STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL A. HYLAND, Plaintiff-Appellee/Cross-Appellant,	UNPUBLISHED May 27, 2004
v	No. 245831 Kent Circuit Court
A.L. BELROSE COMPANY, INC, Defendant-Appellant/Cross-Appellee.	LC No. 00-010187-CK

Before: White, P.J., and Markey and Owens, JJ.

PER CURIAM.

Defendant appeals by right from an order entering judgment for plaintiff in the amount of $150,248.09 plus statutory interest pursuant to the Michigan Sales Representatives' Commissions Act (SRCA), MCL 600.2961, as the amount due to plaintiff for unpaid commissions on sales he completed before his resignation from defendant company; denying plaintiff's claims for an additional $25,423.14 allegedly due to him as commission from a canceled sale; and denying plaintiff's request for attorney fees pursuant to the SRCA. Pursuant to MCR 7.207(A), plaintiff cross-appeals by right from the same order. We reverse and remand.

Defendant begins by arguing that the trial court erred in awarding commissions to plaintiff and in denying defendant's motion for a new trial because plaintiff breached the parties' employment contract when he breached his duty of loyalty to defendant by soliciting the business of defendant's largest customer, VanDorn Demag, (hereinafter VDD), while he was still working for defendant and carrying defendant's business card. We disagree.

We review the trial court's conclusions of law de novo, and its findings of fact for clear error. *Lamp v Reynolds*, 249 Mich App 591, 595; 645 NW2d 311 (2002). We review the trial court's decision whether to grant a new trial for an abuse of discretion. *Arrington v Detroit Osteopathic Hospital Co*, 196 Mich App 544, 550; 493 NW2d 492 (1993).

Every agency contract carries with it a duty of loyalty to the interests of the principal, as well as obligations of good faith and fair dealing. *Burton v Burton*, 332 Mich 326, 337; 51 NW2d 297 (1952); Restatement Agency, 2d, § 387. An agent may forfeit his right to compensation from his principal if he engages in misconduct, breach of duty, or willful disregard of the obligation imposed upon him by the agency relationship. *Sweeney & Moore, Inc v*

Chapman, 295 Mich 360, 363; 294 NW 711 (1940). "[T]he law will not permit an agent to act in a dual capacity in which his interest conflicts with his duty, without a full disclosure of the facts to his principal." *Id.*

The trial court did not err by awarding plaintiff commissions on all but one of the sales that he generated prior to his resignation because plaintiff was entitled to these commissions. He did not breach either the terms of his employment contract or his duty of loyalty to defendant. Plaintiff did not act in a "dual capacity" because he did no "sales work" nor did he "enter into any business relationships with manufacturers until long after" he discontinued working for defendant. While still employed by defendant, plaintiff merely probed the possibility of working for VDD, defendant's largest customer, after leaving defendant, as VDD had mentioned some two years earlier. But, nothing developed from this inquiry, and it alone does not mean plaintiff acted in a "dual capacity." Plaintiff never worked for VDD while still employed by defendant. Moreover, if plaintiff's inquiry rendered plaintiff's agency contract with defendant ineffective, then the contract was in fact, breached two years earlier in 1997 when VDD approached plaintiff and two other employees, and they each discussed the possibility of forming "single-man agencies" with VDD. Because plaintiff was not acting in a "dual capacity," there was nothing to disclose to defendant, and he did not breach his duty of loyalty to defendant.

Next, plaintiff argues that the trial court should have added $25,423.14 to plaintiff's award as the commission that plaintiff earned on the cancelled sale because according to the parties' employment contract, plaintiff was entitled to commissions on "booked" sales, not just completed sales, and he "booked" the sale of a machine that was eventually canceled. We agree.

Here, the contract between the parties included the following terms regarding commissions:

> Commission to sales representatives on all lines represented by the [defendant]. Sales bookings will be totaled from May 1 to April 30 of each year. Total will be reset for each twelve (12) month period. Reviewed by mutual agreement:
>
> ***
>
> [Plaintiff] 60% up to $5 [million dollars]
>
> 65% over $5 [million dollars]

In arriving at its decision to deny plaintiff's claim for a commission on the canceled sale, the trial court relied on MCL 600.2961, which provides the following in pertinent part:

> (2) The terms of the contract between the principal and sales representative shall determine when a commission becomes due.
>
> (3) If the time when the commission is due cannot be determined by a contract between the principal and sales representative, the past practices between the parties shall control or, if there are no past practices, the custom and usage prevalent in this state for the business that is the subject of the relationship between the parties.

But we read the statute as only addressing the timeliness of the payments due to plaintiff, and not whether plaintiff is entitled to receive commissions on sales that are subsequently canceled.

Where the words chosen by the parties to a contract are unambiguous, "the parties will be confined to the language which they employed." *Moore v Kimball*, 291 Mich 455, 561; 289 NW 213 (1939). In *Barber v Vernon*, 8 Mich App 116, 120; 153 NW2d 882 (1967), this Court stated:

> By contract and by law (*Advance Realty Company v Spanos* [1957], 348 Mich 464; 83 NW2d 342), plaintiff was entitled to his commission when he produced a buyer "ready, willing and able" to purchase within the terms of the listing agreement.

When the sales representative has procured a contract between the seller and the buyer, or has produced a ready, willing and able buyer, he cannot be deprived of a commission by the subsequent failure of the buyer to complete the transaction. *Bowman v Myers*, 241 Mich 642, 646-647; 217 NW 916 (1928). In the absence of a special agreement, the general rule is that an agent is deemed to have earned his commission when the vendor and the purchaser enter into a binding agreement. The failure of the transaction does not deprive the agent of his commission. *Rich v Emerson-Dumont Distributing Corp*, 55 Mich App 142, 144; 222 NW2d 65 (1974).

Here, the contract states that "[s]ales bookings will be totaled" and the "[t]otal will be reset for each twelve (12) month period." Reading the contract as a whole, we find the language clearly provides that plaintiff was entitled to a commission of sixty percent for each "booked" sale up to $5 million worth and sixty-five percent for each "booked" sale over $5 million. Black's Law Dictionary, Sixth Edition (1991), defines the term "book" as "[t]o register or make reservation for transportation, lodging, etc. To set date and time for engagement or appointment"; and the term "booked" is defined as "[e]ngaged, destined, bound to promise or pledge oneself to make an engagement. To have travel, lodging, etc. reservations."

Thus, under the terms of the parties' contract, plaintiff was only required to "book" his sales to be entitled to the commissions. As stated in *Moore, supra* at 561, the parties are "confined to the language which they employed," in their contract; and as stated in *Montgomery v Taylor & Gaskin, Inc*, 47 Mich App 269, 275; 209 NW2d 472 (1973), "[t]he contract was what the contract said and neither we nor the trial judge may permissibly impair the obligation thereunder." Therefore, the trial court could not alter the parties' contract and require each machine to be "sold" before plaintiff became entitled to receive his commissions. The evidence at trial demonstrates that plaintiff indeed "booked" the sale of the machine to Textron. Plaintiff cannot be "deprived of a commission by the subsequent failure" of Textron to complete the transaction because plaintiff performed his obligation by producing a "ready, willing and able buyer" for the machine. *Bowman, supra* at 646-647. Therefore, the trial court improperly denied plaintiff's claim and should have awarded an additional $25,423.14 for the commission on the "booked" but canceled sale of the machine to Textron.

Finally, plaintiff argues that he was entitled to attorney fees under the SRCA. We agree.

The SRCA, MCL 600.2961(6) provides that:

> If a sales representative brings a cause of action pursuant to this section, the court shall award to the prevailing party reasonable attorneys' fees and court costs.

MCL 600.2961(1)(c) states the following:

> "Prevailing party" is defined in this section as a party who wins *on all the allegations of the complaint or on all of the responses to the complaint.* [Emphasis added.]

As previously discussed, because the trial court improperly denied plaintiff's claim, he should have been awarded an additional $25,423.14 for the commission on the "booked" but canceled sale of the machine to Textron. Thus, plaintiff did in fact prevail "on all the allegations of the complaint," and the trial court erred in failing to award him attorney fees pursuant to the SRCA.

We reverse and remand for entry of judgment consistent with our opinion. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Donald S. Owens