# STATE OF MICHIGAN

# COURT OF APPEALS

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DURWARD ROLLER,

Plaintiff-Appellee,

v

CHRYSLER CORPORATION, INC.,

Defendant-Appellant.

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UNPUBLISHED
January 27, 1998

No. 194756
Oakland Circuit Court
LC No. 94-473978-CK

Before: MacKenzie, P.J., and Sawyer and Neff, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment awarding plaintiff $513,482.50 in damages for breach of a stock option contract. We reverse and remand for a new trial.

Plaintiff was an employee of defendant for nine years. In 1991, plaintiff requested early retirement. He was told that he did not qualify because he did not have ten years of service, but that defendant would try to accommodate his request. The agreement reached between plaintiff and defendant allowed plaintiff to be laid off for one year until he reached his tenth anniversary of employment, and then retire. He was orally assured that he would retire with full benefits. Plaintiff signed a separation agreement containing a release of all claims, which plaintiff testified that he believed to apply only to age discrimination claims. Two provisions in the separation agreement are relevant. Paragraph 2 of Attachment III to the agreement provides:

> Roller releases and forever discharges Chrysler, its directors, employees, agents, servants, representatives, subsidiary and affiliated companies (collectively in this Attachment III, "Chrysler") from any and all claims, demands and causes of action he now has, or may have, by reason of any matter, act or omission arising out of, or in connection with, Roller's employment with and separation from Chrysler. By way of example but not limitation, Roller waives and releases all claims arising under Age Discrimination in Employment Act and any state civil rights act.

Paragraph 6 of Attachment III provides:

> Attachments I, II and III, the cover letter to which they are attached, and the benefit plans referenced in the Attachments, constitute the entire agreement between Roller and Chrysler. There are no agreements, understandings or representations made by Chrysler except as expressly stated in Attachments I, II and III, the cover letter and said benefit plans. This agreement may not be amended except in writing signed by an authorized Chrysler representative.

Prior to his retirement date, plaintiff learned that his layoff status resulted in the lapse of his stock options, but he was orally assured that they would be "taken care of." Under the stock option plan, an employee's right to exercise his options lapsed on termination of employment. However, if the employee retired or became disabled, the employee would have five years from the date of termination within which to exercise his options.

Section 8 of the stock option agreement provides in part:

> All the rights of an Option Holder under his option shall lapse if his employment with the Corporation or a subsidiary is terminated for any reason other than those referred to in this paragraph 8 or in paragraph 9 of this Plan.
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> If the employment of an Option Holder with the Corporation of a subsidiary is terminated (a) by reason of retirement or permanent total disability, or (b) at or after age 55 under circumstances which the Committee, in its discretion, deems equivalent to retirement, and in either case he has been in the employ of either the Corporation or a subsidiary continuously from the date of granting the option until the termination of his employment, the Option Holder may exercise the option (and any associated Stock Appreciation Right, Additional Appreciation Right or Limited Stock Appreciation Right) after such termination of employment at any time within the five year period commencing on the date of termination of his employment, but not beyond the term of his option, and only to the extent that he would on the date of exercise have been entitled under paragraph 7 of this Plan to exercise the option (or any associated Stock Appreciation Right, Additional Appreciation Right or Limited Stock Appreciation Right) if he had continued to be employed by the Corporation.
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> If the employment of an Option Holder with the Corporation or a subsidiary is terminated by the Corporation under mutually satisfactory conditions, and he has been in the employ of either the Corporation or a subsidiary continuously from the date of granting the option until the termination of his employment, the Committee, in its discretion, may permit the Option Holder to exercise the option (and any associated Stock Appreciation Right, Additional Appreciation Right or Limited Stock Appreciation Right) after such termination of employment at any time within the one year period commencing on the date of the termination of his employment, but not beyond the term of his option, and only to the extent that he would on the date of exercise had been

> entitled under paragraph 7 of this Plan to exercise the option (or any associated Stock appreciation Right, Additional Appreciation Right or Limited Appreciation Right) if he had continued to be employed by the Corporation.

On December 6, 1990, plaintiff received and signed an option agreement granting him the option to purchase 2,750 shares of Chrysler common stock on the terms and conditions of the stock option plan. Over the course of his employment with defendant, plaintiff received 13,500 stock options.

Prior to trial, defendant brought a motion in limine to exclude any extrinsic evidence that would vary or contradict the terms of the separation agreement. Defendant argued that because the agreement was fully integrated and unambiguous, the parol evidence rule prohibited the admission of any evidence regarding the contract negotiations, or prior or contemporaneous agreements. The trial court denied the motion on the grounds that the agreement was silent as to the stock options and was therefore ambiguous.

On appeal, defendant argues that the trial court committed error requiring reversal by denying its motion and by allowing plaintiff to proceed with this action. This Court reviews a trial court's decision concerning the admission of evidence for an abuse of discretion. *Zeeland Farm Services, Inc v JBL Enterprises*, Inc, 219 Mich App 190, 200; 555 NW2d 733 (1996).

The parol evidence rule provides that parol evidence of contract negotiations or of prior or contemporaneous agreements that contradict or vary the written contract is not admissible to vary the terms of a contract which is clear and unambiguous. *Vergote v K Mart Corp (After Remand)*, 158 Mich App 96, 107; 404 NW2d 711 (1987). A prerequisite to the application of the parol evidence rule is a finding that the parties intended the written instrument to be a complete expression of their agreement as to the matters covered, and extrinsic evidence is admissible as it bears on this threshold question. *Id.; NAG Enterprises v All State*, 407 Mich 407, 410; 285 NW2d 770 (1979). The parol evidence rule does not exclude extrinsic evidence showing that: the writing was a sham, not intended to create legal relations; that the contract has no efficacy or effect because of fraud, illegality, or mistake; that the parties did not integrate their agreement, or assent to it as the final embodiment of their understanding, or that the agreement was only partially integrated because essential elements were not reduced to writing. *Id.* at 410-411.

However, the rule does not preclude parol evidence of a prior or contemporaneous parol agreement concerning some matter on which the written instrument is silent, provided no attempt is made to vary or contradict the writing. *Stimac v Wissman*, 342 Mich 20, 25; 69 NW2d 151 (1955). Any independent fact or collateral parol agreement, whether contemporaneous with or preliminary to the main contract in writing, may be proved, provided it does not interfere with the terms of the written contract though it may relate to the same subject matter. *Id.* at 25-26.

In the present case, the trial court found that, because the separation agreement was silent regarding plaintiff's stock options, the scope of the release was ambiguous. Therefore, it denied defendant's motion in limine and permitted parol evidence on the issue of whether the separation agreement precluded plaintiff's action under the stock option agreement. Because the parol evidence

rule does not bar the admission of evidence of a prior or contemporaneous parol agreement concerning some matter on which the written instrument is silent, *Stimac, supra* at 25, or evidence that the agreement was only partially integrated because essential elements were not reduced to writing, *NAG Enterprises, supra* at 410-411, we find that the trial court did not abuse its discretion in denying defendant's motion.

Defendant next argues that the trial court improperly instructed the jury to determine whether or not the stock option contract was ambiguous, and if it found that it was ambiguous, any ambiguity must be construed against the drafter of the contract. The determination whether a jury instruction is applicable and accurately states the law is within the discretion of the trial court. *Klinke v Mitsubishi Motors,* 219 Mich App 500, 515; 556 NW2d 528 (1996). This Court reviews instructions in their entirety and does not extract them piecemeal. *Id.* Reversal is not required if, on balance, the theories of the parties and the applicable law are adequately and fairly presented to the jury. *Id.*

Defendant objected to the jury instruction that any ambiguity must be construed against the drafter, but not to the instruction that the jury is to determine whether or not an ambiguity exists. Therefore, appellate review of this issue is precluded absent manifest injustice. *Mills v White Castle Systems, Inc,* 199 Mich App 588, 592; 502 NW2d 331 (1993). Manifest injustice results where the defect in instruction pertains to a basic and controlling issue in the case. *Id.* Because the controlling issue in this case was the interpretation of the stock option agreement and the separation agreement, we find that manifest injustice would result from this Court's failure to review this issue.

The initial question whether contract language is ambiguous is a question of law. *Port Huron Ed Ass'n v Port Huron Area School Dist,* 452 Mich 309, 323; 550 NW2d 228 (1996). If the contract language is clear and unambiguous, its meaning is a question of law. *Id.* Where the contract language is unclear or susceptible to multiple meanings, interpretation becomes a question of fact. *Id.* Therefore, the trial court erred in instructing the jury that it may determine whether or not the stock option agreement was ambiguous. Furthermore, nothing in the instructions clarified the law on this issue. Therefore, taken as a whole, the jury instructions did not adequately and fairly present the law to the jury.

Defendant also argues that the trial court erred in instructing the jury that it must construe any ambiguity against the drafter of the contract. However, it is a well-settled principle of contract construction that any ambiguity in a contract must be strictly construed against the drafter. See *Petovello v Murray,* 139 Mich App 639, 642; 362 NW2d 857 (1984); *Brown v Considine,* 108 Mich App 504, 508; 310 NW2d 441 (1981). Because the trial court's instruction fairly represented this principle of law, defendant's argument has no merit.

Reversed and remanded for a new trial. We do not retain jurisdiction.

/s/ Barbara B. MacKenzie
/s/ David H. Sawyer
/s/ Janet T. Neff