# STATE OF MICHIGAN

# COURT OF APPEALS

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RALPH L. MILLER, Individually and as Trustee of the KYUNG AE BAE TRUST, under agreement dated October 16, 1989, and KYUNG AE BAE, Individually and as Trustee of the KYUNG AE BAE TRUST, under agreement dated October 16, 1989,

Plaintiffs-Appellants,

v

MSX INTERNATIONAL, INC., CITICORP VENTURE CAPITAL, LTD., and CCT PARTNERS IV, LP,

Defendants-Appellees.

UNPUBLISHED
August 4, 2009

No. 283665
Oakland Circuit Court
LC No. 2007-081824-CK

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Before: Saad, C.J., and Sawyer and Borrello, JJ.

PER CURIAM.

Plaintiffs appeal the circuit court's order that granted defendants' motion for summary disposition and denied plaintiffs' motion for summary disposition. For the reasons stated below, we affirm.

As a result of a prior lawsuit, plaintiffs and defendants entered into a settlement agreement on August 16, 2002, regarding plaintiffs' 4,867 shares of common stock and 7,679 shares of preferred stock in MSX. Plaintiffs contend that, though the settlement agreement provides that "the trust would retain its [MSX International, Inc. (MSX)] series A preferred shares and that [MSX] would not impair those shares," MSX breached the agreement when it reorganized its corporate structure by creating a new holding company, MSX-IBS Holdings, Inc. (MSX-IBS), thereby canceling all of the MSX "series A preferred stock" and replacing this stock with preferred stock from MSX-IBS. Plaintiffs argue that the trial court erred when it granted

defendants' motion for summary disposition and denied plaintiffs' motion for summary disposition.[1]

"An agreement to settle a pending lawsuit is a contract and is to be governed by the legal principles applicable to the construction and interpretation of contracts." *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006), quoting *Walbridge Aldinger Co v Walcon Corp*, 207 Mich App 566, 571; 525 NW2d 489 (1994). If contractual language is clear, its construction is a question of law for the courts, but if a contract is subject to two interpretations, factual development is necessary to determine the intent of the parties and summary disposition is inappropriate. *Meagher v Wayne State University*, 222 Mich App 700, 721-722; 565 NW2d 401 (1997). However, if a contract fairly admits of only one interpretation, the language of the contract should be given its plain and ordinary meaning. *Id*.

The parties' settlement agreement expressly provides that "the trust shall retain ownership of [40 percent] of its common stock of [MSX], . . . and all of its preferred stock of [MSX] . . .." Plaintiffs argue that this language means that defendants were precluded from substituting plaintiffs' MSX stock with MSX-IBS stock. Plaintiffs specifically cite Ralph Miller's testimony that plaintiffs signed the settlement agreement in order to prevent defendants from substituting plaintiffs' MSX stock with other stock. We agree with both parties that the language of the settlement agreement fairly admits of only one interpretation, and thus, is not ambiguous. *Meagher, supra* at 721-722. However, contrary to plaintiffs' argument, the unambiguous language of the agreement does not provide that defendants are precluded from substituting plaintiffs' MSX stock with other stock. Instead, the agreement merely provides that defendants purchased 60 percent of plaintiffs' common stock and none of the preferred stock. This means simply that plaintiffs retained ownership of 40 percent of the common stock and all of the preferred stock. Because the language is unambiguous, Miller's testimony regarding his subjective beliefs why plaintiffs signed the settlement agreement is irrelevant. See *Zurich Ins Co v CCR and Co*, 226 Mich App 599, 605; 576 NW2d 392 (1997).

The only relevant restriction that the settlement agreement places on defendants is that, as long as plaintiffs retained ownership of some stock, defendants could not amend MSX's certificate of incorporation in a manner that "decrease[d] the dividend rate, reduce[d] or diminish[ed] the accrual, payment terms, or stated value, or extend[ed] the date of redemption set forth in . . . the Certificate with respect to the Trust's Series A preferred stock without the written

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[1] We review a trial court's decision to grant or deny a motion for summary disposition pursuant to MCR 2.116(C)(10) de novo, *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003), viewing the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in a light most favorable to the nonmoving party, *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004), and granting the motion if the documentary evidence shows that there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law, *Veenstra v Washtenaw Country Club*, 466 Mich 155, 164; 645 NW2d 643 (2002). We likewise conduct a de novo review of issues of contractual interpretation, including the determination of whether contractual language is ambiguous. *Klapp v United Insurance Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003).

consent of the Trust." Plaintiffs argue that defendants' "restructuring" that cancelled all of the MSX "series A preferred stock" and replaced it with preferred stock from MSX-IBS violated the aforementioned restriction.

We disagree with plaintiffs' argument. The governing certificate of incorporation, in place at the time the settlement agreement was executed, provides that plaintiffs' preferred stock was valued at $100 a share, and accumulated a 12 percent dividend compounded twice annually. The certificate further provided for accrual of unpaid dividends, and established that plaintiffs would be able to redeem the stock on December 31, 2008, "to the extent funds are legally available therefore." When MSX-IBS merged with MSX, thereby replacing the MSX preferred stock with MSX-IBS preferred stock, it provided that the replacement stock would have "identical rights and privileges to the shares previously issued by MSX." Furthermore, MSX-IBS's certificate of incorporation expressly provides that the replacement stock will be worth $100 a share, will accumulate a 12 percent dividend compounded twice annually "on June 30 and December 31 of each year, commencing on June 30, 1997." Therefore, the replacement stock would also be valued at $100 a share, accumulate a 12 percent dividend compounded twice annually, provide for the accrual of unpaid dividends and have a redemption date of December 31, 2008. Therefore, defendants did not "decrease the dividend rate, reduce or diminish the accrual, payment terms, or stated value, or extend the date of redemption set forth in . . . the Certificate with respect to the Trust's Series A preferred stock" when it replaced the stock with MSX-IBS preferred stock.

We also reject plaintiffs' argument that defendants violated the terms of the settlement agreement when MSX's certificate of incorporation was amended, thereby allegedly changing the redemption date of plaintiffs' preferred stock. The amendment protected plaintiffs' redemption rights by specifically providing that any changes that were made are not applicable to the extent that the changes "impair the rights of the parties to that certain Settlement Agreement dated August 16, 2002." MSX-IBS's amended and restated certificate of incorporation contains the same redemption provision. Accordingly, we conclude that plaintiffs, as they did before, had the option to redeem their stock, "to the extent that funds are legally available," any time after December 31, 2008, and thus, plaintiffs' redemption rights were not affected when MSX amended its certificate of incorporation. Therefore, there are no genuine issues of material fact regarding whether any of defendants' questioned actions "decrease[d] the dividend rate, reduce[d] or diminish[ed] the accrual, payment terms, or stated value, or extend[ed] the date of redemption set forth in . . . the Certificate with respect to the Trust's Series A preferred stock." In light of these conclusions, the trial court did not err when it denied plaintiffs' motion for summary disposition and granted defendants' motion for summary disposition. *Veenstra, supra* at 164; *Meagher, supra* at 721-722.

Affirmed.

/s/ Henry William Saad
/s/ David H. Sawyer
/s/ Stephen L. Borrello