

STATE OF MICHIGAN
COURT OF APPEALS

MARTIN AND HADDIE RASCHE
CORPORATION, d/b/a VALLEY CITY PLATING
COMPANY,

Plaintiff- Appellant,

v

INTERNATIONAL METALS AND CHEMICALS
GROUP, d/b/a TALCO METALS AND IMC
GROUP,

Defendant- Appellee.

UNPUBLISHED
November 21, 1997

No. 199018
Kent Circuit Court
LC No. 96-006300-CK

Before: O’Connell, P.J., and MacKenzie and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court’s order granting summary disposition to defendant pursuant to MCR 2.116(C)(4) and (C)(10) based on the exclusive jurisdiction of Pennsylvania courts under the terms of the contract. We affirm.

Plaintiff filed suit against defendant for breach of contract, fraud, and misrepresentation after defendant failed to deliver goods due under the parties’ contract. The parties’ oral contract was confirmed when plaintiff signed defendant’s writing entitled “confirmation of oral contract,” which quoted the terms of the agreement, i.e., quantity, price, and description of goods. This writing also specified, “See Standard Conditions of Sale on reverse side, incorporated in and made part of the contract. FAILURE TO NOTIFY US IN WRITING OF ANY DISCREPANCIES OR OBJECTIONS WITHIN TEN(10) DAYS OF RECEIPT OF THIS CONFIRMATION SHALL BE DEEMED YOUR WRITTEN CONFIRMATION.” There was, however, no reverse side to the writing signed by plaintiff because it had been sent by facsimile. Moreover, plaintiff had crossed out the words “on reverse side” on the copy it signed. In its motion for summary disposition, defendant noted that the standard conditions provided that contract disputes were to be governed by Pennsylvania law and that Pennsylvania courts had exclusive jurisdiction.

Plaintiff now argues that the circuit court erred in granting summary disposition because there was no evidence from which to conclude that plaintiff expressly agreed to incorporate defendant's standard conditions of sale into the parties' contract. We disagree.

We review a trial court's ruling on a motion for summary disposition de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). The cardinal rule of contract interpretation is to ascertain the parties' intent. *Rasheed v Chrysler Corp*, 445 Mich 109, 127, n 28; 517 NW2d 19 (1994). Where contract language is clear and unambiguous, the intent of the parties will be ascertained according to the contract's plain sense and meaning. *Haywood v Fowler*, 190 Mich App 253, 258; 475 NW2d 458 (1991). Where contractual language is clear, its construction is a question of law for the court to decide. *Dillon v DeNooyer Chevrolet Geo*, 217 Mich App 163, 166; 550 NW2d 846 (1996). The initial question whether contractual language is clear or ambiguous is also a question of law. *Port Huron Education Ass'n v Port Huron Area School Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996).

The circuit court found the language of the contract to be clear and straightforward and to include "See Standard Conditions of Sale, incorporated in and made part of the contract." Among those standard conditions was the choice of forum and choice of law clauses, giving exclusive jurisdiction over contract disputes to courts in Pennsylvania. On appeal, plaintiff does not argue that the contract is ambiguous. Rather, citing the Uniform Commercial Code (UCC), MCL 440.2207; MSA 19.2207, and *American Parts Co, Inc v American Arbitration Ass'n*, 8 Mich App 156; 154 NW2d 5 (1967), plaintiff contends that the exclusive jurisdiction and choice of law provisions contained in the standard conditions are material terms and cannot be imposed unilaterally by one party subsequent to the parties' oral agreement. We agree that material terms cannot be unilaterally imposed. However, such terms become a part of the contract when expressly agreed to by the other party. *Id.* at 175. Plaintiff signed the sales confirmation slip, which incorporated defendant's standard conditions. Thus, by the contract's plain terms, plaintiff acknowledged its agreement to incorporate defendant's standard conditions. Therefore, contract disputes are within the exclusive jurisdiction of Pennsylvania courts, and the circuit court did not err in granting summary disposition on this ground.

Plaintiff also contends that the circuit court erred in finding that defendant's standard conditions were applicable through the parties' course of dealing because defendant failed to establish a course of dealing. This argument has no merit because the circuit court did not find that defendant's standard conditions were applicable through the parties' course of dealing. Instead, the court based its decision on the plain language of the contract. While the court buttressed its decision by observing that these parties were not strangers and had previous dealings, the court did not find a "course of dealing" as that term is employed in the UCC. MCL 440.1205(1); MSA 19.1205(1). Moreover, plaintiff admitted that it had previous transactions with defendant.

Affirmed.

/s/ Peter D. O'Connell
/s/ Barbara B. MacKenzie
/s/ Hilda R. Gage