STATE OF MICHIGAN

COURT OF APPEALS

ROYAL KEY RIVER CLUB, LTD.,
a Michigan corporation,

Plaintiff-Appellant,

v

JAMES L. STEVENS,

Defendant-Appellee.

UNPUBLISHED
April 1, 1997

No. 181448
Berrien Circuit Court
LC No. 91004199 CK

Before: Marilyn Kelly, P.J., and Neff and J. Stempien,* JJ.

PER CURIAM.

Plaintiff appeals as of right from an award of $10,000 in damages to it for defendant's breach of a real estate purchase agreement. On appeal, plaintiff claims that damages should not have been limited to $10,000. We reverse.

Plaintiff owned property which it was developing as a membership campground. Defendant expressed an interest in purchasing the property. The parties signed a uniform purchase agreement and an addendum on March 14, 1991. They signed an amendment to the agreement on April 27, 1991. Defendant failed to close on the deal, and plaintiff filed this breach of contract action.

The trial judge found that defendant breached the purchase agreement.[1] When the agreement was signed, defendant placed $10,000 with Berrien County Abstract and Title as a deposit. The agreement contained the following provision concerning damages if the buyer breached:

> In the event, BUYER shall fail or refuse to complete the sale on the terms herein set forth, then the SELLER shall have one of the following options.
>
> 1. Terminate this Agreement and authorize RELATOR/BROKER to retain earnest money deposit as liquidated damages for the payment of expenses incurred related to this transaction, selling commissions and damages for BUYER'S breach; or

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* Circuit judge, sitting on the Court of Appeals by assignment.

2. Proceed with any remedy available under the laws of the State of Michigan.

A line was drawn on the agreement in the area of the second option. It partially covers the sentence and partially underlines it. Plaintiff argued that the line was meant as an underline. Defendant, on the other hand, argued that it was meant to strike-out option number two. The trial judge found, looking at the face of the document, that the contract was unambiguous and that the line effectively crossed out option two. He held that the parol evidence rule barred oral testimony on the issue.

If a contract fairly admits of but one interpretation, it may not be said to be ambiguous. *South Macomb Disposal Authority v Michigan Municipal Risk Management Authority*, 207 Mich App 475, 478; 526 NW2d 3 (1994). However, where a contract might be ambiguous, extrinsic evidence may be admitted to prove the existence of an ambiguity. *L Loyer Const Co v Novi*, 179 Mich App 781, 794; 446 NW2d 364 (1989). Parol evidence is admissible to clarify the meaning of any ambiguous contract. *Brauer v Hobbs*, 151 Mich App 769, 774; 391 NW2d 482 (1986).

We find the contract to be ambiguous. The line goes through part of the sentence, then goes under part, and then goes back through the sentence again. This line has the attributes of both an underline and a strike-out. Moreover, the parties did not place their initials by this line. On the amendment, changes were made to the typed document. Each of the changes had the initials of both parties next to it. The fact that the line on the purchase agreement is not initialed demonstrates that the line may not have meant to change the agreement as written. At the very least, it makes the meaning of the line ambiguous.

Because the contract was ambiguous, the trial judge should have allowed extrinsic evidence, including the oral testimony of the parties, to explain the meaning of the line. The judge stated during his discussion of the parol evidence rule that, if extrinsic evidence were allowed, he would find plaintiff's version more credible and rule in its favor. Therefore, we remand this matter for an appropriate determination of damages.

Reversed and remanded. Plaintiff being the prevailing party, it may tax costs pursuant to MCR 7.219. We do not retain jurisdiction.

/s/ Marilyn Kelly
/s/ Janet T. Neff
/s/ Jeanne Stempien

[1] This finding is not in dispute on appeal.