STATE OF MICHIGAN

COURT OF APPEALS

PAUL LEONE and HARRY ORRELL,

Plaintiffs-Appellees,

v

MIKA SYSTEMS, INC.,

Defendant-Appellant.

UNPUBLISHED
November 23, 2004

No. 249963
Oakland Circuit Court
LC No. 2002-045645-CB

Before: Cavanagh, P.J., and Kelly and H Hood*, JJ.

PER CURIAM.

Defendant, Mika Systems, Inc., appeals by leave granted from the trial court's order granting in part and denying in part defendant's motion for summary disposition. We affirm in part and vacate in part.

Defendant formerly employed plaintiffs, Paul Leone and Harry Orrell, as account managers. According to defendant, plaintiffs were at-will employees, employed to "solicit and procure business" by selling defendant's informational technology services. Plaintiffs assert that defendant's business also involved the sale of computer software and hardware. While employed by defendant, plaintiff Orrell signed a "Receipt of Employee Handbook and Acknowledgement of Employment Terms" in February 2001, which, in part, provided for a 180-day limitation period to bring an action. The "Receipt" and "Acknowledgement" also contained an agreement to arbitrate any employment disputes. Specifically, the "Receipt" and "Acknowledgement" provided in pertinent part:

> 9. I understand and agree that in the event that a dispute arises concerning my employment with and/or termination from the Company, which dispute would be resolved by judicial or administrative proceeding, I hereby agree to arbitrate any and all such disputes arising out of my employment or termination from the Company or in any way relating to any alleged wrongful acts on the part of the Company relating to my employment, whether such disputes are based on alleged statutory violations or otherwise, through the procedures and policies of the American Arbitration Association, unless other procedures are agreed upon in writing between myself and the Company. . . .

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

> 10. I agree that any arbitration or judicial proceeding arising out of a dispute relative to my employment with the Company shall not be brought unless the same is commenced within one hundred and eighty (180) days following the incident giving rise to such dispute. My failure to commence such proceeding within the one hundred and eighty (180) day period shall result in the extinguishment of any rights I may have had to prosecute such claims or actions. . . .

Plaintiff Leone never signed any "Receipt" or "Acknowledgment."

After plaintiffs were terminated from their employment, they commenced this action against defendant, alleging that they were entitled to four percent commissions, which defendant refused to pay. Plaintiffs also sought double the amount of unpaid commissions pursuant to the Michigan sales representative commission act (SRCA), MCL 600.2961(5)(b). Defendant moved for summary disposition, arguing that plaintiff Orrell's action was barred because an arbitration agreement existed. Defendant further argued that the SRCA was not applicable because there was no genuine issue of material fact about whether it was a "principal" within the meaning of the SRCA, and further, plaintiffs were not employed for the solicitation of orders for the sales of goods, only services. The trial court granted defendant's motion with respect to plaintiff Orrell, finding that he had agreed to submit all employment-related disputes to arbitration. The court went on to hold that the contractual 180-day limitation period was invalid as a matter of law. Regarding the applicability of the SRCA, the trial court denied defendant's motion with respect to plaintiff Leone, concluding that, although the essential character of the relationship between defendant and plaintiff Leone involved the sale of defendant's services, there was some sale of goods involved. The court therefore held that the SRCA was applicable to this action.

Defendant argues that the trial court erred when it concluded that, although the arbitration agreement with plaintiff Orrell was valid, the 180-day contractual limitation period was invalid under the SRCA. We review de novo a trial court's decision on a motion for summary disposition. *McDowell v Detroit,* ___ Mich App ___; ___ NW2d ___ (Docket No. 246294, issued November 9, 2004), slip op, p 10. Statutory construction is a question of law that we also review de novo. *County of Wayne v Hathcock*, 471 Mich 445, 455; 684 NW2d 765 (2004).

The trial court erred in addressing the applicability of the contractual 180-day limitation period and in concluding that it was void as a matter of law. Michigan has a strong policy favoring arbitration and, as a general rule, arbitrators, rather than courts, should decide the application of a potential defense to arbitration, such as a contractual limitation period. *Amtower v William C. Roney & Co (On Remand),* 232 Mich App 226, 233; 590 NW2d 580 (1998). "[P]arties may contract for a period of limitation shorter than the applicable statute of limitation provided that the abbreviated period remains reasonable." *Timko v Oakwood Custom Coating, Inc*, 244 Mich App 234, 239; 625 NW2d 101 (2001). "[T]he determination whether the issue of timeliness must be decided by the arbitrator or a court inexorably becomes a question of contract interpretation." *Amtower, supra* at 234. "[A]ny ambiguity concerning whether a specific issue falls within the scope of arbitration, such as whether a claim is timely, must be resolved in favor of submitting the question to the arbitrator for resolution." *Id.*

As noted previously, the trial court determined that plaintiff Orrell had a valid arbitration agreement with defendant, and plaintiff Orrell does not challenge this determination. Plaintiff

Orrell agreed to arbitrate employment disputes that were based on alleged statutory violations, and agreed to the 180-day limitation period. As previously indicated, parties are permitted to contract for a shortened limitation period as long as it is reasonable. *Timko, supra* at 239.[1] Thus, the unambiguous language of the parties' agreement reserved the initial consideration of the validity of the contractual limitation period, as a term of employment, for the arbitrator.

Further, in determining that the contractual 180-day limitation period was invalid as a matter of law, the trial court relied on MCL 600.2961(8), which provides that a "provision in a contract between a principal and a sales representative purporting to waive any right under this section is void." However, nothing in the SRCA provides for a specific limitation period. Where statutory language is not ambiguous, a court must enforce the statute as written and may not go beyond the words of the statute to determine the Legislature's intent. *Shinholster v Annapolis Hosp*, 471 Mich 540, 549; 685 NW2d 275 (2004). Because the SRCA does not prescribe any limitation period, the trial court erred in concluding that the contractual limitation period affected a right under the SRCA that could not be waived by agreement of the parties. Additionally, an agreement to resolve conflicts in arbitration rather than a trial court is not a waiver of statutory rights. *Rembert v Ryan's Family Steak Houses, Inc*, 235 Mich App 118, 138; 596 NW2d 208 (1999).

For these reasons, we affirm the trial court's grant of summary disposition in favor of defendant with respect to plaintiff Orrell's action, but vacate the portion of the trial court's order holding that the 180-day contractual limitation period is invalid as a matter of law.

Defendant also contends that the trial court erred in denying its motion for summary disposition with respect to the applicability of the SRCA, and in affirmatively determining that the SRCA applied in this case.

As an initial matter, because plaintiff Orrell's action is subject to arbitration, it is apparent that the trial court's ruling with regard to this issue must be limited to plaintiff Leone. The applicability of the SRCA to plaintiff Orrell's claims is to be resolved through arbitration.

The SRCA provides for double damages when a principal purposefully fails to pay a commission to a sales representative when due. MCL 600.2961(5)(b); *In re Certified Question*, 468 Mich 109, 110-111; 659 NW2d 597 (2003). Plaintiff Leone's allegations in his complaint that he was employed by defendant as a sales representative, that defendant failed to pay him promised commissions on sales for which he was the procuring cause, and that he was therefore entitled to damages under MCL 600.2961, were sufficient to state a claim for recovery under the SRCA. Therefore, the trial court properly denied defendant's motion for summary disposition pursuant MCR 2.116(C)(8). *Adair v State*, 470 Mich 105, 119; 680 NW2d 386 (2004).

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[1] In *Timko v Oakwood Custom Coating, Inc*, 244 Mich App 234, 242; 625 NW2d 101 (2001), this Court held that, in the context of other employment legislation, there is "no inherent unreasonableness" in a six-month period of limitation.

Defendant additionally contends, however, that there is no genuine issue of material fact about whether it was a principal and that plaintiff Leone was not a sales representative within the meaning of the SRCA and, therefore, it was entitled to summary disposition under MCR 2.116(C)(10). *Rose v Nat'l Auction Group, Inc*, 466 Mich 453, 461; 646 NW2d 455 (2002).

The SRCA defines a "sales representative" as "a person who contracts with or is employed by a principal for the solicitation of orders or sale of *goods* and is paid, in whole or in part, by commission. . . ." MCL 600.2961(1)(e) (emphasis added). A "principal" is defined as a person who "[m]anufactures, produces, imports, sells, or distributes a *product* in this state" or "contracts with a sales representative to solicit orders for or sell a *product* in this state." MCL 600.2961(1)(d)(i) and (ii) (emphasis added).

Defendant's president submitted an affidavit averring that defendant does not manufacture, produce, import, or distribute a "product," but acknowledging that it does occasionally sell goods. Although defendant maintained that it did not employ plaintiff Leone to sell products, plaintiff Leone submitted an affidavit in which he alleged that he sold software and hardware products for defendant and received a commission. Plaintiff Leone also submitted a copy of defendant's 2002 compensation plan, which provides that transactions involving the sale of hardware and "certain strategic products" may be eligible for commission, subject to certain conditions. This compensation plan does not alone establish plaintiff's entitlement to a commission for goods sold, inasmuch as plaintiff admittedly did not sign it. The 2002 compensation plan does, however, lend support to plaintiff's claim that his relationship with defendant was not limited to the solicitation of services, but also included the sale of some goods for which he was eligible to receive a commission. In light of the parties' conflicting claims and evidence, we conclude that there was a genuine issue of material fact regarding whether plaintiff Leone's employment included the solicitation of orders or sale of goods for which he was entitled to be paid by commission. Therefore, the trial court properly denied defendant's motion for summary disposition of plaintiff Leone's SRCA claim. To the extent the trial court's order may be read as affirmatively holding that the SRCA applies, however, it is vacated.

Affirmed in part and vacated in part.

/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly
/s/ Harold Hood