COURT OF APPEALS
DECISION
DATED AND FILED

September 28, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 99-2707

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

JACKSON ELECTRIC COOPERATIVE,

PLAINTIFF-RESPONDENT-CROSS-APPELLANT,

v.

BROCKWAY SANITARY DISTRICT NO. 1,

DEFENDANT-APPELLANT-CROSS-RESPONDENT.

APPEAL and CROSS-APPEAL from a judgment and an order of the circuit court for Jackson County: ROBERT W. RADCLIFFE, Judge. *Reversed and cause remanded with directions.*

Before Eich, Roggensack and Deininger, JJ.

¶1 DEININGER, J. The Jackson Electric Cooperative sued the Brockway Sanitary District to recover some $35,000 in "interim interest" the

Cooperative claimed it was owed under a loan agreement with the District. The parties each moved for summary judgment. The trial court granted judgment to the Cooperative, and the District appeals. The District also appeals an order denying its motion for reconsideration, and the Cooperative cross-appeals the trial court's dismissal of two equitable claims. We conclude that the agreement is ambiguous as to whether the parties intended the District to reimburse the Cooperative for interim interest, and that there are genuine issues of material fact regarding the parties' intent. Accordingly, we reverse the appealed judgment and order, and we remand for further proceedings in the trial court regarding all of the Cooperative's claims, legal and equitable.

BACKGROUND

¶2 The District is a town sanitary district created under WIS. STAT. § 60.71 (1997-98).[1] The Cooperative is a Wisconsin cooperative association engaged in the sale of electricity to its members. In the spring of 1995, the Cooperative agreed to apply to the United States Department of Agriculture (USDA) for a $400,000 loan under a loan and grant program. The Cooperative further agreed to loan the money to the District for ten years, without interest, to assist the District in constructing a water project. Under the terms of the loan for which the Cooperative originally applied, the Cooperative would have received the money prior to the District's completion of the project, and the Cooperative would have promptly distributed the funds to the District.

[1] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

¶3 The Cooperative received notice in September 1995 that the USDA had denied its application for the original loan. The Cooperative's manager asserts that he met with one of the District commissioners and the District's secretary-treasurer shortly after receiving the USDA letter. He claims he explained to them that the Cooperative could apply for a different USDA loan/grant program, under which the government would not provide the money until after the District completed the project, thus creating a need for interim financing. The District representatives allegedly told the Cooperative to apply for the alternative funding source on the District's behalf. The Cooperative did so and ultimately obtained the alternative grant. In November, a lawyer jointly selected by the parties drafted a written contract embodying their agreement.[2]

¶4 According to the Cooperative's manager, in December 1995, he again met with the same two District representatives to discuss the interim financing. He claims that the District representatives agreed that the Cooperative should obtain interim financing on the District's behalf. The Cooperative did so in order to facilitate an earlier distribution of the $400,000 to the District. The Cooperative subsequently requested reimbursement from the District for $34,804.95 in accumulated interest on the interim loan. The District representatives, however, deny that the alleged meetings occurred, and deny any knowledge of the Cooperative's actions in obtaining interim financing prior to receiving the reimbursement request. The District denies that it has any obligation

[2] The Loan Agreement recites that it is "dated as of 20th day of November, 1995." The District's Board of Commissioners adopted a resolution approving the Agreement, and representatives of the District signed the Agreement on December 15, 1995. The Cooperative approved the transaction with the District in four formal resolutions adopted between April 1995 and September 1996. Officers of the Cooperative did not sign the Agreement until September 25, 1996.

under the Agreement to pay the interim interest charges claimed by the Cooperative.

¶5 The Cooperative filed suit to collect the interim interest, claiming breach of contract, promissory estoppel and unjust enrichment. The trial court granted summary judgment to the Cooperative on its contract claim, concluding that the contract unambiguously requires the District to pay the interim interest as an out-of-pocket expense. Because the Cooperative prevailed on its contract claim, the court dismissed the Cooperative's two equitable claims "without further consideration." The District appeals the summary judgment entered in favor of the Cooperative, and the subsequent order denying its motion for reconsideration. The Cooperative cross-appeals the dismissal of its two equitable claims.

ANALYSIS

¶6 We review the circuit court's grant of summary judgment de novo, employing the same methodology as the trial court. *See* ***Envirologix Corp. v. City of Waukesha***, 192 Wis. 2d 277, 287-88, 531 N.W.2d 357 (Ct. App. 1995). Summary judgment should be granted only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See* ***M&I First Nat'l Bank v. Episcopal Homes Management, Inc.***, 195 Wis. 2d 485, 496-97, 536 N.W.2d 175 (Ct. App. 1995); *see also* WIS. STAT. § 802.08(2).

¶7 At the heart of the parties' dispute is the interpretation of the contract between them. Thus, we begin with some general rules of contract construction. The meaning of an unambiguous contract is a question of law. *See* ***Schlosser v. Allis-Chalmers Corp.***, 86 Wis. 2d 226, 244, 271 N.W.2d 879 (1978). The object of contract construction is to ascertain the intent of the contracting parties, and we first look to the language used by the parties to express their

agreement. *See* ***Bank of Barron v. Gieseke***, 169 Wis. 2d 437, 455, 485 N.W.2d 426 (Ct. App. 1992). We do not consider extrinsic evidence unless the contract is ambiguous. *See* ***Patti v. Western Mach. Co.***, 72 Wis. 2d 348, 351, 241 N.W.2d 158 (1976).

¶8 Whether a contract is ambiguous presents a question of law, which we decide independently of the trial court. *See* ***Wausau Underwriters Ins. Co. v. Dane County***, 142 Wis. 2d 315, 322, 417 N.W.2d 914 (Ct. App. 1987). A contract is ambiguous if its terms are susceptible to more than one reasonable interpretation. *See* ***Wilke v. First Fed. S&L Ass'n***, 108 Wis. 2d 650, 654, 323 N.W.2d 179 (Ct. App. 1982). If a contract is ambiguous, the court's duty is to determine the parties' intent at the time of making the contract, which is a question of fact. *See* ***Patti***, 72 Wis. 2d at 353.

¶9 Both parties assert that the language is unambiguous, but each claims that its interpretation is correct. Both interpretations cannot be correct, however, inasmuch as the two interpretations are in direct conflict. If we find one of the proposed interpretations to be reasonable, we must then determine whether the other is also reasonable. If it is, the contract language is reasonably susceptible to more than one meaning, and it is thus ambiguous. Under that circumstance, we must look to extrinsic evidence to determine the parties' intent. *See* ***Patti***, 72 Wis. 2d at 351.

¶10 The issue is whether the District agreed to pay interim finance charges. The District contends that the contract clearly does *not* require it to pay any interest whatsoever. It points to several provisions in the Agreement and

related documents which state that the District agreed to an interest-free loan.[3] The District argues that "no interest" means no interest of any kind, whether on the original loan or any interim loans. In short, the District's position is that the contract states that the parties agreed to a ten-year, interest-free loan, and it nowhere obligates the District to pay any "interim interest" the Cooperative might have incurred in obtaining the funds called for under the Agreement. We agree with the District that a person could reasonably interpret the language of the Agreement to mean that the District was not obligated to pay any interest of any kind.

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[3] The District points to three portions of the integrated Agreement that discuss the zero-interest aspect of the loan. First, Section 2.01, which provides in relevant part as follows: "Subject to the terms and conditions of this Agreement, the Lender shall grant the Borrower a term loan in the principal amount of [$400,000]. The unpaid principal balance of the Term Loan shall bear no interest."

Second, Section 3.01 of the Agreement provides in relevant part: "On November 20, 1996 and the same day of each year thereafter until all principal of the Term Loan has been paid in full, the Borrower shall pay to the Lender a principal payment of $40,000.00. On December 1, 2005, the Borrower shall pay to the Lender all of the outstanding principal balance of the Term Loan."

Finally, the District refers to a resolution adopted by its board on November 20, 1995, which approved the Agreement and set out a chart of payments due under the Agreement:

Payment Dates	Principal Amount Due	Interest Due	Total Principal and Interest Due
November 20, 1996	$40,000.00	-0-	$40,000.00
November 20, 1997	$40,000.00	-0-	$40,000.00
November 20, 1998	$40,000.00	-0-	$40,000.00
November 20, 1999	$40,000.00	-0-	$40,000.00
November 20, 2000	$40,000.00	-0-	$40,000.00
November 20, 2001	$40,000.00	-0-	$40,000.00
November 20, 2002	$40,000.00	-0-	$40,000.00
November 20, 2003	$40,000.00	-0-	$40,000.00
November 20, 2004	$40,000.00	-0-	$40,000.00
November 20, 2005	$40,000.00	-0-	$40,000.00

¶11 We consider next the Cooperative's interpretation to see if it is also reasonable. The Cooperative argues, and the trial court concluded, that the contract unambiguously requires the District to pay interim interest. The Cooperative principally relies on Section 2.02 of the Agreement, entitled "Purposes of the Term Loan," which provides that the District "shall" use loan proceeds to finance the Project "or to reimburse short-term financing expenditures for the Project." Therefore, according to the Cooperative, although the Agreement does not explicitly provide for the District to pay interim interest charges incurred by the Cooperative, the language of the Agreement shows that the parties contemplated the possibility that interim interest charges might arise.

¶12 The Cooperative next points to Section 10.01, "Transaction Expenses," which provides that the District must reimburse the Cooperative for "all out-of-pocket expenses" incurred by the Cooperative "in connection with the transactions contemplated by this agreement."[4] Thus, even if not directly liable for the interest charges under other provisions of the Agreement, the Cooperative

[4] Section 10.01 provides, in relevant part:

> Transaction Expenses. The Borrower shall pay to the Lender upon demand *all out-of-pocket expenses incurred by the Lender in connection with the transactions contemplated by this Agreement*, including, but not limited to, the Lender's reasonable attorneys' fees incurred in preparing the Borrower Documents and any and all costs and fees incurred in connection with the recording or filing of any documents or instruments in any public office, pursuant to or in as a consequence of this Agreement, or to perfect or protect any security for the Term Loan. The Borrower shall also pay to the Lender upon demand all out-of-pocket expenses incurred from time to time in the administration of the Term Loan, including without limitation any out-of-pocket expenses (including, but not limited to attorneys' fees) incurred by the Lender if any of the Borrower Documents should be amended, extended and/or renewed from time to time.

(Emphasis added.)

argues that the District agreed in Section 10.01 to reimburse it for all expenses incurred in obtaining interim financing.

¶13 The District responds that the interim interest cannot be an "out-of-pocket expense" because it is not a "nominal" charge. The District, however, provides scant support for this proposition. It cites definitions for "out-of-pocket expense" as meaning "for miscellaneous items" and "[a]n incremental cost."[5] However, expenses for "miscellaneous items" need not necessarily be "nominal." By the same token, "incremental" costs are costs "increase[d] in quantity or value,"[6] which could of course be "nominal," or could just as easily be substantial. We therefore reject the District's argument that "out-of-pocket expenses" must be "nominal," and we do not address whether $35,000 in interim interest on a $400,000 loan is or is not "nominal."

¶14 We thus conclude that a person could reasonably interpret the Agreement to include an obligation on the District's part to reimburse the Cooperative for any interim financing charges incurred in carrying out the terms of the agreement. Because both interpretations are reasonable, the Agreement is ambiguous, and we may therefore look to extrinsic evidence to aid in determining the parties' intent. *See* ***Patti*****,** 72 Wis. 2d at 351-52. The parties both suggest, however, that the integration clause in Section 11.11 of the Agreement precludes a court from considering any alleged oral understandings or agreements in interpreting the Agreement. We disagree. Extrinsic evidence is admissible, even

[5] The District cites Webster's New Universal Unabridged Dictionary (1979) for the former definition, and Black's Law Dictionary (5th ed. 1979) for the latter. We note that Black's Law Dictionary 599 (7th ed. 1999) defines "out-of-pocket expense" simply as "[a]n expense paid from one's own funds."

[6] BLACK'S LAW DICTIONARY 707 (7th ed. 1999).

though the contract has an integration clause. *See* ***Roth v. City of Glendale***, 2000 WI 100, ¶49, ___ Wis. 2d ___, 614 N.W.2d 467 (Sykes, J., concurring) (citing ***Bidlack v. Wheelabrator Corp.***, 993 F.2d 603, 608 (7th Cir. 1993) *en banc* ("[T]he parol evidence rule … enforces integration clauses by barring evidence of side agreements, [although it] does not bar the use of extrinsic evidence to clarify the meaning of an ambiguous text.")).

¶15 The trial court based its decision to grant the Cooperative's summary judgment motion and to deny the District's, in part, on assumptions that (1) the District knew it could not obtain the USDA money until after it had completed the project; (2) the District knew that the Cooperative used its line of credit to provide interim financing; and (3) the District accepted the use of the interim financing. The District, however, vigorously disputes these assumptions, asserting, correctly, that there is no basis to support them within the "four corners" of the parties' Agreement. But in arguing that an "interim loan" was *not* among the "transactions contemplated by the agreement," the District urges a conclusion similarly ungrounded in the language of the contract.

¶16 Quite simply, whether the interim loan was or was not contemplated by the parties when they entered into the Agreement is a hotly disputed issue of fact. The record on summary judgment includes averments that a District commissioner and its secretary-treasurer met with the Cooperative's manager on two occasions; that the District representatives were informed of the need for interim financing; and that they gave approval for the Cooperative to obtain a short-term loan on the District's behalf. The District's representatives flatly deny that these meetings occurred, and they aver that they knew nothing about the change in the status of the USDA loan/grant, or of the resulting need for interim financing.

¶17 Because the Agreement is ambiguous, and because the extrinsic evidence in the record reveals genuine issues of material fact, we reverse the appealed judgment and order, and we remand for further proceedings in the trial court.

¶18 In its cross-appeal, the Cooperative argues that if we reverse the trial court's favorable ruling on its contract claim, we should restore its alternative equitable claims of promissory estoppel and unjust enrichment, which the court dismissed. We agree that the appealed and cross-appealed judgment must be reversed in its entirety. The trial court did not address the merits of the equitable claims, and we note that their resolution may depend in part on some of the same disputed facts relevant to the contract claim. We thus direct that on remand an order be entered denying the summary judgment motions of both parties on all claims.

CONCLUSION

¶19 For the reasons discussed above, we reverse the judgment and order of the trial court and remand for further proceedings consistent with this opinion.

By the Court.—Judgment and order reversed and cause remanded with directions.

Not recommended for publication in the official reports.