[Cite as *Antonucci v. Ohio Dept. of Taxation*, 2009-Ohio-2832.]

Court of Claims of Ohio
The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

RICHARD D. ANTONUCCI, et al.

Plaintiffs

v.

OHIO DEPARTMENT OF TAXATION

Defendant
Case No. 2006-07368

Judge Joseph T. Clark

DECISION

{¶ 1} Plaintiffs Richard Antonucci, Garry Driggs, and Rosemary Zureick brought this action alleging breach of contract. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶ 2} Each plaintiff has been in defendant's employ for more than 30 years. In July 2001, Antonucci, Driggs, and Zureick were employed in the classified position of "Tax Commissioner Agent Supervisor 3" (TCA 3) at defendant's offices in Youngstown, Zanesville, and Cincinnati respectively. At some point in November and December 2001, defendant abolished plaintiffs' jobs. Plaintiffs filed appeals from their job abolishments with the State Personnel Board of Review (SPBR). Following a hearing, an administrative law judge issued a report and recommendation finding that defendant had acted in bad faith when it abolished plaintiffs' jobs. The administrative law judge recommended that the job abolishments be disaffirmed and that plaintiffs be reinstated to their respective positions of TCA 3, together with all back pay and emoluments due them from the effective date of their respective job abolishments. Defendant filed

objections to the judge's report and recommendation. Before a decision was issued on the objections, the parties entered into settlement discussions. Plaintiffs were represented by attorney Marc Myers and defendant was represented by Assistant Attorney General Nicole Moss.

{¶ 3} On May 28, 2004, plaintiffs were presented with separate, substantially identical settlement agreements that had been prepared by Moss.[1] Each settlement agreement contained the following language:

{¶ 4} "4.A. Reinstatement: [Defendant] shall return [plaintiff] to the position of Tax Commissioner Agent Supervisor 3 * * *. Neither the language of this paragraph or the fact of this agreement shall be construed in any way to create a contract for employment between the named parties to this agreement. By signing this agreement [plaintiff] acknowledges and accepts that he retains only the rights provided to him by civil service law as codified in the Ohio Revised and Ohio Administrative Codes, as well as federal law so far as any of those apply to his employment with the State of Ohio." (Plaintiffs' Exhibits 3, 4, and 5; Page 2.)

{¶ 5} Each settlement agreement also contained an "integration clause" which states in pertinent part:

{¶ 6} "This Agreement sets forth the entire agreement between the parties hereto, and fully supersedes any and all prior discussions, agreements or understandings between the parties. The undersigned parties state that they have carefully read the foregoing and understand the contents thereof, and that each executes the same as their own free and voluntary act." (Plaintiffs' Exhibits 3, 4, and 5; Page 4.) Plaintiffs signed their respective settlement agreements. In June 2004, plaintiffs were reinstated to their former job classifications of TCA 3 and were paid full back pay in accordance with the settlement agreements.

{¶ 7} On October 25, 2005, defendant sent a letter to the Department of Administrative Services (DAS). The letter stated that due to "changes in technology and business operations" defendant requested that plaintiffs be "redlined" in the Tax Commissioner Agent Supervisor 2 classification (TCA 2). (Plaintiffs' Exhibit 6.) According to defendant, "redlining" means that plaintiffs would not be entitled to pay

raises until the other members of the new classification "caught up" to or met plaintiffs' rate of pay. After hearings required by law, DAS and the Joint Commission on Agency Rule Review approved the revisions to the classifications as requested and the revisions became effective in March 2006. In April 2006, plaintiffs were reclassified from the TCA 3 to the TCA 2 classification, and their salaries were redlined. The job duties of plaintiffs remained unchanged and their rate of pay was not reduced. As a result of the reclassification, plaintiffs did not receive the pay increases on July 1, 2006, and July 1, 2007, that they would have received had they remained classified as TCA 3. The parties agree that the reclassification of plaintiffs' positions from TCA 3 to TCA 2 and the redlining of their salaries in April 2006 were done in accordance with Ohio's civil service laws.

{¶ 8} Plaintiffs assert that defendant's actions in 2006 with regard to reclassifying their positions and redlining their salaries constitute a violation of the May 28, 2004 settlement agreements. Plaintiffs' argument is based on language contained in a May 7, 2004 letter drafted by Moss during settlement negotiations, wherein Moss stated the following: "The positions that [plaintiffs] will be returning to will be deleted from the table of organization when each of the aforementioned employee [sic] leaves that position. However, that will not prevent these employees from receiving all applicable wage increases, past and future." (Plaintiffs' Exhibit 2.)[2] Plaintiffs assert that the May 7, 2004 letter shows that the parties' intent when they executed the settlement agreements was to retain plaintiffs in the TCA 3 classification with commensurate salaries and raises until plaintiffs voluntarily left defendant's employ or were terminated for cause. Plaintiffs further assert that they would not have agreed to the terms of the settlement agreements if they had known that they would be subject to reclassification and redlining less than two years later.

{¶ 9} Defendant claims that the settlement agreements represent the final and complete integration of the parties' intent and that the May 7, 2004 letter should not be considered because it is inadmissible extrinsic evidence. In the alternative, defendant

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[1]The agreements were identical except for plaintiffs' names, the amount of money to be paid to each, and the respective offices to which they would return.

argues that even if the May 7, 2004 letter were admissible, defendant's actions in 2006 did not violate the terms of the letter. "It is axiomatic that a settlement agreement is a contract designed to terminate a claim by preventing or ending litigation and that such agreements are valid and enforceable by either party. * * * Further, settlement agreements are highly favored in the law." *Continental W. Condominium Unit Owners Ass'n v. Howard E. Ferguson, Inc.*, 74 Ohio St.3d 501, 502, 1996-Ohio-158. (Citations omitted.)

{¶ 10} The parol evidence rule is not a rule of evidence, interpretation or construction, but rather a rule of substantive law which, when applicable, defines the limits of a contract. *Galmish v. Cicchini,* 90 Ohio St.3d 22, 27, 2000-Ohio-7, citing *Charles A. Burton, Inc. v. Durkee* (1952), 158 Ohio St. 313, 324. The rule provides that a writing intended by the parties to be a final embodiment of their agreement cannot be modified by evidence of earlier or contemporaneous agreements that might tend to add to, vary, or contradict the writing. *Galmish*, supra, at 26. However, extrinsic evidence becomes admissible to ascertain the intent of the parties when the contract is unclear or ambiguous or when circumstances surrounding the agreement give the plain language special meaning. *Shifrin v. Forest City Enterprises, Inc.*, 64 Ohio St.3d 635, 638, 1992-Ohio-28.

{¶ 11} Defendant asserts that the May 7, 2004 letter is extrinsic evidence. The court agrees. Indeed, the May 7, 2004 letter was drafted during negotiations that occurred before the settlement agreements were reduced to their final written form. The May 7, 2004 letter would be admissible only if plaintiffs were to show either that the settlement agreements are unclear or ambiguous or that circumstances surrounding the making of the agreements give the plain language a special meaning.

{¶ 12} Antonucci testified that, as a result of his settlement agreement, he believed he would receive reinstatement and back pay. He also testified that he did not think his reinstatement to TCA 3 was for a finite period of time. Zureick testified that she had rejected a previous offer which included redlining and that she believed that she

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[2]On December 14, 2007, defendant filed a motion in limine to prevent plaintiffs from introducing parol evidence at trial. The ruling on the admissibility of Plaintiffs' Exhibits 1 and 2 was held in abeyance pending this decision.

would stay in the position of TCA 3 until she retired or was terminated for cause. Driggs likewise testified that he had rejected a previous offer which included redlining.

{¶ 13} Myers testified that he had a meeting with Moss on April 12, 2004. According to Myers, Moss presented a settlement offer during the meeting which would award plaintiffs 70 percent of their back pay and "redline" them at their current salary. Myers testified that he told Moss that 70 percent of the back pay due to plaintiffs was not enough and that redlining was unacceptable. According to Myers, it was critical that plaintiffs be returned to their positions as TCA 3. Nevertheless, after reading the settlement agreements that Moss had drafted, Myers advised his clients to sign them. On cross-examination, Myers admitted that nothing regarding "redlining" or guaranteed future employment was put into writing.

{¶ 14} Plaintiffs have not identified which portion of the settlement agreements they assert to be unclear or ambiguous. Rather, plaintiffs assert that a portion of the May 7, 2004 letter combined with their own testimony makes the settlement agreements unclear or ambiguous.

{¶ 15} A court is not required to go beyond the plain language of an agreement to determine the parties' rights and obligations if a contract is clear and unambiguous. *Cuthbert v. Trucklease Corp.,* Franklin App. No. 03AP-662, 2004-Ohio-4417, ¶ 21. If no ambiguity appears on the face of the instrument, parol evidence cannot be considered in an effort to demonstrate such an ambiguity. *Shifrin*, supra, at 638.

{¶ 16} Whether a contract is ambiguous is a question of law. *Cuthbert*, at ¶ 21. The test to determine whether contract terms are ambiguous is as follows: "Common words appearing in a written instrument will be given their ordinary meaning unless manifest absurdity results, or unless some other meaning is clearly evidenced from the face or overall contents of the instrument." *Alexander v. Buckeye Pipe Line Co.* (1978), 53 Ohio St.2d 241, paragraph 2 of the syllabus.

{¶ 17} Upon review of the settlement agreements, the court finds that the language in the settlement agreements is clear and unambiguous.[3] The settlement agreements contain the following language:

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[3]On December 19, 2007, a magistrate of the court overruled defendant's motion for summary judgment and found that genuine issues of material fact existed with regard to the intent of the parties as

{¶ 18} "3. Intent: It is understood and agreed by the parties hereto that this Settlement Agreement and Release is being entered into solely for the purposes of avoiding further litigation, expense, and inconvenience. Except as specifically set forth herein, both [plaintiff] and [defendant] wish to bring a complete, final and irreversible end to any and all claims and/or disputes which arise or which could have arisen from his State Personnel Board of Review Appeal, * * * and to reach a full and final settlement of all matters occurring *on or before* the date of execution of this Agreement." (Emphasis Added.)

{¶ 19} The plain language of Section 4A of the settlement agreements states that plaintiffs were to be reinstated to TCA 3 positions and that plaintiffs would retain only the rights provided to them by civil service law. No language in the settlement agreements states that plaintiffs would be entitled to remain in TCA 3 positions until they chose either to leave, or to retire, or were terminated for cause. In addition, the settlement agreements state that the agreements were to settle matters occurring on or before the date of execution. The settlement agreements do not contemplate any future events that might occur regarding plaintiffs' employment. Because the court finds that the plain language of the settlement agreements is clear and unambiguous, the parol evidence rule bars consideration of both the May 7, 2004 letter and plaintiffs' testimony regarding the intent of the parties.[4]

{¶ 20} The court now considers plaintiffs' claims for breach of contract. The cardinal purpose for judicial examination of any written instrument is to ascertain and give effect to the intent of the parties. *Aultman Hosp. Assn. v. Community Mut. Ins. Co.* (1989), 46 Ohio St.3d 51. The court must ascertain the intent of the parties at the time the contract was made. *Hubbard v. Dillingham*, Butler App. No. CA2002-02-045, 2003-Ohio-1443, citing *Stony's Trucking Co. v. Public Utilities Commission* (1972), 32 Ohio St.2d 139, 142. "The intent of the parties to a contract is presumed to reside in the language they chose to employ in the agreement." *Kelly v. Med. Life Ins. Co.* (1987), 31 Ohio St.3d 130, paragraph one of the syllabus.

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set forth in Section 4(A) of the settlement agreements. However, the magistrate kept open for later court ruling the issue of parol evidence.

[4]Defendant's December 14, 2007 motion in limine is GRANTED and Plaintiff's Exhibits 1 and 2 are NOT ADMITTED.

{¶ 21} Plaintiffs do not identify any specific provision in the settlement agreements that defendant allegedly violated. Plaintiffs' entire argument rests upon inadmissible evidence that was generated prior to the execution of the settlement agreements.

{¶ 22} Furthermore, the parties agree that Ohio civil service law expressly authorizes the actions that defendant took in 2006. R.C. 124.14(A)(2) states in pertinent part:

{¶ 23} "The director of administrative services may reassign to a proper classification those positions that have been assigned to an improper classification. If the compensation of an employee in such a reassigned position exceeds the maximum rate of pay for the employee's new classification, the employee shall be placed in pay step X and shall not receive an increase in compensation until the maximum rate of pay for that classification exceeds the employee's compensation."

{¶ 24} The court finds that defendant acted in conformance with R.C. 124.14(A)(2) in April 2006 when it redlined plaintiffs' salaries, and that defendant's actions in 2006 did not breach the 2004 settlement agreements. For the foregoing reasons, the court finds that plaintiffs have failed to prove any of their claims by a preponderance of the evidence and, accordingly, judgment shall be rendered for defendant.

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Case No. 2006-07368

Judge Joseph T. Clark

JUDGMENT ENTRY

This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiffs. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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JOSEPH T. CLARK
Judge

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