

STATE OF MICHIGAN
COURT OF APPEALS

DAVID BARNES, PETE AWREY, SHANNON
HANDRICH, THOMAS HENEY, CRAIG SIDES,
KEITH BUTCHER, THOMAS GOODWILL,
VALERIE GOODWILL, CHRIS HOLBURN,
DOUG JOHNSON, DEBORAH NORTH,
THOMAS NORTH, CATHERINE WEST, JAY
RUDDY, LINDA POLLARD, PENNY MORAN,
PAUL MORAN, DAVID BARNES II, DARLENE
MEDINA, DAWN BARNES, MARGO BARNES,
CAROL HILTS, THEO HILTS, RUSSELL HILTS,
RICK HILTS, SANDY TROUT, LESTER
SENSOBAUGH, LAURA BEEBE and JAY
MEDINA,

Plaintiffs-Appellants,

v

STATE OF MICHIGAN and BUREAU OF
LOTTERY,

Defendants-Appellees.

UNPUBLISHED
August 22, 1997

No. 197246
Court of Claims
LC No. 96-016293-CM

Before: Neff, P.J., and Wahls and Taylor, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting summary disposition for defendants pursuant to MCR 2.116(C)(8) and (10). This case arises out of defendants' refusal to pay plaintiffs prize winnings in the "\$5000 Money Match" instant lottery game. Plaintiffs believed that they had won numerous prizes under their interpretation of the game rules. We affirm.

Plaintiffs first argue that the trial court erred in granting summary disposition on their breach of contract claim. Plaintiffs do not dispute that there is a contract between the parties. Instead, they argue that the contract terms are ambiguous. We disagree. A court may interpret a contract for purposes of

a motion for summary disposition where, as here, the terms are clear. *Portelli v I R Constr Products Co*, 218 Mich App 591, 598, n 3; 554 NW2d 591 (1996). We construe contracts as a whole, giving “harmonious effect, if possible, to each word and phrase.” *Singer v Goff*, 334 Mich 163, 168; 54 NW2d 290 (1952). In order to interpret the contract as a whole in this case, we must consider the physical layout of the lottery ticket. In addition, language printed on the ticket indicates that “all tickets . . . are subject to lottery rules, directives, and state law.” Thus, we must also consider any lottery rules or directives as part of the contract between the parties.

Here, the directions on the front of the lottery ticket provide that “if ‘your prize’ matches ‘their prize’ in any game, win that prize amount.” Plaintiffs argue that the phrase “in any game” is a misplaced modifier that allows the rules to be interpreted to mean that if any dollar amount in the “your prize” column matches any dollar amount in the “their prize” column, then the holder is a winner even though the matching icons are not necessarily found in the same horizontal game row. If we ignore the physical layout of the ticket, there are two possible ways to interpret these directions. First, the phrase “in any game” could be interpreted as modifying only the term “their prize.” This is essentially the reading relied on by plaintiffs. The other possible reading is that the phrase “in any game” modifies the entire preceding phrase “if ‘your prize’ matches ‘their prize.’” Thus, the directions, when taken out of context, are indeed ambiguous, and we must look to the rest of the contract to determine their proper meaning.

The layout of the lottery ticket includes four horizontal rows separated by solid horizontal lines. The rows are labeled “Game 1,” “Game 2,” “Game 3,” and “Game 4.” Thus, the face of the ticket makes it clear that a “game” is a horizontal row. In addition, Lottery Bureau Instant Game Directive No. 212, which is also part of the contract, parenthetically defines a game as a horizontal row. Each game includes one box labeled “your prize” and one box labeled “their prize.” Thus, there are four boxes labeled “your prize” and four labeled “their prize.” We find that plaintiffs’ interpretation of the directions conflicts with the physical layout of the ticket. The phrase “if ‘your prize’ matches ‘their prize’” refers to “your prize” in the singular. Under plaintiffs’ interpretation, there should be only one box labeled “your prize” and several boxes labeled “their prize.” In fact, the layout of the ticket is only consistent with the conclusion that the phrase “in any game” modifies the entire phrase “if ‘your prize’ matches ‘their prize.’” Thus, the trial court properly concluded that a match must occur “in any game,” and may not occur across games. Defendants’ argument regarding the meaning of the word “any” is irrelevant. The definition of the word “any” cannot change the fact that a match must occur within a game, rather than across games.

All of the contract terms, including the directions and statements on the ticket, the physical layout of the ticket, and Directive No. 212 are consistent with the above interpretation, and the contract is not ambiguous. Because we conclude that the contract, viewed as a whole, is clear, and because defendants did not breach that contract by refusing to pay plaintiffs, the trial court properly granted summary disposition for defendants on this issue.

Plaintiffs next argue that the trial court erred in granting summary disposition for defendants on their constructive fraud claim. We disagree. The Michigan Supreme Court has recognized that constructive fraud is essentially the receipt and retention of unmerited benefits. *Goodrich v Waller*,

314 Mich 456, 469; 22 NW2d 862 (1946). Defendants in this case did not receive any unmerited benefits. When plaintiffs purchased their lottery tickets, they essentially bought a chance to win money, pursuant to the terms of a contract. As noted above, defendants did not breach that contract, and plaintiffs indeed got the chance to win money. The fact that plaintiffs did not win does not make defendants' conduct fraudulent, nor does it make their retention of plaintiffs' money "unmerited."

Finally, plaintiffs argue that the trial court erred in granting summary disposition for defendants on their claim of innocent misrepresentation. Again, we disagree. We have described a claim for innocent misrepresentation as a variation on fraud:

Claims for fraudulent misrepresentation require proof that (1) the defendant made a material representation, (2) it was false, (3) the defendant knew it was false when made, or made it recklessly, without knowledge of its truth and as a positive assertion, (4) it was made with the intention to induce reliance by the plaintiff, (5) the plaintiff acted in reliance upon it, and (6) the plaintiff thereby suffered injury. A claim for "innocent" misrepresentation requires proof of the same elements except that the misrepresentation need not be made knowingly or recklessly. Innocent misrepresentation also requires proof of the additional element that the plaintiff's injury actually benefited the defendant. [*State-William Partnership v Gale*, 169 Mich App 170, 178; 425 NW2d 756 (1988) (citations omitted).]

Here, as noted above, the contract between the parties is consistent and clear. Plaintiffs cannot point to any statement outside the contract upon which they relied. Thus, defendants did not make any misrepresentations, and the trial court properly granted summary disposition in their favor.

Because we affirm the trial court, we need not address plaintiffs' request for a different judge on remand.

Affirmed.

/s/ Janet T. Neff
/s/ Myron H. Wahls
/s/ Clifford W. Taylor