

STATE OF MICHIGAN
COURT OF APPEALS

SPECTRUM ILLUMINATION COMPANY,
INC.,

UNPUBLISHED
March 16, 2010

Plaintiff-Appellant,

v

GILBERT M. PINTER and SMART VISION
LIGHTS, LLC.,

No. 288713
Muskegon County Court
LC No. 07-045518-CK

Defendants-Appellees.

Before: Meter, P.J., and Zahra and Donofrio, JJ.

PER CURIAM.

Plaintiff, Spectrum Illumination Company, Inc. (Spectrum), appeals as of right a bench trial judgment in favor of defendants, Gilbert M. Pinter and Smart Vision Lights, LLC (Smart Vision), in this breach of contract action. Because the language in Section 11(C)(i) of the settlement is unambiguous, the trial court properly applied the plain language of the settlement agreement when it concluded that defendants had not breached the settlement agreement, any argument regarding damages is moot, and plaintiff's cursory treatment of its discovery issue on appeal rendered it abandoned, we affirm.

Pinter and David Muyskens, the president of Spectrum, formed Spectrum together as partners in 1999. Spectrum designs, manufactures, and sells high-powered LED lights for use in machine vision lighting. The LED lights work in conjunction with high-speed cameras and computers to perform quality control functions through the use of photography in industrial manufacturing. In 2006, Pinter and Muyskens became estranged and Pinter ultimately left Spectrum. Pinter started Smart Vision, his own machine vision lighting company. Pinter initiated the underlying case to this action when he filed a complaint against his former partner, Muyskens. That case was settled by the parties' execution of a "Settlement Agreement, Release, and Redemption Agreement" (settlement agreement) dated April 26, 2007. In the settlement agreement, Pinter gave up his 50% share in Spectrum in exchange for a cash sum. Additionally, Pinter agreed not to utilize certain driver technology in his own design, manufacturing, and sale of LED lights for use in machine vision lighting.

Subsequently, in the instant case, plaintiff Spectrum filed suit against defendants Pinter and Smart Vision alleging that they violated the provisions of the settlement agreement Pinter and Muyskens entered into to resolve the previous litigation. Plaintiff Spectrum alleged three

counts in its complaint: a breach of contract claim alleging that defendants' used Spectrum's driver technology in violation of the settlement agreement; a breach of contract claim alleging that defendants' used Spectrum's business records in violation of the settlement agreement; and finally, a third count asserting a theory of tortious interference with contractual relations. The matter went to bench trial where the trial court heard several days of both lay and expert testimony from both sides. The central issue in the case was the interpretation of Section 11(C)(i) of the settlement agreement. It is as follows:

C. "Company [Spectrum] has two generic terms for its driver technology, known as the "micro driver" and the "LDM" driver. Pinter is not entitled, directly or indirectly, in concert with others or otherwise, to create or attempt to recreate the functionality of any or more of the unique features of the micro driver or LDM driver, described below, regardless of whether the LED driver includes additional features and/or components beyond those described below, a/k/a "definitions":

i. Any LED driver comprising:

an integrated circuit having at least two pins wherein a first one of at least two pins turns on and off said integrated circuit and a second one of said at least two pins controls the brightness of one or more LED's electrically coupled to said integrated circuit; and wherein said LED driver strobes said LED's by using said second pin[.]

After finding Section 11(C)(i) of the settlement agreement unambiguous, the trial court held that defendants had not violated Section 11(C)(i) stating as follows in its September 24, 2008 opinion:

The only possible meaning of clause II(C)(i) is that defendants are precluded from using the second of at least two pins to control brightness, and to use "said second pin" to strobe. There is no "said second pin", other than the second pin which controls brightness, referred to in the clause. Thus, defendants may not use the same pin to control both brightness and strobing. As the court has previously noted, defendants' lights use one pin to control brightness, and a different pin to control strobing. While it would not be practical to use the same pin to control both brightness and strobing, it is not impossible to use a single pin for both brightness and strobing. The court further finds that defendants' lights do not use a single pin to turn the integrated circuit on and off. Consequently, defendants' lights are not in violation of section II(C)(i).

Plaintiff now appeals as of right.

Plaintiff first argues on appeal that the trial court erroneously interpreted Section 11(C)(i) of the settlement agreement without considering the rest of Section 11 and in the context of the machine vision industry. Defendants respond that the trial court correctly found that the language in Section 11(C)(i) was unambiguous and properly applied its plain meaning. It is well-settled that "[a]n 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." *Reagan v*

Ford Motor Co, 207 Mich App 566, 571; 525 NW2d 489 (1994). We review de novo the interpretation of a contract, including whether a contract is ambiguous. *DaimlerChrysler Corp v G-Tech Professional Staffing, Inc*, 260 Mich App 183, 184-185; 678 NW2d 647 (2003).

“In interpreting a contract, it is a court’s obligation to determine the intent of the parties by examining the language of the contract according to its plain and ordinary meaning. If the contractual language is unambiguous, courts must interpret and enforce the contract as written because an unambiguous contract reflects the parties’ intent as a matter of law.” *Phillips v Homer*, 480 Mich 19, 24; 745 NW2d 754, 2008 (citations omitted). We conclude that Section 11(C)(i) of the settlement is unambiguous. While somewhat inartfully worded, the plain language of the contested provision affords only one interpretation:

that defendants may not utilize, in their electrical driver designs, technology involving an LED driver comprised of an integrated circuit having at least two pins wherein,

(a) one pin (pin 1 of at least 2 pins) turns the integrated circuit on and off,

and,

(b) a second pin (pin 2 of at least 2 pins) controls both the brightness and strobing capabilities of the LED.

No other interpretation can be supported by the language of Section 11(C)(i). That being the case, because the terms of the settlement agreement are unambiguous, the settlement contract must be enforced according to its own terms. *Kloian v Domino’s Pizza, LLC*, 273 Mich App 449, 461; 733 NW2d 766 (2006).

Plaintiff first tries to create an ambiguity in the settlement agreement by arguing that the trial court did not look at the contract as a whole, and in isolating Section 11(C)(i), misinterpreted that provision, as well as the rest of the contract. Indeed, to properly interpret a contract, we “read the contract as a whole and give meaning to all the terms contained within the [contract].” *Michigan Twp Participating Plan v Pavolich*, 232 Mich App 378, 383; 591 NW2d 325 (1998), quoting *Royce v Citizens Ins Co*, 219 Mich App 537, 542-543; 557 NW2d 144 (1996). Further, we give the contractual language its ordinary and plain meaning in order to avoid technical and strained constructions. *Id.* There is nothing in the record indicating that the trial court did not read the contract as a whole and afford the contractual language its plain and ordinary meaning. *Id.* Contrary to plaintiff’s assertions, the trial court stated plainly in its opinion that while during trial it did hear testimony regarding the proper interpretation of the contract, in finding the contractual language unambiguous, it “disregard[ed] that evidence on the record which would interpret the meaning of the clause based upon factors other than *the contractual language itself*.” (emphasis added.) Thus, undeniably, the trial court relied only on the “contractual language itself.” There is no evidence that it did not look at the contract as a whole resulting in misinterpretation of the contract, and plaintiff’s contention is belied by the record.

Plaintiff also contends that the trial court erred in its interpretation of the settlement agreement because it did not consider the contractual terms “in the context of the machine vision

industry.” However, because the terms of the settlement agreement are unambiguous, the settlement contract must be enforced according to its own terms. *Kloian, supra* at 273 Mich App 461. The trial court properly applied the settlement agreement as written and did not engage in any further construction of the contract with or without regard to the context of the machine vision industry. *Rory v Continental Ins Co*, 473 Mich 457, 468-469; 703 NW2d 23 (2005). That plaintiff does not utilize the technology prescribed by Section 11(C)(i), that it is not what he meant it to say, or even if the technology is “non-sensical,” as he puts it in his brief on appeal, is of no consequence to this Court because we are charged with applying the provisions of the contract as written. Courts are required to enforce unambiguous contracts according to their terms. *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 370; 666 NW2d 251 (2003); *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 51-52; 664 NW2d 776 (2003).

With regard to defendants’ alleged breach of the settlement agreement, we agree with the trial court’s determination that defendants’ did not breach the settlement agreement. “This Court reviews a trial court’s findings of fact in a bench trial for clear error and its conclusions of law de novo.” *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003). “A finding is clearly erroneous where, after reviewing the entire record, this Court is left with a definite and firm conviction that a mistake has been made.” *Id.* We give deference to the trial court’s special opportunity to judge the credibility of witnesses who appear before it. MCR 2.613(C).

We are not blind to the fact that what drove plaintiff’s arguments in the trial court and on appeal was an attempt to transform the settlement agreement into an agreement not to compete. But the settlement agreement is not a non-compete agreement. Clearly the settlement agreement presumes that plaintiff and defendants are going to compete in the same marketplace with LED products of the same or very similar functionality. That being said, the settlement agreement reserves certain electrical design schematics or driver technologies for plaintiff’s benefit in order to gain a competitive advantage over defendants. However, under the express language set forth in Section 11, defendants would not be in violation of the terms of the settlement agreement even if they offered LED products with the exact same functionality as plaintiff’s LED products as long as defendants’ LED products do not utilize the driver technology exclusively retained by plaintiff in the settlement agreement.

It appears that after the fact, plaintiff is not satisfied with the manner in which Section 11(C)(i) was drafted. Plaintiff contends now that Section 11(C)(i) can be interpreted more than one way in an attempt to encompass its technological argument that the section actually means that defendants are prohibited from strobing off the DIM pin and that defendants knew that. But, as matter of law, the contested section means only what it says. *Quality Products & Concepts Co, supra* at 469 Mich 370; *Wilkie, supra* at 469 Mich 51-52. In sum, the settlement agreement, by its plain terms, merely sets forth language with the goal of limiting defendants’ ability to utilize certain electrical design schematics or particular driver technologies to achieve specific functionalities of the LED. And after carefully reviewing this technically dense record, we are not left with a definite and firm conviction that the trial court erred when it found that defendants’ LED design was not in violation of the terms of the settlement agreement. In other words, the record supports the trial court’s finding that while defendants offered an LED product with similar functionality to plaintiff’s product, defendants were not in breach of the settlement

agreement because their product did not utilize the prohibited design as described in the settlement agreement. *Alan Custom Homes, Inc, supra* at 256 Mich App 512.

Plaintiff next argues that the trial court applied the wrong standard of damages in determining net profit, and as a result, allowed defendants to manipulate the calculations to avoid an award of damages. In light of our decision that defendants did not breach the settlement agreement, we need not address plaintiff's arguments regarding the determination of damages and the evidence introduced regarding damages for the reason that they are moot. *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 221; 761 NW2d 293 (2008).

Finally, plaintiff argues that the trial court erred in limiting discovery so that plaintiff could not determine whether defendants disclosed or used Spectrum's information in developing defendants' LED driver. Defendants respond that the trial court properly allowed plaintiff to conduct discovery of protected materials via review of all discoverable documents by an appointed Special Master who was an experienced patent attorney. This Court reviews a trial court's decision pertaining to a discovery matter for an abuse of discretion. *VanVorous v Burmeister*, 262 Mich App 467, 476; 687 NW2d 132 (2004). "[A]n abuse of discretion occurs only when the trial court's decision is outside the range of reasonable and principled outcomes." *Safian v Simmons*, 477 Mich 8, 12; 727 NW2d 132 (2007).

Without citation to the record, plaintiff alleges the following in its brief on appeal:

When Spectrum initiated the suit, it served a subpoena on the electrical engineer who designed the driver and the strobe circuitry for Defendants. Because the strobing circuitry basically duplicated Spectrum's strobing circuitry, because Pinter had disclosed Spectrum's information to others for competitive purposes, because Pinter through [sic] away the lap top [sic] hard drive, because the Spectrum schematic disappeared when Pinter quit, Spectrum strongly believed that Pinter have [sic] copied of the schematic and use [sic] them to obtain his new schematic.

Defendants respond that plaintiff had no evidence to support its theory that Pinter had used any technology from plaintiff in violation of the settlement agreement.

In an attempt to support its theories during litigation, plaintiff sought discovery of design documents of defendants' engineer, Jon Cusack by serving a subpoena. Seeking to protect their confidential design documents, defendants responded by filing a motion to quash the subpoena. The trial court denied defendants' motion to quash plaintiff's subpoena, but in an effort to facilitate discovery for plaintiff while at the same time protecting defendants' confidential design documents and correspondence, the trial court appointed patent attorney Frank Scutch, III, as Special Master. The trial court tasked Scutch with reviewing the materials plaintiff requested of defendants to determine if any of the documents indicated that defendants had violated the terms of the settlement agreement. Scutch testified at trial that after reading the settlement agreement and reviewing the materials provided to him pertaining to design work that Cusack did for defendants, he did not find any evidence that defendants violated any term of the settlement agreement.

Plaintiff argues that the trial court erred in its handling of discovery because it refused to allow plaintiff to conduct its own discovery to see what specific documents Pinter disclosed to Cusack. Because plaintiff cites no authority for its argument, we reject it as abandoned on appeal. *Etefia v Credit Technologies, Inc.*, 245 Mich.App. 466, 471, 628 NW.2d 577 (2001). An appellant may not merely announce its position and leave it to this Court to discover and rationalize the basis for its claims. *In re Petition by Wayne Co Treasurer for Foreclosure of Certain Lands for Unpaid Prop Taxes*, 265 Mich App 285, 299-300; 698 NW2d 879 (2005). This Court is not required to search for authority to sustain or reject a position raised by a party without citation of authority. *In re Reisman Estate*, 266 Mich App 522, 533; 702 NW2d 658 (2005); *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). “It is not enough for an appellant in his brief simply to . . . assert an error and then leave it up to this Court to . . . unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.” *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). See, generally, *Derderian v Genesys Health Care Systems*, 263 Mich App 364, 388; 689 NW2d 145 (2004).

Were we to review this issue, we would not find error. It is true that our court rules implement “an open, broad discovery policy” *Reed Dairy Farm v Consumers Power Co.*, 227 Mich App 614, 616; 576 NW2d 709 (1998). However, if a party believes a discovery request should not be honored, it may bring a motion under MCR 2.302(C). MCR 2.302(C) states as follows:

(C) Protective Orders. On motion by a party or by the person from whom discovery is sought, and on reasonable notice and for good cause shown, the court in which the action is pending may issue any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following orders:

- (1) that the discovery not be had;
- (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
- (5) that discovery be conducted with no one present except persons designated by the court;
- (6) that a deposition, after being sealed, be opened only by order of the court;
- (7) that a deposition shall be taken only for the purpose of discovery and shall not be admissible in evidence except for the purpose of impeachment;

(8) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(9) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

Here, clearly the trial court properly appointed a Special Master with the appropriate background technical knowledge to review the confidential documents under both MCR 2.302(C)(3) and (C)(8). It appears from the record that the trial court was not attempting to limit the scope of plaintiff's discovery by appointing a special master. Instead, the trial court was facilitating discovery through alternative means with a dual focus of endeavoring to ascertain the truth for plaintiff's benefit while at the same time protecting defendants' trade secrets. *Id.* Again, though we have concluded that because of its cursory treatment of this issue on appeal, plaintiff has abandoned the issue, were we to review the issue we would conclude that plaintiff has not shown an abuse of discretion on this record. *Safian, supra* at 477 Mich 12; *VanVorous, supra* at 262 Mich App 476.

Affirmed. Defendants, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Patrick M Meter

/s/ Brian K. Zahara

/s/ Pat M. Donofrio