STATE OF MICHIGAN

COURT OF APPEALS

3DM (ASIA) PTE LTD,

Plaintiff-Appellant,

v

3DM TECHNOLOGIES, INC. and 3DM WORLDWIDE, PLC.,

Defendants-Appellees.

UNPUBLISHED
May 1, 2007

No. 273194
Oakland Circuit Court
LC No. 2005-068919-CK

Before: Neff, P.J., and O'Connell and Murray, JJ.

PER CURIAM.

In this contract dispute, plaintiff 3DM (Asia) PTE, Ltd. appeals as of right from the trial court's order granting summary disposition in favor of defendants 3DM Technologies, Inc. (3DM Tech) and 3DM Worldwide, PLC (3DM Worldwide). We affirm.

I

3DM Tech is a Michigan corporation established as a subsidiary of 3DM Worldwide. 3DM Tech acquired a patent and technology for a novel way of making plastic polymers called powder impression molding (PIM). Kenneth Brooks, the chairman of the 3DM Worldwide Board of Directors, subsequently joined with Christian Hoyar Millar to establish plaintiff, a Singapore corporation, for the purpose of commercializing PIM technology in the Far East. In June 2004, plaintiff and 3DM Tech entered into a licensing agreement, that granted plaintiff exclusive rights to market PIM for product development in certain Eastern hemisphere countries in exchange for royalties on the products developed. A second licensing agreement, which is the subject of the present suit, was signed in September 2004 and expanded the territory covered by the agreement to include Singapore, South Korea, and Taiwan.

Plaintiff filed this action in September 2005, claiming that defendants had breached the parties' licensing agreement. Plaintiff's complaint alleged that under the agreement, 3DM Tech was required to transfer its "know-how" related to the PIM process to plaintiff, but failed to do so. Defendants moved for summary disposition, asserting they had no duty to provide technical support to plaintiff under the agreement, that plaintiff had failed to satisfy the licensing agreement's confidentiality requirements and, thus, committed a prior breach of the agreement, and that the licensing agreement was terminated because plaintiff admitted its insolvency in a

separate court proceeding in Singapore. The trial court agreed with defendants in all respects and granted the motion for summary disposition.

II

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003). The trial court granted defendant's summary disposition motion pursuant to MCR 2.116(C)(8) and (C)(10). Defendants moved for summary disposition pursuant to MCR 2.116(C)(8) on the basis of the plain language of the licensing agreement. The pleadings alone are considered in ruling on a motion brought pursuant to MCR 2.116(C)(8), which includes a written contract on which an action is based:

> The trial court granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(8) on the basis that plaintiff failed to state a claim upon which relief may be granted. When an action is based on a written contract, it is necessary to attach a copy of the contract to the complaint. MCR 2.113(F). Accordingly, the written contract becomes part of the pleadings themselves, even for purposes of review under MCR 2.116(C)(8). *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 133; 676 NW2d 633 (2003). We review de novo a trial court's decision to grant or deny summary disposition pursuant to MCR 2.116(C)(8). *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). "A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the complaint and allows consideration of only the pleadings. The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery." *MacDonald v PKT, Inc*, 464 Mich 322, 332; 628 NW2d 33 (2001) (citation omitted). [*Laurel Woods Apartments v Roumayah*, ___ Mich App ___; ___ NW2d ___ (Docket No. 269506, issued March 8, 2007), slip op pp 2-3.]

The interpretation of a contract is a question of law, reviewed de novo on appeal. *DaimlerChrysler Corp v G Tech Professional Staffing, Inc*, 260 Mich App 183, 184-185; 678 NW2d 647 (2003). Likewise, the question whether the language of a contract is ambiguous and requires resolution by the trier of fact is reviewed de novo on appeal. *Id*. The goal of contract construction is to give effect to the intent of the parties. *Klapp*, *supra* at 473. "Where the terms of a contract are unambiguous, their construction is a matter of law to be decided by the court." *Grand Trunk W R, Inc v Auto Warehousing Co*, 262 Mich App 345, 350; 686 NW2d 756 (2004). A contract is unambiguous if it fairly admits of but one interpretation. *Meagher v Wayne State Univ*, 222 Mich App 700, 722; 565 NW2d 401 (1997). "Thus, an unambiguous contractual provision is reflective of the parties' intent as a matter of law." *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 375; 666 NW2d 251 (2003).

Plaintiff argues that the trial court erred in determining that the licensing agreement did not require the transfer of "know-how" from defendants, and therefore, summary disposition under MCR 2.116(C)(8) was improper. We disagree.

The parties' agreement granted plaintiff a license, but nowhere obligated defendants to transfer its "know-how" related to the PIM technology to plaintiff. The agreement provided as follows:

> 4.1 3DM grants to 3DM (Asia) from the Effective Date the exclusive right (being a "Licence" [sic] as defined for purposes of this Agreement) under the Patents and Know-how to make the Contract Products and to use, sell and otherwise dispose of the products so made world-wide and to sub-license any of such rights on the terms of a Sub-licence [sic] in the Territory in the Field, and the non-exclusive rights under the Patents and Know-How to make the contract products and to use, sell and otherwise dispose of the products so made worldwide and to sub-license any of such rights on the terms of a sub-license in the non-exclusive territory in the field, subject to Clause 4.2.
>
> 4.2 The rights of 3DM Asia and its sub-licensees to market Contract Products in countries outside the Territory and the non exclusive [sic] territories shall be conditional on the marketing of those Contract Products not infringing the terms of existing licenses granted elsewhere by 3DM at the time of granting of the license or sub-license for the Contract Product . . . .

The agreement specifically defines "know-how" and "license" as follows:

> "Know-How" shall mean the technical information and data and any other non-patented practical information, resulting from experience and testing, which is secret, substantial and disclosed to 3DM (Asia) in furtherance of this Agreement or any Licence [sic].
>
> * * *
>
> "License" shall mean the right to make Contract Products themselves or the right to have others make, use, sell, have sold, lease and have leased the various Contract Products made via the powder molding process or to sub-license the foreground and background technology within the "Territory" or the "Non-Exclusive Territory."

No express language of the agreement obligates defendants to give its "know-how" to plaintiff.

Plaintiff effectively concedes the absence of any express provision in the parties' agreement regarding the transfer of "know-how," arguing rather that the obligation is implicit, reading the agreement as a whole, because the definition of "know-how" includes "technical information, data and any other non-patented practical information . . . disclosed to 3DM (Asia) in furtherance of this Agreement or any License." Plaintiff argues that the trial court's contrary interpretation results in an absurdity because plaintiff was neither able to make, nor sublicense its right to make, contract products if defendants' "know-how" is not transferred to plaintiff along with any nonpatented information. Plaintiff argues that this interpretation imposed an impossible condition on plaintiff. "Courts will not interpret a contract in a manner which would impose an absurd or impossible condition on one of the parties." *Wembelton Dev Co v Travelers Ins Co*, 45 Mich App 168, 172; 206 NW2d 222 (1973).

The parties' agreement clearly recognizes that "know-how" may be disclosed to plaintiff, but nonetheless, imposes no contractual duty to disclose "know-how." We find no impossibility or absurdity in this contractual arrangement. Plaintiff bargained for the right to use the PIM process "under the Patents and Know-how." Such terms do not require that defendants give plaintiff either the patents or know-how. It is entirely plausible that plaintiff could pursue independent experimentation and testing, or have its sublicensees do the same, to determine how the PIM process could best be commercialized. Further, while plaintiff may have expected to receive additional "know-how" in furtherance of the licensing agreement, "[r]espect for the freedom to contract entails that we enforce only those obligations actually assented to by the parties." *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 63; 664 NW2d 776 (2003). Because we conclude that 3DM Tech did not assent to a requirement that it transfer its "know-how" with regard to the PIM process to plaintiff, we are unable to create and enforce such an obligation.

Plaintiff further argues that the trial court erred in its determination that the affidavits of plaintiff's experts could not be considered in construing the term "know-how" in the licensing agreement. We disagree. "'Where a contract is to be construed by its terms alone, it is the duty of the court to interpret it; but where its meaning is obscure and its construction depends upon other and extrinsic facts in connection with what is written, the question of interpretation should be submitted to the jury, under proper instructions.'" *Klapp, supra* at 469 (citations omitted). Here, the agreement was unambiguous; no construction was required. And given the express definition of "know-how" in the agreement, we find plaintiff's argument that the affidavits are necessary to explain technical or trade terms unavailing.[1]

Because we conclude the language of the licensing agreement is clear and unambiguous and does not require the transfer of know-how to plaintiff, factual development could not possibly justify recovery. Accordingly, the trial court properly granted summary disposition in favor of defendants. *MacDonald, supra* at 332. Because our finding of no contractual duty is dispositive, we need not address plaintiff's remaining claims.

Affirmed.

/s/ Janet T. Neff
/s/ Peter D. O'Connell
/s/ Christopher M. Murray

---

[1] Plaintiff notes that the trial court failed to address plaintiff's claim that the licensing agreement was breached when 3DM Worldwide allegedly established another company to compete with plaintiff in exclusive territories. However, plaintiff does not argue any alleged error in this regard as a basis for reversal.