[Cite as *Oden v. Associated Materials, Inc.*, 2010-Ohio-5981.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

HARTLEY ODEN	C.A. No. 25120
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
ASSOCIATED MATERIALS, INC., et al.	COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
Appellants	CASE No. CV 2008-06-4325

DECISION AND JOURNAL ENTRY

Dated: December 8, 2010

BELFANCE, Presiding Judge.

{¶1} Appellants, Associated Materials, Inc. and Gentek Building Products, Inc., appeal the decision of the Summit County Court of Common Pleas that granted partial summary judgment in favor of Appellee, Hartley Oden. We affirm the judgment of the trial court.

BACKGROUND

{¶2} Mr. Oden began his employment with Gentek Building Products in 1976 with the company's information technology department in the Warren Systems office in Warren, Ohio. In 1997, Gentek began to consider closing the Warren Systems office. In July 1997, Gentek's management met with Mr. Oden and subsequently sent him a letter confirming the substance of the parties' meeting ("the 1997 letter"). The main paragraphs of the 1997 letter speak to guarantees made to Mr. Oden in the event of closure of the Warren Systems office and Mr. Oden's severance package should Gentek terminate him without cause. The 1997 letter provides in pertinent part:

> "This will confirm the following items that were discussed at our meeting yesterday at the Cleveland office:
>
> "1. In the event that the decision is made to close or relocate the Warren Systems office, you will be able to remain with Gentek in your same position. You will have the choice of working at Gentek's Cleveland office or telecommuting for a six[-]month trial period. If you choose to telecommute, the telecommuting arrangement can be extended indefinitely at the conclusion of the six[-]month trial period upon the mutual consent of both you and the Company.
>
> "2. If the situation arises where your employment with Gentek is involuntarily terminated for any reason other than cause, you will receive an extra six months of separation pay in addition to any separation pay you would be entitled to receive under the Gentek Separation Pay Policy.
>
> "* * *
>
> "On behalf of Gentek, we are very pleased that you have decided to remain with the Company and look forward to many mutually rewarding years in the future."

Mr. Oden remained employed with Gentek at the Warren Systems office.

{¶3} In February 1998, Gentek changed its company-wide Separation Pay Policy by reducing the duration of the benefits available under the policy. Mr. Oden was concerned whether the changes affected his prior severance agreement with Gentek as represented in the 1997 letter, which provided that he would receive benefits as calculated under the pre-February 1998 policy, plus an extra six months of severance pay. Mr. Oden sent an e-mail to Gentek management explaining his concerns. Mr. Oden did not recall receiving a responsive e-mail or attending a meeting exploring his concerns, however, in April 1998, Mr. Oden received a letter addressing his severance package ("the 1998 letter"). The 1998 letter stated in pertinent part:

> "This will confirm that if the decision is made to close or relocate the Warren Systems Office, you will be covered by the same policy that applied when the Warren Headquarters Office was moved to the Cleveland area in 1996. The major components of that policy are as follows:
>
> "1. If your position is eliminated and as a result, your employment is involuntarily terminated for any reason other than cause, you will be covered by the Gentek Building Products, Inc. Severance Pay Plan that was in effect prior to February 16, 1998. * * *

> "2. If your position is moved to the Cleveland area or any other area that is not within a reasonable commuting distance of your home, and you choose not to relocate or commute, you will be eligible for the Severance Pay Plan described in Number 1 above.
>
> "The items described above would be in addition to the extra six months of separation pay that you were granted in [the 1997 letter]."

The 1998 letter confirmed that Mr. Oden would receive severance as calculated under the pre-February 1998 policy, plus an extra six months of severance pay.

{¶4} Gentek closed its Warren Systems office in late 1998, after Mr. Oden received the 1998 letter. Mr. Oden continued to work for Gentek by telecommuting from his home.

{¶5} At some point after closure of the Warren Systems office, Gentek became a wholly owned subsidiary of Associated Materials, Inc. ("AMI"). On March 28, 2008, AMI eliminated Mr. Oden's position and terminated his employment, without cause. AMI did not provide Mr. Oden with the severance package as described in the 1997 letter and confirmed in the 1998 letter. Instead, AMI offered Mr. Oden severance as calculated pursuant to the AMI plan in affect in 2008. The AMI severance plan would provide Mr. Oden with less severance pay than the pre-February 1998 plan, and he would not receive the extra six months pay promised to him by Gentek. Mr. Oden believed that the 1997 and 1998 letters constituted a contract entitling him to severance pay as provided in Gentek's pre-February 1998 plan upon his termination without cause. Mr. Oden initiated an action against AMI and Gentek (collectively "the Company") seeking to enforce the terms of the severance package as outlined in the letters.

{¶6} In the trial court, the Company and Mr. Oden each sought partial summary judgment on the issue of which severance package the Company was obligated to provide Mr. Oden: (1) Gentek's pre-February 1998 policy, plus an additional six months of pay, or (2) AMI's policy in affect at the time of Mr. Oden's termination. The Company argued that the 1997 and

1998 letters provided that Mr. Oden was only entitled to severance calculated pursuant to Gentek's policy, plus six months, if he was terminated without cause when the Company closed the Warren Systems office. The Company argued that because Mr. Oden remained employed long after the closure, the Company was no longer bound by the language of the 1997 and 1998 letters. Mr. Oden countered that the language of the letters does not lead to the interpretation alleged by the Company. Instead, Mr. Oden asserted that the letters provided that if Mr. Oden's position was eliminated and he was terminated without cause at any time after the closure of the Warren Systems office, he would be entitled to the severance package described in the 1997 letter and confirmed in the 1998 letter. Mr. Oden argued that each of those events occurred, thus the Company's obligation with respect to severance arose.

{¶7} The trial court agreed with Mr. Oden. It stated that it was undisputed that the Warren Systems office closed, Mr. Oden's position was eliminated, and he was terminated; thus, the Company's duties were triggered pursuant to the letters. Further, "[the letters] incorporate[] no time limitation or duration." The court granted Mr. Oden's motion for partial summary judgment, finding that he was entitled to severance pay as outlined in the 1997 and 1998 letters. The court denied the Company's motion for partial summary judgment. The parties subsequently reached an agreement as to the amount of damages to be awarded to Mr. Oden by the trial court. The damages award was subsequently journalized by the trial court.

{¶8} The Company appealed the trial court's judgment. Mr. Oden filed a responsive brief and included a "Cross[-]Assignment of Error." The Company filed a motion to strike the cross assignment of error alleging that it was an improperly filed cross-appeal.

SUMMARY JUDGMENT

{¶9} This Court reviews a trial court's ruling on a motion for summary judgment de novo and applies the same standard as the trial court. *Chuparkoff v. Farmers Ins. of Columbus, Inc.*, 9th Dist. No. 22712, 2006-Ohio-3281, at ¶12. The facts are viewed in the light most favorable to the nonmoving party. Id. Pursuant to Civ.R. 56(C), summary judgment is appropriate when: "(1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the party against whom the motion for summary judgment is made." *State ex rel. Zimmerman v. Tompkins* (1996), 75 Ohio St.3d 447, 448.

{¶10} On a motion for summary judgment, the moving party has the burden of demonstrating that no genuine issues of material fact exist. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 292. The burden then shifts to the nonmoving party to provide evidence showing that a genuine issue of material fact does exist. Id. at 293. Pursuant to Civ.R. 56(E), the nonmoving party may not simply rest on the allegations of its pleadings; it must provide the court with evidentiary material, such as affidavits, written admissions, and/or answers to interrogatories, to demonstrate a genuine dispute of fact to be tried. See, also, *Henkle v. Henkle* (1991), 75 Ohio App.3d 732, 735.

{¶11} The Company has raised three assignments of error: (1) that the trial court erred in granting summary judgment to Mr. Oden; (2) that it erred in denying the Company's motion for partial summary judgment; and (3) that it erred in its award of damages to Mr. Oden. Because the Company's assignments of error are interrelated, we shall consider them in tandem.

{¶12} The central question on appeal concerns the interpretation of the 1997 and 1998 letters sent to Mr. Oden. The Company contends that the trial court's interpretation of the contract was erroneous because the trial court ignored the "context, structure, and typography of the 1998 Letter Agreement[.]"

{¶13} The parties do not dispute that these letters represent contracts between the Company and Mr. Oden. "The interpretation of written contracts, including any assessment as to whether a contract is ambiguous, is a question of law subject to de novo review on appeal." *Watkins v. Williams*, 9th Dist. No. 22162, 2004-Ohio-7171, at ¶23. Generally, the intent of the parties is exhibited in the language of the contract itself. *Foley v. Empire Die Casting Co., Inc.*, 9th Dist. No. 24558, 2009-Ohio-5539, at ¶12. If the language of the contract is unambiguous, "its interpretation is a matter of law unaccompanied by the need for factual determinations." *Watkins* at ¶23. "Where an ambiguity exists, however, interpretation of a contract involves both factual and legal questions." Id. "Terms in a contract are ambiguous if their meanings cannot be determined from reading the entire contract, or if they are reasonably susceptible to multiple interpretations." *Foley* at ¶12.

{¶14} Upon review of the 1997 and 1998 letters, it is apparent that the language employed was clear and unambiguous. Thus, the trial court correctly found that it was unnecessary to look beyond the language contained in the letters to determine the terms of the contract. The Company does not dispute this aspect of the trial court's order; rather, it asserts that the trial court erred in rejecting the Company's interpretation of the letters.

{¶15} The 1997 letter addresses three topics. First, if the Warren Systems office is closed or relocated, Mr. Oden would be retained and would have the option of either working in the Company's Cleveland office or working from home and telecommuting. Second, if the

Company terminated Mr. Oden for any reason other than cause, Mr. Oden would be entitled to an extra six months of severance pay beyond the amount to which he would be entitled pursuant to the Company's severance plan. Finally, Mr. Oden would be offered stock options. With regard to the severance pay package, there is no language to support the Company's position on appeal that receipt of that pay as outlined in the 1997 letter was conditioned on termination of Mr. Oden's employment simultaneously with the closure of the Warren Systems office. On the contrary, based upon the language in the letter, the parties contemplated that Mr. Oden would remain employed after the closure and work in Cleveland or from home and that the Company "look[ed] forward to many mutually rewarding years in the future."

{¶16} In February 1998, the Company amended its severance plan to provide less severance pay than that which was offered under its prior company plan. Mr. Oden was concerned about the effect that this change would have on the Company's guarantee in the 1997 letter that he would receive severance based on the plan in place pre-February 1998, plus an extra six months. After expressing his concerns to management, the Company sent Mr. Oden the 1998 letter. In the 1998 letter, the Company confirmed that if the Warren Systems office was closed, Mr. Oden would be covered by the severance package policy that applied when the Company's headquarters were moved to Cleveland, i.e. the pre-February 1998 policy. The 1998 letter also provided that if Mr. Oden's position was moved to an area not within a reasonable commuting distance from his home and Mr. Oden chose not to commute or relocate, Mr. Oden would be granted severance as provided in the pre-February 1998 plan. Further, Mr. Oden would also be entitled to an extra six months of severance pay as described in the 1997 letter. Upon review of both letters, we do not agree with the Company's restrictive interpretation of the language contained in the letters. Although the 1998 letter opens by referencing the possible

closure of the Warren Systems office, the letter does not state that Mr. Oden's right to his severance pursuant to the pre-February 1998 plan, plus six months additional pay, only arises if elimination or relocation of his position coincides with the closure of the Warren Systems office.

{¶17} The Company urges this Court to consider the format and "typography" of the 1998 letter to demonstrate that Mr. Oden would be entitled to the pre-February 1998 severance package only if his job was eliminated at the same time that the Warren Systems office was closed. While the format of the letter is a consideration, we will not interpret the format to unreasonably contort the plain meaning of the language of the letter. The 1998 letter does not contain language limiting the payment of the severance to the simultaneous occurrence of the closing of the Warren Systems office and the elimination of Mr. Oden's employment. The opening paragraph of the 1998 letter confirmed that "if the decision is made to close or relocate the Warren Systems [o]ffice," Mr. Oden would be covered by Gentek's pre-February 1998 severance package plan. The 1998 letter then outlined the major components of that prior policy which included the promise that "if" Mr. Oden's position is eliminated and he is terminated without cause, he will be entitled to the pre-February 1998 severance package, plus six months of extra pay. The trial court correctly determined that Mr. Oden's right to a particular severance package was dependant upon the occurrence of three separate conditions: closure of the Warren Systems office, elimination of Mr. Oden's position, and his termination without cause. Moreover, there is no provision in the letters that elimination of Mr. Oden's position and his termination must occur simultaneously with the closure of the Warren Systems office. All of the conditions identified in the letter occurred; thus, the Company became obligated to provide the severance package it agreed to provide Mr. Oden pursuant the 1997 and 1998 letters. The trial court correctly denied the Company's motion for partial summary judgment and correctly

granted Mr. Oden's motion for partial summary judgment. The Company's first and second assignments of error are overruled.

DAMAGES

{¶18} The Company states as its third assignment of error: "The Trial Court erred as a matter of law when it awarded $244,641.80 in damages to Mr. Oden based on the November 6, 2009 Order." The Company, however, has presented no argument in support of this contention within the argument section of its brief. Thus, the Company's third assignment of error is overruled. See App.R. 16(A)(7).

MOTION TO STRIKE

{¶19} In his responsive brief, Mr. Oden submitted a "Cross[-]Assignment of Error" in which he argues that in the event that this Court determines that ambiguities exist in the 1997 and 1998 letters, we must consider the affidavit and deposition of the Company's Human Resources Director to interpret the letters. The Company contends that Mr. Oden has attempted to file a cross-appeal, which should be stricken because proper notice of a cross-appeal pursuant to the Appellate Rules was not given. As we have determined that no ambiguity exists, this issue has become moot because any determination this Court would make would have no legal effect on the actual controversy. Thus, we decline to address Mr. Oden's argument and the Company's motion to strike.

CONCLUSION

{¶20} The assignments of error advanced by Associated Materials, Inc. and Gentek Building Products, Inc. are overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellants.

EVE V. BELFANCE
FOR THE COURT

CARR, J.
WHITMORE, J.
CONCUR

APPEARANCES:

DAVID J. TOCCO, and CHARLES F. BILLINGTON, III, Attorneys at Law, for Appellants.

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