

STATE OF MICHIGAN
COURT OF APPEALS

PENINSULA COPPER INDUSTRIES, INC.,

Plaintiff-Appellee,

v

CLARK PELLEGRINI,

Defendant-Appellant.

UNPUBLISHED

March 1, 2002

No. 228210

Houghton Circuit Court

LC No. 99-010778-CK

Before: Bandstra, P.J., and Murphy and Murray, JJ.

MEMORANDUM.

Defendant appeals as of right the order granting plaintiff's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff brought this action asserting that defendant breached a settlement agreement in other litigation. That agreement provides in part:

4. MONETARY CONSIDERATION AND LIEN: Pellegrini agrees to pay PCI the sum of \$35,000.00; provided, however, that such payment shall be made only out of any proceeds recovered by Pellegrini whether by settlement, judgment or arbitration arising out of the matters alleged and related to the consolidated litigation currently pending in the Houghton County Circuit Court identified by court file Nos. 93-8435-CZ, 93-8730-CK and 93-14944-CM, and, provided further, that interest at the rate applicable to judgments shall be paid on said amount from September 1, 1996 to the date of payment if the Pellegrini recovery by arbitration or judgment is subject to such interest.

The litigation mentioned was resolved by a settlement agreement, which contained the following terms:

In consideration of the mutual covenants set forth herein, the parties agree as follows:

A. Ventures agrees to pay to Superior National Bank, custodian for Clark L. Pellegrini IRA, on or before February 15, 1999, the sum of \$50,000.00 representing repayment in full of that certain promissory note given by Ventures

to Pellegrini's IRA dated August 28, 1991, plus the additional sum of \$60,000.00 representing all interest and collection costs associated with said promissory note. Upon payment of said amounts, Pellegrini shall cause the return to Ventures of the original promissory note.

A motion under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. *Dillon v DeNooyer Chevrolet Geo*, 217 Mich App 163, 168; 550 NW2d 846 (1996). This Court will review the record de novo to determine whether the prevailing party was entitled to judgment as a matter of law. *Westfield Companies v Grand Valley Health Plan*, 224 Mich App 385, 387; 568 NW2d 854 (1997).

The primary goal in interpreting contracts is to determine and enforce the parties' intent. *Old Kent Bank v Sobczak*, 243 Mich App 57, 63; 620 NW2d 663 (2000). To do so, this Court reads the agreement as a whole and attempts to apply the plain language of the contract itself. *Id.* It is axiomatic that if a term is unambiguous and no reasonable person could differ with respect to the application of the term to undisputed material facts, then the court should grant summary disposition to the proper party pursuant to MCR 2.116(C)(10). *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999).

There is no ambiguity in the settlement agreement. Defendant was required to pay plaintiff from "any proceeds" recovered by a settlement arising out of the underlying litigation. No conditions were placed on that recovery. There is no support for defendant's claim that payments made to an IRA cannot be considered proceeds. The trial court properly granted summary disposition as a matter of law under MCR 2.116(C)(10).

Affirmed.

/s/ Richard A. Bandstra
/s/ William B. Murphy
/s/ Christopher M. Murray