NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

XPERT TECHNOLOGIES, INC Appellee v. MICROBYTES, INC. Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 890 MDA 2012

Appeal from the Order Entered April 12, 2012
In the Court of Common Pleas of Cumberland County
Civil Division at No(s): 2010-2823

BEFORE: FORD ELLIOTT, P.J.E., PANELLA, J., and ALLEN, J.

MEMORANDUM BY PANELLA, J. Filed: March 5, 2013

Appellant, Microbytes, Inc., appeals from the order granting judgment on the pleadings to Appellee, Xpert Technologies, Inc., entered on April 12, 2012, by the Honorable Edward E. Guido, Court of Common Pleas of Cumberland County. After careful review, we affirm.

The factual background of this case is largely undisputed. On January 2, 2009, the parties entered into a Supplier Agreement whereby Xpert would supply technical service personnel candidates to MicroBytes. The purpose of the Supplier Agreement was to allow MicroBytes to provide services to MicroBytes's clients. In essence, Xpert was a subcontractor to MicroBytes, and MicroBytes was contracted by a third party. Pursuant to the Supplier Agreement, Xpert supplied a consultant, Badari Mallireddy, to MicroBytes for a project undertaken by MicroBytes's client, U.S. Steel. Mallireddy was then

to provide consulting services to U.S. Steel, while Xpert paid Mallireddy's hourly wages, fees and expenses. Xpert would then bill MicroBytes an hourly rate based upon the hours reported by Mallireddy.

Mallireddy provided all the consulting services requested by U.S. Steel, Xpert paid Mallireddy's wages, expenses and fees, and Xpert sent invoices to MicroBytes on February 3, March 3, April 8, April 15, and May 18, 2009. However, MicroBytes never paid on Xpert's invoices. As a result, Xpert filed a breach of contract suit against MicroBytes on April 28, 2010.

Shortly thereafter, the parties entered into a settlement agreement. Under the agreement, MicroBytes was to pay $12,000.00 to Xpert in return for a release on all claims contained in the complaint. This sum was to be "payable in twenty four (24) monthly installments of five hundred dollars ($500.00) each." The settlement agreement also referenced an Installment Promissory Note that was to be executed concurrently with the settlement agreement, and be fully incorporated into the settlement agreement.

An authorized agent of MicroBytes executed the settlement agreement, but not the Installment Promissory Note. Furthermore, MicroBytes made only one payment of $500.00 on November 15, 2010. Consequently, Xpert filed a motion to amend its complaint to include a count for breach of the settlement agreement on February 3, 2011. After MicroBytes filed an answer with new matter, Xpert moved for judgment on

the pleadings. The trial court ultimately granted Xpert's motion, and this timely appeal followed.

On appeal, MicroBytes purports to raise three issues for our review:

> 1. Did the lower court abuse its discretion and/or commit an error of law when it incorporated the terms of an unsigned Installment Promissory Note into a signed Settlement Agreement and Mutual Release?
> 2. Did the lower court abuse its discretion and/or commit an error of law when it found that Defendant's New Matter failed to state material issues of fact?
> 3. Did the lower court abuse its discretion and/or commit an error of law when granted [sic] Judgment on the Pleadings?

Apppellant's Brief, at 4.

As an initial matter, we note that MicroBytes provides no argument in support of issue 3; it is therefore waived. ***See*** Pa.R.A.P., Rule 2119(a); ***Umbelina v. Adams***, 34 A.3d 151, 161 (Pa. Super. 2011). Turning to the issues preserved on appeal, MicroBytes is appealing from the entry of judgment on the pleadings. In reviewing a trial court's grant of a motion for judgment on the pleadings, our scope of review is plenary. ***See Vetter v. Fun Footwear Co.***, 668 A.2d 529, 531 (Pa. Super. 1995) (*en banc*). "A motion for judgment on the pleadings is similar to a demurrer. It may be entered when there are no disputed issues of fact and the moving party is entitled to judgment as a matter of law." ***Citicorp N. Am. v. Thornton***, 707 A.2d 536, 538 (Pa. Super. 1998).

In determining whether there are disputed issues of fact, we must confine the scope of our consideration to "the pleadings and documents properly attached thereto." ***DeSantis v. Prothero***, 916 A.2d 671, 673 (Pa. Super. 2007) (citing ***Lewis v. Erie Ins. Exch.***, 753 A.2d 839, 842 (Pa. Super. 2000)). Accordingly, "[w]e must accept as true all well pleaded statements of fact, admissions, and any documents properly attached to the pleadings presented by the party against whom the motion is filed, considering only those facts which were specifically admitted." ***Lewis***, 753 A.2d at 842. No factual material outside the pleadings may be considered in determining whether there is an action under the law. ***See Bensalem Twp. Sch. Dist. v. Commonwealth***, 518 Pa. 581, 586, 544 A.2d 1318, 1321 (1988).

A court should only grant judgment on the pleadings if "the moving party's right to succeed is certain and the case is so free from doubt that trial would clearly be a fruitless exercise." ***Lewis***, 753 A.2d at 842. We should determine whether the trial court's grant of the motion for judgment on the pleadings "was based on a clear error of law or whether there were facts disclosed by the pleadings which should properly go the jury." ***Id***. Thus, if disputed facts exist that should properly go to the jury, the decision to grant judgment on the pleadings should be reversed.

In this case, the trial court concluded that the undisputed facts established that MicroBytes had breached the settlement agreement and

therefore granted judgment on the pleadings. MicroBytes first contends that the trial court erred in incorporating the language contained in the unexecuted note referenced by the settlement agreement. MicroBytes's argument is based upon an implicit assumption that the settlement agreement itself, stripped of the note, would permit the payment of a lump sum at the end of 24 months. We conclude that this implicit assumption is incorrect; the note is ultimately irrelevant, as the settlement agreement itself contains language sufficient to conclude that MicroBytes has breached the agreement.

The interpretation of a contract is a question of law, for which our scope of review is plenary and our standard of review is *de novo*. ***TruServ Corp. v. Morgan's Tool & Supply Co., Inc.***, 39 A.2d 293, 258 (Pa. 2012). "In construing a contract, the intention of the parties is paramount and the court will adopt an interpretation which under all circumstances ascribes the most reasonable, probable, and natural conduct of the parties, bearing in mind the objects manifestly to be accomplished." ***Id***.

To give effect to the intent of the parties, we must start with the language used by the parties in the written contract. ***See Szymanski v. Brace***, 987 A.2d 717, 722 (Pa. Super. 2009), ***appeal denied***, 606 Pa. 688, 997 A.2d 1179 (2010). Generally, courts will not imply a contract that differs from the one to which the parties explicitly consented. ***See Kmart of Pennsylvania, L.P. v. M.D. Mall Associates, LLC***, 959 A.2d 939, 944 (Pa.

Super. 2008), ***appeal denied***, 602 Pa. 667, 980 A.2d 609 (2008). We are not to assume that the language of the contract was chosen carelessly or in ignorance of its meaning. ***See id***.

Where the language of the contract is clear and unambiguous, a court is required to give effect to that language. ***Prudential Property and Casualty Ins. Co. v. Sartno***, 588 Pa. 205, 212, 903 A.2d 1170, 1174 (2006). Contractual language is ambiguous "if it is reasonably susceptible of different constructions and capable of being understood in more than one sense." ***Hutchison v. Sunbeam Coal Co.***, 513 Pa. 192, 201, 519 A.2d 385, 390 (1986). "This is not a question to be resolved in a vacuum. Rather, contractual terms are ambiguous if they are subject to more than one reasonable interpretation when applied to a particular set of facts." ***Madison Constr. Co. v. Harleysville Mut. Ins. Co***., 557 Pa. 595, 606, 735 A.2d 100, 106 (1999).

Paragraph 2 of the settlement agreement, entitled "Payment by MicroBytes to Xpert" states that MicroBytes "shall pay [$12,000.00] … payable in twenty four (24) monthly installments of five hundred dollars ($500.00) each." While the unexecuted note is even more specific regarding the timing of the $500.00 payments, this clause is more than sufficient to defeat MicroBytes's proffered defense that it is was entitled to pay a lump sum of $12,000.00 at the end of 24 months. There is no reasonable construction of the language in the settlement agreement that supports

MicroBytes's position. Indeed, a plain reading of the language leaves only one possibility: that MicroBytes was required to make $500.00 payments every month for 24 months. Accordingly, we conclude that MicroBytes's first issue on appeal merits no relief.

In its second and final preserved issue, MicroBytes argues that the trial court erred in concluding that MicroBytes did not raise any disputed issues of material fact in its New Matter. However, the first three allegations in MicroBytes's New Matter are relevant only to the underlying Supplier Agreement. For example, MicroBytes alleges Malinreddy had not been paid on time by Xpert. While this claim might raise a valid defense to Xpert's claim that MicroBytes had breached the Supplier Agreement, it is irrelevant to Xpert's cause of action based upon a breach of the settlement agreement. The only duty imposed upon Xpert by the settlement agreement was the surrender of all claims arising from the original complaint.

In contrast, the remaining allegations in MicroBytes's new matter are all in the manner of summary legal conclusions, lacking any attempt at alleging specific factual support for the conclusions. Such pleadings are insufficient to raise a legal defense. ***See, e.g.***, ***American Rock Mechanics, Inc. v. N. Abbonizio Contractors, Inc.***, 887 A.2d 322, 324 (Pa. Super. 2005). Accordingly, MicroBytes's second and final preserved argument on appeal merits no relief.

As none of MicroBytes's arguments on appeal merit relief, we affirm the trial court's order granting judgment on the pleadings.

Order affirmed. Jurisdiction relinquished.