

STATE OF MICHIGAN
COURT OF APPEALS

SMB GLOBAL SERVICES GROUP, LLC,

Plaintiff-Appellee,

v

CENTURY, INC. and CENTURY-3 PLUS, LLC,

Defendant-Appellants.

UNPUBLISHED

July 24, 2012

No. 304698

Macomb Circuit Court

LC No. 2009-004431-CK

Before: TALBOT, P.J., and SERVITTO and M. J. KELLY, JJ.

PER CURIAM.

Century, Inc. (“Century”) and Century-3 Plus, LLC (“Century-3”) appeal as of right the trial court’s opinion and order in favor of SMB Global Services Group, LLC (“SMB”) after a bench trial, arguing that the trial court erred in concluding, based on its use of the dictionary definition of “document,” that SMB provided sufficient documentation of the time it spent on a project to satisfy the “documented time” language in the contract. We affirm.

We review “de novo questions involving the proper interpretation of a contract and the legal effect of a contractual clause.”¹ The primary goal of contract construction is to determine and enforce the parties’ intent from the plain language of the contract itself.² A contract must be interpreted according to its plain and ordinary meaning, avoiding “technical or constrained constructions.”³ In interpreting a contract, courts must “give effect to every word, phrase, and clause in a contract and avoid an interpretation that would render any part of the contract surplusage or nugatory.”⁴ To determine the plain and ordinary meaning of terms undefined in a contract, we may refer to a dictionary.⁵

¹ *Alpha Capital Mgt, Inc v Rentenbach*, 287 Mich App 589, 611; 792 NW2d 344 (2010).

² *Old Kent Bank v Sobczak*, 243 Mich App 57, 63; 620 NW2d 663 (2000).

³ *St Paul Fire & Marine Ins Co v Ingall*, 228 Mich App 101, 107; 577 NW2d 188 (1998).

⁴ *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 468; 663 NW2d 447 (2003) (quotation and citation omitted).

⁵ *Cole v Auto-Owners Ins Co*, 272 Mich App 50, 53; 723 NW2d 922 (2006).

The relevant portion of the contract provided that Century and Century-3 would reimburse SMB “for any documented time and/or expense.” The only documentation SMB provided concerning the time it worked for Century and Century-3 was a “Manpower and Expense Breakdown” (“breakdown”) that it created based on its retrospective approximation of the number of hours worked. The breakdown provided the number of hours SMB’s employees worked each week between the weeks of September 29, 2008 and November 24, 2008. SMB’s founder Robert Breuhan testified that he and his employees wrote information about their work schedules on a wall calendar and Breuhan would put the rough amount of time he worked on projects on the calendar. He used the calendar to calculate the number of hours accounted for in the breakdown. The actual calendar was no longer available at the time SMB filed suit to recover payment under the contract. In its opinion, the trial court quoted the eighth edition of Black’s Law Dictionary for its definitions of “document:” “[t]o support with records, instruments, or other evidentiary authorities” or “[t]o record; to create a written record of.” The trial court used those definitions to hold that “the [contract] does not require that any specific form of documentation be provided.” Accordingly, the trial court found that SMB’s breakdown was sufficient documentation under the “documented time” language in the contract.

On appeal, Century and Century-3 cite three dictionaries⁶ to define the verb “document.” Those definitions provide that “document” means to “support with records, instruments, or other evidentiary authorities;” to “record; to create a written record of;” to “provide (a book, pamphlet, etc.) with documents or supporting references;” to “prove, as by reference to documents;” to “furnish with a document or documents;” to “support (an assertion or claim, for example) with evidence or decisive information;” and to “support (statements in a book, for example) with written references or citations; annotate.”⁷ Century and Century-3 argue that the definitions provide that to document the hours worked, SMB must prove or support the hours worked; and to prove or support the hours worked, SMB must provide credible documentation of the hours worked; and to provide credible documentation of the hours worked, SMB must have created the documentation of the hours worked contemporaneously to the hours worked. As SMB’s breakdown was not created contemporaneously to the hours worked, it did not fit Century and Century-3’s construction of the term “documented time.” Further, Century and Century-3 argue that the trial court’s construction of the word “documented” impermissibly rendered the word “documented” surplusage and nugatory because it permitted SMB to “merely write a number on a piece of paper” based on a retrospective approximation of the hours worked.

We do not agree that the plain and ordinary language of the definitions provide that the documentation must be contemporaneous. The definitions do include the words “prove” and “support,” but Century and Century-3’s argument that this Court should derive a contemporaneousness requirement from those words using two separate logical inferences is

⁶ Black’s Law Dictionary (7th ed); *Webster’s New World Dictionary of American English* (1988); *The American Heritage Dictionary of the English Language* (1975).

⁷ *Id.*

inconsistent with the rule that a contract must be interpreted according to its plain and ordinary meaning, avoiding “technical or constrained constructions.”⁸

We note that the verb “document” means “[t]o support with records, instruments, or other evidentiary authorities” or “[t]o record; to create a written record of.”⁹ Thus, plain and ordinary meaning of the verb “documented” in this case means that SMB must have supported its claim of time and expense incurred with records, instruments, or other evidentiary authorities, or have created a written record of the time and expense incurred. This construction is consistent with the trial court’s holding that “the [contract] does not require that any specific form of documentation be provided.” As such, the trial court’s construction was consistent with the plain and ordinary meaning of the word “documented.”¹⁰ Also, the trial court’s construction of the term “documented” did not render it surplusage or nugatory because it was not deprived of any effect.¹¹ Accordingly, contrary to Century and Century-3’s assertion, the parties’ contract did not mandate a specific level of detail in the documented time.

In sum, using the plain and ordinary meaning of the verb “documented,” SMB supported its claim of time and expenses incurred with its breakdown, and created a written record of the time and expense incurred. Therefore, the trial court properly concluded as a matter of law that SMB’s breakdown was sufficient documentation under the “documented time” language in the contract.¹²

Affirmed.

/s/ Michael J. Talbot
/s/ Deborah A. Servitto
/s/ Michael J. Kelly

⁸ *St Paul Fire & Marine Ins Co*, 228 Mich App at 107.

⁹ Black’s Law Dictionary (9th ed).

¹⁰ *St Paul Fire & Marine Ins Co*, 228 Mich App at 107.

¹¹ *Klapp*, 468 Mich at 468.

¹² *Alpha Capital Mgt, Inc*, 287 Mich App at 611.