

STATE OF MICHIGAN
COURT OF APPEALS

DEBORAH OMOKEHINDE,

Plaintiff-Appellee,

v

DETROIT BOARD OF EDUCATION,

Defendant-Appellant.

UNPUBLISHED

January 24, 2012

No. 299853

Wayne Circuit Court

LC No. 09-020554-CK

Before: GLEICHER, P.J., and CAVANAGH and O'CONNELL, JJ.

PER CURIAM.

Defendant appeals as of right an order granting plaintiff's motion for summary disposition in this contract dispute. We reverse and remand for further proceedings consistent with this opinion.

On August 19, 2009, plaintiff filed her complaint against defendant alleging breach of a general release and settlement agreement. Plaintiff averred that her previous lawsuit alleging retaliatory discharge and discrimination against defendant was settled via the general release and settlement agreement on May 4, 2009, but defendant "failed and refused to adhere to material terms of that Agreement and are in Breach of that Agreement." In particular, plaintiff averred, defendant "failed to adhere to the terms of ¶5 with respect to restoring Plaintiff's sick days, personal days, vacation days and seniority for the period from July 1, 2005 through January 2, 2008."

Subsequently, plaintiff filed a motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff argued that there was no genuine issue of material fact that defendant did not comply with the terms of their settlement agreement. The settlement agreement provided that defendant agreed "to restore [plaintiff's] sick days, personal days, vacation days, and seniority for the period she was no longer employed by [defendant], specifically for the period from July 1, 2005 through January 2, 2008." However, defendant did not notify the Michigan Public School Employees Retirement System (MPERS) that plaintiff should be credited with years of seniority which, if not corrected, destroyed her entitlement to a pension. And defendant did not make the required contribution to MPERS with regard to those years of service; accordingly, plaintiff's seniority was not restored. Further, defendant did not restore plaintiff's accumulated sick days by correcting its record in that regard. As a consequence of such failure,

for instance, when plaintiff became ill and required hospitalization, her significant time off of work was unpaid.

Defendant responded to plaintiff's motion, arguing that it complied with the terms of the agreement thus summary disposition in plaintiff's favor would be improper. First, defendant argued, although it agreed to restore plaintiff's seniority, it did not agree to restore her pension rights. Second, the reason plaintiff was not paid sick time is because she failed to provide payroll with the required medical release; thus, she was not entitled to such payment.

Oral arguments were held on plaintiff's motion. Thereafter, the trial court noted that one consequence of seniority is employer contributions and, although that consequence was not spelled out specifically in the settlement agreement, it did not need to be specifically spelled out. Accordingly, the court ordered that plaintiff's seniority records be corrected with MSPERS and the appropriate contribution to her pension be made. And further, the court held, plaintiff was entitled to be paid for the disputed sick days for which she was not properly credited. An order consistent with the trial court's decision was then entered and this appeal followed.

Defendant first argues that plaintiff's motion for summary disposition was erroneously granted because defendant did not agree to contribute to plaintiff's pension. We review de novo the grant or denial of a motion for summary disposition. See MCR 2.116(C)(10); *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). The construction and interpretation of a contract, as well as the issue whether a contract is ambiguous, are questions of law subject to de novo review. *Morley v Auto Club of Mich*, 458 Mich 459, 465; 581 NW2d 237 (1998); *Port Huron Ed Ass'n v Port Huron Area Sch Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996).

The resolution of this issue involves contract interpretation. The primary goal of contract interpretation is to determine and enforce the parties' intent. *Dobbelaere v Auto-Owners Ins Co*, 275 Mich App 527, 529; 740 NW2d 503 (2007). General principles of contract interpretation require that

if contractual language is clear, construction of the contract is a question of law for the court. If the contract is subject to two reasonable interpretations, factual development is necessary to determine the intent of the parties and summary disposition is therefore inappropriate. If the contract, although inartfully worded or clumsily arranged, fairly admits of but one interpretation, it is not ambiguous. The language of a contract should be given its ordinary and plain meaning. [*Meagher v Wayne State Univ*, 222 Mich App 700, 721-722; 565 NW2d 401 (1997) (internal citations omitted).]

The disputed provision in the parties' general release and settlement agreement provides:

5. In further consideration for executing this Agreement, DPS agrees to restore [plaintiff's] sick days, personal days, vacation days and seniority for the period she was no longer employed by DPS, specifically for the period from July 1, 2005, through January 2, 2008.

Defendant argues that the term to “restore” plaintiff’s “seniority” merely meant to change the internal school records and nothing more. Plaintiff argues that the term to “restore” her “seniority” meant notifying MSPERS and making the necessary contribution to plaintiff’s pension, not just changing the school records.

Contract terms are interpreted in accordance with commonly used meanings. *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 354; 596 NW2d 190 (1999). The common meaning of “restore” is “to give back; make return or restitution of (anything taken away or lost).” *Random House Webster’s College Dictionary* (1997). And “seniority” commonly means “status obtained as the result of a person’s length of service.” *Id.* Thus, to restore plaintiff’s seniority means to give her back or return her to the status obtained as a result of her length of service.

Here, restoring plaintiff to the status obtained as a result of her length of service could mean causing the return of workplace rights plaintiff lost as a consequence of the termination. Restoring plaintiff to the status obtained as a result of her length of service could also reasonably mean causing the return of pension rights plaintiff lost as a consequence of the termination because she had been a contributing member of MPSERS when she was terminated. Other interpretations of the term are also feasible. Thus, factual development is necessary to determine the intent of the parties and summary disposition was inappropriate. See *Meagher*, 222 Mich App at 721-722; see, also, *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 467, 469; 663 NW2d 447 (2003). Accordingly, we reverse the trial court’s grant of summary disposition in plaintiff’s favor and remand for further proceedings.

Next, defendant argues that the trial court erred when it granted plaintiff’s motion for summary disposition with regard to her claim that she was not paid when she was off work sick because her sick time bank was not restored. We agree. In response to plaintiff’s motion for summary disposition, defendant provided the affidavit of the payroll supervisor who averred that plaintiff was not paid for a certain period of time when she was off work sick because plaintiff did not provide a sick leave release. Accordingly, considering this evidence in the light most favorable to defendant, a genuine issue of material fact existed whether plaintiff was not paid for a certain period of sick leave because her sick days were not restored or because she failed to provide the necessary sick leave release. Thus, summary disposition in plaintiff’s favor with regard to this issue was improper.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher
/s/ Mark J. Cavanagh
/s/ Peter D. O’Connell