word "hire" does not explicitly or implicitly contemplate permanency of employment or employment of a long-term nature. Nor does the word suggest

only "good-faith" employment or non-terminable employment. There is quite simply no extrinsic fact that creates the possibility of more than one meaning in this case, *In re Woodworth Trust*, *supra* at 328, and the circuit court therefore properly declined to consider parol evidence in the interpretation of the contractual term "hire." Paragraph 7 of the parties' contract was unambiguous.

Had the parties wished to state in ¶ 7 that VW was only entitled hire plaintiff's employees in good faith[3] and for permanent, full-time positions, they certainly could have done so. However, no such provisions were included in the contract, and we will not read into an agreement terms that have not been placed there by the parties. *Cottrill v Michigan Hosp Service*, 359 Mich 472, 476; 102 NW2d 179 (1960); *Trimble v Metropolitan Life Ins Co*, 305 Mich 172, 175; 9 NW2d 49 (1943). VW did not breach ¶ 7 of the contract when it "engage[d] the services of [plaintiff's employees] for wages or other payment," or "engage[d] the temporary use of [plaintiff's employees] at a set price." See *Random House Webster's College Dictionary* (1997). The circuit court properly granted summary disposition with respect to plaintiff's breach of contract claim.[4]

IV

Plaintiff also argues that the circuit court erred by granting summary disposition with respect to its tortious interference and civil conspiracy claims. Again, we disagree.

A

As an initial matter, we note that these arguments have not been properly presented for appellate review because they were not raised in plaintiff's statement of the questions presented. MCR 7.212(C)(5); *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000). Nevertheless, we will briefly discuss the merits of these claims.

B

It appears from the pleadings that plaintiff attempted to set forth a claim of tortious interference with a business relationship or expectancy.[5] "The elements of tortious interference

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[3] We acknowledge that "the covenant of good faith and fair dealing is an implied promise contained in every contract . . . ." *Hammond v United of Oakland, Inc*, 193 Mich App 146, 152; 483 NW2d 652 (1992). However, Michigan does not recognize an independent cause of action for breach of the implied covenant of good faith and fair dealing. *Fodale v Waste Management of Michigan, Inc*, 271 Mich App 11, 35; 718 NW2d 827 (2006).

[4] Nor does the self-serving affidavit of Jim Cowper create an ambiguity in ¶ 7 of the contract by establishing that the word "hire" was susceptible to more than one reasonable interpretation. We will not distort a contract's plain language in such a way as to create an ambiguity where none exists. *Michigan Twp Participating Plan v Pavolich*, 232 Mich App 378, 382; 591 NW2d 325 (1998).

[5] It also appears that count II of plaintiff's complaint was based on a theory of tortious

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with a business relationship or expectancy are (1) the existence of a valid business relationship or expectancy that is not necessarily predicated on an enforceable contract, (2) knowledge of the relationship or expectancy on the part of the defendant interferer, (3) an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and (4) resulting damage to the party whose relationship or expectancy was disrupted." *Health Call of Detroit v Atrium Home & Health Care Services, Inc*, 268 Mich App 83, 90; 706 NW2d 843 (2005). The intentional interference must be improper, involving "a per se wrongful act or the doing of a lawful act with malice and unjustified in law for the purpose of invading the . . . business relationship of another." *Feldman v Green*, 138 Mich App 360, 378; 360 NW2d 881 (1985). In this context, "[a] 'per se wrongful act' is an act that is inherently wrongful or one that is never justified under any circumstances." *Formall, Inc v Community Nat Bank of Pontiac*, 166 Mich App 772, 780; 421 NW2d 289 (1988).

Plaintiff has not explained how defendants committed a "per se wrongful act" that was "inherently wrongful or . . . never justified under any circumstances." *Id.* As we have already concluded, VW acted properly under the parties' agreement and did not breach the contract when it hired plaintiff's employees. Moreover, once VW had hired plaintiff's employees, it was necessarily free to release those employees and to allow defendants Dako and TTi to hire them. Defendants' actions in this regard can hardly be described as "per se wrongful" and "never justified under any circumstances." *Id.* The circuit court properly granted summary disposition in favor of defendants with respect to plaintiff's tortious interference claim.

C

"'A civil conspiracy is a combination of two or more persons, by some concerted action, to accomplish a criminal or unlawful purpose, or to accomplish a lawful purpose by criminal or unlawful means.'" *Advocacy Organization for Patients & Providers v Auto Club Ins Ass'n*, 257 Mich App 365, 384; 670 NW2d 569 (2003), quoting *Admiral Ins Co v Columbia Cas Ins Co*, 194 Mich App 300, 313; 486 NW2d 351 (1992). But because plaintiff has failed to establish any actionable underlying tort, the civil conspiracy claim must fail. *Advocacy Organization*, *supra* at 384. Summary disposition of plaintiff's civil conspiracy claim was properly granted.

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Kathleen Jansen

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interference with a contract or contractual relations. "[T]ortious interference with a contract or contractual relations is a cause of action distinct from tortious interference with a business relationship or expectancy." *Health Call of Detroit*, *supra* at 89. However, any claim of tortious interference with a contract or contractual relations was properly dismissed because the evidence failed to show that defendants had wrongfully instigated a breach of contract. *Id.* at 90.