

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

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LARRY D. CLANTON,

Plaintiff-Appellant,

v

GENERAL PRODUCTS CORPORATION,

Defendant-Appellee.

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UNPUBLISHED

August 16, 2005

No. 253176

Jackson Circuit Court

LC No. 02-005894-CK

Before: Fort Hood, P.J., and Meter and Schuette, JJ.

PER CURIAM.

Plaintiff appeals by right from a judgment granting defendant General Products Corporation's motion for summary disposition. This dispute arose after plaintiff resigned from his position with General Products Corporation (GPC). When GPC refused to pay plaintiff severance benefits, believing that it was not required to under the terms of his employment contract, plaintiff filed this suit. We affirm.

**I. FACTS**

Plaintiff, Larry Clanton worked as defendant's Chief Financial Officer for over two years pursuant to a written employment agreement. In addition to serving as GPC's Chief Financial Officer, his responsibilities included supervising three of the company's departments: finance, computer services, and purchasing. He also supervised thirteen employees. As Chief Financial Officer, Clanton attended all duly called board meetings and maintained GPC's minute book.

On May 5, 2002, GPC's Chief Executive Officer, Guy Cassidy, told Clanton that he was reassigning two of those departments, purchasing and computer services, to other people. Clanton considered this an insult and a substantial adverse change in the nature and scope of his responsibilities. About two weeks later, Clanton told Cassidy that he would be leaving the company. At Cassidy's request, Clanton agreed to continue working until August 2002, to ensure a smooth transition for his successor.

On August 19, 2002, the GPC presented Clanton with a proposed separation package. Clanton turned it down because "it was not what [he] was expecting and nor was it what [he] thought he was owed and due." Three days later, on August 22, 2002, Clanton delivered a formal written notice to defendant that he was resigning "pursuant to paragraph 12(f)(1) [of his

employment agreement]. . . due to a substantial adverse change, not agreed to by me, in the nature and scope of his responsibilities and duties under the employment agreement.” He also wrote that August 23, 2002 would be his last day of employment with GPC.

On August 28, Cassidy responded that the reason for the resignation was unexpected and that there was no basis for “good cause” because there had been no substantial adverse change in Clanton’s duties. Cassidy stated that even if Clanton’s duties had changed, Clanton had agreed to them “and the change was made following a finding in good faith by the board of directors that you were materially failing to attend to your assigned duties.” On September 3, Clanton responded in a letter to Cassidy, in which he stated in part:

Although I did not give formal written notice at that time [in May], you understood why I was leaving, and you asked me to stay until the end of August, well beyond the 60 days required by my employment contract, to ease in the transition, which I agreed to do. Thus, it is more accurate to say that my Notice of Resignation is effective as of May 16, 2002, when I gave your oral notice, and that my last day of work was determined by you.

This dispute centers around the language of Clanton’s employment agreement. Specifically, § 12 of the agreement, which addresses Clanton’s termination of employment, provides as follows, in pertinent part:

Termination of Agreement. The employment by the Company of the Executive pursuant to this Agreement shall not be terminated prior to the end of the then current Term hereof except as set forth in this Section 12. Except as otherwise set forth below, in the event of such early termination, the Executive shall be entitled to receive all Base Salary and benefits to be paid or provided to the Executive under this Agreement through the applicable date of such termination.

\* \* \*

(f) By the Executive for Good Reason. This Agreement may be terminated by the Executive by *written* notice of his resignation (“Notice of Resignation”) upon (1) a substantial adverse change, not agreed to by the Executive, in the nature or scope of the Executive’s responsibilities or duties under this Agreement, unless such change is made pursuant to a finding in good faith by the Board of Directors that the Executive is materially failing to attend to the Executive’s duties hereunder . . . . In the event that the employment by the Company of the Executive pursuant to this Agreement is terminated by the Executive for Good Reason pursuant to this Section 12(f)(1)(2) or (3), the Executive shall be entitled to (i) all Base Salary and benefits to be paid or provided to the Executive under this Agreement through the Date of Termination, (ii) the Base Salary and medical benefits to be paid or provided to the Executive under this Agreement for twenty-four (24) months following the Date of Termination, and (iii) the pro rata portion of the bonus payable to the Executive, if any, as determined by the Compensation Committee for the then current fiscal year of the Company. . . .

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(h) Date of Termination. The Executive's Date of Termination shall be . . . (iv) if the Executive's employment is terminated pursuant to Section 12(f) [ ] sixty (60) days after the date of Notice of Termination or Notice of Resignation . . . is given.  
...

On November 14, 2003, Clanton filed a motion in limine to exclude § 12(h)(iv) of the employment agreement. In denying Clanton's motion in limine, the trial court determined that his complaint did not plead that the condition precedent had been satisfied, and, therefore, he failed to satisfy MCR 2.112(C)(1), and GPC was not required to allege with specificity how the condition had not been met. The court further found that its ruling on the motion was dispositive of the case, because if it proceeded to trial, the trial court would have to grant defendant a directed verdict at the close of plaintiff's proofs as a matter of law. The court concluded that according to MCR 2.116(I)(1), it was clear that no genuine issue of material fact existed and that the case should be disposed of summarily.

## II. STANDARD OF REVIEW

A trial court's decision to grant summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). This Court must review the record in the same manner as must the trial court to determine whether the movant was entitled to judgment as a matter of law. *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (1998). The construction and interpretation of a contract is a question of law that we likewise reviewed do novo. *Henderson v State Farm Fire and Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). If a word or phrase is unambiguous and no reasonable person could differ with respect to application of a term or phrase to undisputed material facts, then the court should grant summary disposition to the proper party pursuant to MCR 2.116(C)(10). *Id.* If reasonable minds could differ about the conclusions to be drawn from the facts, a question for the factfinder exists, and summary disposition is not appropriate. *Id.*

## III. ANALYSIS

This dispute centers on the language of plaintiff's employment contract. The primary goal in interpreting a contract is to give effect to the parties' intent. *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998). The language of a contract is construed according to its plain and ordinary meaning; technical or constrained constructions must be avoided. *Id.* If the contract language is unambiguous, it must be enforced as written. *Farm Bureau Mut Ins Co v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1999).

This case rests on the meaning and application of § 12(f) and § 12(h)(iv) of the employment agreement, the relevant portions of which provide:

(f) By the Executive for Good Reason. This Agreement may be terminated by the Executive by written notice of his resignation ("Notice of Resignation") upon (1) a substantial adverse change, not agreed to by the Executive, in the nature of scope of the Executive's responsibilities or duties under this Agreement . . . In the event that the employment by the Company of the Executive pursuant to this

Agreement is terminated . . . pursuant to Section 12(f)(1) . . . the Executive shall be entitled to (i) all Base Salary and benefits to be paid or provided to the Executive under this agreement through the *Date of Termination* [and] (ii) the Base Salary and medical benefits to be paid or provided to the Executive under this Agreement for twenty-four (24) months following the *Date of Termination*. . . .

\* \* \*

(h) Date of Termination. The Executive's Date of Termination shall be . . . (iv) if the Executive's employment is terminated pursuant to Section 12(f) [ ] sixty (60) days after the date of Notice of Termination or Notice of Resignation . . . is given. . . .

When these provisions are read together, the contract's language is unambiguous. Section 12(f) defines "Notice of Resignation" as *written* notice. Section 12(h)(iv) then defines the "Date of Termination" as sixty days after the date of Notice of Termination is given. Therefore, before plaintiff was entitled to twenty-four months of severance benefits, the plain meaning of the contract required that he must first show that his notice of resignation was written, given sixty days before his last day of work, and based on "a substantial adverse change."

The material facts are undisputed and show that plaintiff failed to give GPC written notice sixty days before his last day of work. On May 5, 2002, GPC's CEO told plaintiff that plaintiff would no longer be supervising the purchasing and computer services departments. Plaintiff considered this an insult and a substantial adverse change in the nature and scope of his responsibilities. About two weeks later, plaintiff verbally informed the CEO that he would be leaving the company. At the CEO's request, plaintiff agreed to continue working until August 2002, to ensure a smooth transition for his successor. Then, on August 19, 2002, GPC presented plaintiff with a proposed separation package. Plaintiff rejected the package because "it was not what [he] was expecting and nor was it what [he] thought he was owed and due." Three days later, on August 22, 2002, plaintiff delivered a formal written notice to GPC indicating that he was resigning "pursuant to paragraph 12(f)(1) [of his employment agreement]. . . due to a substantial adverse change, not agreed to by me, in the nature and scope of his responsibilities and duties under the employment agreement." Plaintiff's last day of employment with GPC was August 23, 2002.

The contract required plaintiff to provide written notice to GPC at least sixty days before August, 23, his last day. Plaintiff's May 5 notification to GPC's CEO was verbal, and his written August 22 notification was not sixty days before his last day of work; thus, plaintiff failed to satisfy the terms of his employment contract. Summary disposition properly entered.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Patrick M. Meter

/s/ Bill Schuette