

STATE OF MICHIGAN
COURT OF APPEALS

PAUL E. BRONDYK,

Plaintiff-Appellant,

v

MIDWESTERN UNITED LIFE INSURANCE
COMPANY,

Defendant-Appellee.

UNPUBLISHED

August 4, 2005

No. 252859

Muskegon Circuit Court

LC No. 02-041949-CZ

Before: Zahra, P.J., and Gage and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order that granted defendant's motion for summary disposition. We affirm.

Plaintiff, a long time customer of defendant Midwestern United Life Insurance Company (MULIC), submitted an application to make changes in an existing life insurance policy with the company in 1988. Plaintiff contends that at the time he submitted this application, MULIC's agent represented that his premiums would be approximately \$1,600 per quarter and would remain level. However, MULIC has required that plaintiff pay more than this amount or have his policy lapse. Plaintiff therefore filed suit seeking to have the insurance contract reformed to provide for payments of \$1,666 or, in the alternative, the payment of monetary damages. The trial court found that, because the insurance contract in question contains an integration clause, the parol evidence rule bars plaintiff from testifying about allegedly fraudulent representations made by MULIC's agent. Because plaintiff cannot establish his claim without this evidence, the trial court granted summary disposition in favor of MULIC.

The decision to grant or deny summary disposition is a question of law that we review de novo. *Schmalfeldt v North Pointe Ins Co*, 469 Mich 422, 426; 670 NW2d 651 (2003). Under MCR 2.116(C)(10), summary disposition is appropriate when there is no genuine issue as to any material fact. A question of material fact exists "when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

Courts construe the terms of insurance policies in accord with the well-settled principles of contract construction. *Farmers Ins Exch v Kurzmann*, 257 Mich App 412, 417; 668 NW2d 199 (2003). "The primary goal in the construction or interpretation of any contract is to honor

the intent of the parties.” *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998), quoting *Rasheed v Chrysler Corp*, 445 Mich 109, 127 n 28; 517 NW2d 19 (1994). The intent of the parties must be discerned from the words used in the written instrument. *UAW-GM, supra*. Courts do not have the right to “make a different contract for the parties or to look to extrinsic testimony to determine their intent when the words used by them are clear and unambiguous and have a definite meaning.” *Id.*, quoting *Sheldon-Seatz, Inc v Coles*, 319 Mich 401, 406-407; 29 NW2d 832 (1947). Ambiguous provisions in insurance contracts must be construed against the drafting insurer and in favor of the insured. *Michigan Mut Ins Co v Dowell*, 204 Mich App 81, 87; 514 NW2d 185 (1994). But if a provision “is clear and unambiguous, the terms are to be taken and understood in their plain, ordinary, and popular sense.” *Id.*

“The parol evidence rule excludes evidence of prior contemporaneous agreements, whether oral or written, which contradict, vary or modify an unambiguous writing intended as a final and complete expression of the agreement.” *Romska v Oppper*, 234 Mich App 512, 516 n 3; 594 NW2d 853 (1999). An explicit integration clause conclusively demonstrates that the parties intended a writing to be such a final and complete expression. *UAW-GM, supra* at 494-496, 502. Although parol evidence is generally admissible to establish fraud, “in the context of an integration clause, which releases all antecedent claims, only certain types of fraud would vitiate the contract.” *Id.* at 503. In *UAW-GM*, this Court cited the following passage from Corbin on Contracts:

“To establish fraud, it is not sufficient merely to show that the writing states that there was no antecedent agreement when the fact is that there had been one. If by artifice or concealment, one party induces the other to suppose that the antecedent agreement is included in the writing, or to forget that agreement and to execute an incomplete writing, while describing it as complete, the written provision may be voidable on the ground of fraud.” [*Id.*, quoting 3 Corbin, Contracts, § 578, p 411]

This Court then explained, “fraud that relates solely to an oral agreement that was nullified by a valid merger clause would have no effect on the validity of the contract.” *Id.*

In the instant case, the general provisions section of the insurance policy in question contains the following integration clause.

The contract. The Policy (including any endorsements and riders), the application, and any supplemental application *constitute the entire contract between us*. All statements made are deemed representations and not warranties. *No statement may be used to deny a claim unless it is in an application*. A copy of the application will be attached to the Policy at issue. A copy of any supplemental application will be attached or furnished to you for attachment to the Policy at the time of any increase in coverage. [Emphasis added.]

Further, the application contains the following similar clause.

(2) no knowledge on the part of any representative of the Company shall be binding unless reduced to writing and made a part hereof;

* * *

(7) this request, if approved, shall become part of the policy and, together with the application, constitute a single and entire contract of insurance.

The plain language of these integration clauses conclusively demonstrates that the parties intended the combination of the policy and the application to constitute the final and complete expression of their agreement. Contrary to plaintiff's assertions, they explicitly state that only terms included in either the application or the policy constitute part of the contract. As in *UAW-GM*, the fraud alleged by plaintiff relates solely to an oral agreement that, if it existed, was nullified by a valid merger clause and thus, has no effect on the validity of the insurance contract. The trial court correctly concluded that testimony regarding these representations was barred by the parol evidence rule and that plaintiff cannot establish his claim without such evidence. Consequently, no genuine issue of material fact exists and we affirm the trial court's order granting MULIC's motion for summary disposition.

Affirmed.

/s/ Brian K. Zahra

/s/ Hilda R. Gage

/s/ Christopher M. Murray