

STATE OF MICHIGAN
COURT OF APPEALS

GOVERNMENTAL CONSULTANT SERVICES,
INC.,

UNPUBLISHED
November 22, 2011

Plaintiff/Counter-Defendant-
Appellee,

v

No. 298738
Ingham Circuit Court
LC No. 09-000233-CK

STRATHMORE DEVELOPMENT COMPANY,
a/k/a CHAPPELLE DEVELOPMENT
COMPANY,

Defendant/Counter-Plaintiff-
Appellant,

and

SCOTT A. CHAPPELLE,

Defendant-Appellant,

and

KEVIN T. MCGRAW,

Defendant.

Before: WHITBECK, P.J., and MURRAY and DONOFRIO, JJ.

PER CURIAM.

Defendants Strathmore Development Company, a/k/a Chappelle Development Company, and Scott A. Chappelle appeal as of right the trial court's order granting plaintiff Governmental Consultant Services, Inc.'s motion for summary disposition of defendants' counter-complaint. We affirm.

Plaintiff provides professional services by advocating before state and local governments for its clients. Defendant are engaged in real estate development, management, and leasing. In

2002, plaintiff and defendants entered into a retainer agreement for services for the Lower Town Development in Ann Arbor. In 2003, defendants terminated the Ann Arbor contract and paid plaintiff in full for services rendered. Plaintiff and defendants then entered into a separate contract for services in connection with a project in East Lansing.

Plaintiff sued defendants for a balance of \$35,000 on the East Lansing contract. Defendants never asserted that the fees were not owed; Scott Chappelle and Kevin McGraw¹ personally guaranteed payment of the \$35,000. Nonetheless, defendants filed a counter-complaint alleging that plaintiff breached the Ann Arbor contract by failing to lobby the City of Ann Arbor and the University of Michigan, and by failing to disclose a conflicting personal relationship with one of defendants' competitors.

After discovery, plaintiff sought summary disposition, seeking judgment in its favor on the complaint and dismissal of the counter-complaint. The trial court granted the motion, and defendants appeal that order to the extent it dismissed the counter-complaint.

Defendants argue that the trial court erred in granting summary disposition of the counter-complaint because there was sufficient admissible evidence to create a genuine issue of material fact as to whether plaintiff breached the Ann Arbor contract. Summary disposition is proper when the moving party can show there is no genuine issue of material fact. MCR 2.116(C)(10); *Coblentz v Novi*, 475 Mich 558, 569; 719 NW2d 73 (2006). The non-moving party must present more than speculation or conjecture when opposing a properly supported motion. *Coblentz*, 475 Mich at 569; *Detroit v Gen Motors Corp*, 233 Mich App 132, 139; 592 NW2d 732 (1998). When deciding a motion for summary disposition, the trial court must consider all the evidence in a light most favorable to the non-moving party. *Coblentz*, 475 Mich at 567-568. The trial court may consider affidavits, pleadings, depositions, admissions, and other evidence presented by the parties. MCR 2.116(G)(5); *Veenstra v Washtenaw Country Club*, 466 Mich 155, 163; 645 NW2d 643 (2002).

Contractual language should be given its plain and ordinary meaning, and if the language is clear and unambiguous then the meaning of the contract is a question of law. *Meagher v Wayne State Univ*, 222 Mich App 700, 721-722; 565 NW2d 401 (1997). If the contract is subject to two reasonable interpretations, summary disposition is inappropriate and further factual development is required. *Id.* at 722. A contract is not ambiguous if it is inartfully worded, as long as it fairly admits to but one interpretation. *Id.*

Defendants alleged in the counter-complaint that plaintiff breached the Ann Arbor contract in two ways. First, defendants asserted that plaintiff failed to advocate on defendants' behalf with the city of Ann Arbor and the University of Michigan. The Ann Arbor contract provided that, "GCSI . . . agree[s] to provide professional services for the purpose of aiding

¹ Scott Chappelle is the president of Strathmore Development Company and Kevin McGraw was a principal of Strathmore.

STRATHMORE in accomplishing its charter objectives, and GCSI agrees to the best of its ability to assist STRATHMORE in accomplishing such objectives.” The contract did not state plaintiff would lobby any particular entity, including the city of Ann Arbor or the University of Michigan.² Additionally, McGraw testified that plaintiff repeatedly informed him as one of the principals of Strathmore that it would not be lobbying its clients, the city of Ann Arbor or the University of Michigan.

Defendants argue that a genuine issue of material fact exists because Kirk Profit, a director of GCSI, testified that GCSI was “selling advocacy” with Ann Arbor. However, the deposition testimony cited does not support that proposition, as Profit instead mentioned “selling advocacy” in the context of his testimony about why they do not keep time records for billing or other purposes:

Q. During the period of Lower Town contract, can you tell us approximately how many hours a month you would have been working on it?

A. No.

Q. Is there any document that would help us determine that?

A. No. *The nature of our business you can't really attach – it is hard to compute how much time is spent on a particular client's work.*

Q. Why is that?

A. *Because what we sell is advocacy within a relationship, so the advocacy you are buying is a function of the relationships that I had with the City of Ann Arbor, so I may be out with a staff member, an elected official, different folks just developing a relationship that you can't attach directly to a client, very unlike what you can tell with a law firm, where you can compute two-tenths of an hour, three-tenths of an hour for a specific client. You can't do that in this kind of work because so much of the work is a relationship development that you can't assign to a particular client. [Emphasis added.]*

Profit's testimony was therefore not specific to this contract or this case, but was regarding the general proposition about why GCSI does not and could not keep detailed time records for all clients. And, throughout the remaining portion of his deposition, Profit repeatedly testified that there was never an understanding that Ann Arbor or University of Michigan would be lobbied.

² A letter accompanying, but not made a part of or otherwise incorporated into the contract, did not state which local entities plaintiff would lobby, and instead contained general statements about plaintiff's unique position with local decision makers. However, the letter did mention which specific State entities and individuals plaintiff would lobby.

In light of the above, defendants failed to produce any evidence to create a genuine issue of material fact as to whether plaintiff breached the agreement by not lobbying the city of Ann Arbor or the University of Michigan.

Defendants also asserted that plaintiff breached the agreement by failing to disclose a conflicting personal relationship with one of defendants' competitors. Defendants failed to create a genuine issue of material fact. Indeed, Chappelle admitted in his deposition that he had no personal knowledge of any such conflict, and could identify no one who had such knowledge. Defendants submitted nothing but speculation and conjecture that any such conflicts existed during the term of the contract. That, of course, is insufficient to withstand a motion for summary disposition. *Coblentz*, 475 Mich at 569.

Defendants further alleged that plaintiff disclosed confidential information to a competitor through the alleged personal relationship. But, again, defendants presented no evidence to support the allegation. Chappelle admitted he authorized the disclosure of confidential information, and he could not support the allegation that plaintiff had disclosed anything. Defendants presented no other evidence, but again only speculation and conjecture; therefore, the trial court did not err in granting summary disposition on the counter-complaint.

Defendants also argue that the judgment on the complaint should be set aside because they are entitled to setoff for plaintiff's breach of the Ann Arbor contract. However, because the trial court properly dismissed the counter-complaint, any alleged right to setoff is moot.

Affirmed.

Plaintiff may tax costs, having prevailed in full. MCR 7.219(A).

/s/ William C. Whitbeck
/s/ Christopher M. Murray
/s/ Pat M. Donofrio