

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MARILYN CHAPMAN and LINDA ROLLER,

UNPUBLISHED  
May 7, 1996

Plaintiffs-Appellants,

v

No. 166345  
LC No. 92-225628

SILWICK UNLIMITED, INC.,

Defendant-Appellee.

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Before: Jansen, P.J., and McDonald and D. C. Kolenda,\* JJ.

MEMORANDUM.

Plaintiffs appeal as of right from orders dated May 24 and June 18, 1993, granting in part defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this breach of contract case.

Plaintiffs' complaint sets forth a claim for damages arising from defendant's refusal to pay plaintiffs certain commissions for the sale of defendant's products from June 1990 to March 1992. Plaintiffs assert they entered into an oral contract with defendant in 1982 that provided for certain down line commissions and that defendant arbitrarily and unilaterally modified the agreed upon commissions scale in June 1990. The uncontroverted evidence presented to the trial court indicated plaintiffs entered written contracts on June 18, 1991, that expressly authorized defendant to alter or modify commissions. Finding the contract unambiguous, the court on May 24, 1993, granted defendant's motion for summary disposition as to all claims arising after June 18, 1991.<sup>1</sup> Because the existence and terms of the alleged 1992 oral contracts was unclear, the trial court denied defendant's motion with regard to the breach of contract claims arising between June 1990 and June 17, 1991. However, in order to make the court's May order a final appealable order, plaintiffs voluntarily dismissed without prejudice the breach of contract claims arising prior to June 18, 1991. Thereafter, on June 18, 1993, the court entered an order of voluntary dismissal and making its earlier order of partial summary disposition a final order. We affirm.

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\* Circuit judge, sitting on the Court of Appeals by assignment.

Although on appeal plaintiffs attempt to address the propriety of defendant's alleged June 1990 retroactive modification of the commissions, this claim is not properly before us. We address only the portion of plaintiffs' complaint dismissed by the court on May 24, 1993, and find no error.

The contracts executed by plaintiffs are unambiguous and provide clear authority for defendant to alter commissions. There remained no genuine issues of material fact with regard to any alleged claims arising after the effective date of the contract. Summary disposition was properly granted. *Dafter Sanitary Landfill v Superior Sanitation Service*, 198 Mich App 499; 499 NW2d 383 (1983).

Affirmed.

/s/ Kathleen Jansen

/s/ Gary R. McDonald

/s/ Dennis C. Kolenda

<sup>1</sup> The court also dismissed those counts of plaintiffs' complaint alleging defendant's bad faith breach of the implied covenant of fair dealing and violation of MCL 600.2961; MSA 27A.2961. Plaintiffs do not address dismissal of these counts on appeal.