

[J-157-1998]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

BANKS ENGINEERING CO., INC,	:	No. 5 W.D. Appeal Docket 1998
	:	
	:	Appeal from the Order of the Superior
	:	Court dated July 16, 1997 at No. 1959
	:	PGH 1996, affirming the judgment of the
v.	:	Court of Common Pleas of Westmoreland
	:	County dated October 3, 1996 at Civil
	:	Division No 4936 of 1994
MICHAEL POLONS AND DENISE	:	
POLONS, HIS WIFE	:	697 A.2d 1020 (Pa. Super. 1997)
	:	
APPEAL OF: MICHAEL POLONS	:	ARGUED: September 15, 1998
	:	
	:	
	:	

CONCURRING AND DISSENTING OPINION

MR. JUSTICE NIGRO

DECIDED: JUNE 23, 2000

I agree with the majority that Snellenberg Clothing Co. v. Levitt should be overruled. However, under the facts of this case I would find it unnecessary to remand to the trial court, as the parties' unambiguous contract terms are determinative of the outcome.

Snellenberg stands for the proposition that, where the parties' agreement fails to address whether a draw in excess of commissions earned is to be repaid to the employer, the employee is obligated to repay such draw. However, I maintain that the instant case has never been controlled by Snellenberg since the agreement between Banks and Polons did address the repayment. Moreover, as I believe the terms of the

written contract between Banks and Polons does not provide for repayment of the draw beyond the termination of the contract, I see no reason to remand the case.

Here, as in any contract dispute, the court's primary goal when interpreting a contract is to determine and give effect to the intent of the parties as reasonably manifested by the language of their written agreement. O'Brien Energy Systems, Inc. v. American Employers' Ins. Co., 427 Pa. Super. 456, 461, 629 A.2d 957, 960 (1993). To make this determination, the court looks to what the parties have clearly expressed, as the law does not assume that the language of the contract was chosen carelessly. Meeting House Lane, Ltd. v. Melso, 427 Pa. Super. 118, 126, 628 A.2d 854, 857 (1993). Furthermore, the court recognizes that the parties have the right to make their own contract; it is not the function of the court to rewrite it or to give it a construction in conflict with the accepted and plain meaning of the language used. Id. Banks, as party to the Polons agreement, is wedded to the provisions it drafted for repayment which, by the plain meaning of those provisions, do not extend beyond the life of the contract.

The contract between Banks Engineering and Michael Polons addressed the repayment of Polons' draw, providing that "[t]his draw will continue until the commissions exceed the draw and this contract is in effect Once commissions exceed the draw . . . payment will continue at the rate of the draw until the draw is compensated for by commissions . . . or by other means. When the . . . draw has been compensated for . . . the full commission will be paid and the draw eliminated." (Emphasis added). Thus, pursuant to the plain meaning of the contract's terms, it is evident that Banks was entitled to reimbursement of its advances so long as Polons was still under the contract, but that the contract does not provide for reimbursement in

the event of his termination. Insofar as the contract was drawn up by the employer, Banks Engineering, Banks was in the position to elaborate beyond the language it used if it so chose. We must therefore infer that Banks intended to address the repayment of Polons' draw only to the extent that the contract expressed.

Thus, I believe that the parties are bound by the terms of the contract between them, which does not provide for repayment of the draw except while the contract is in effect and, once Polons' employment was terminated, so, too, was his obligation to continue to repay the draw. Therefore, based on the explicit language of the contract, I would find, without remanding for further consideration of evidence, that the plain terms of the contract has determined that Polons no longer has an obligation to repay the draw.