

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

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MOUNT CLEMENS REGIONAL MEDICAL  
CENTER,

UNPUBLISHED  
March 15, 2011

Plaintiff-Appellee,

v

No. 295359  
Macomb Circuit Court  
LC No. 2008-005537-CK

UNITED AMERICAN PAYROLL, L.L.C.,

Defendant-Appellant.

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Before: K. F. KELLY, P.J., and BORRELLO and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant appeals as of right an order denying plaintiff's motion for show cause; specifically, defendant challenges the portion of the order clarifying that the trial court had previously ruled orally that plaintiff's version of an amendment to the parties' lease agreement was correct and defendant's version was incorrect. We affirm.

This matter arises out of a lease agreement under which plaintiff, as landlord, leased a portion of its premises to defendant.<sup>1</sup> Defendant allegedly fell behind in its payments, and plaintiff commenced this suit. The parties entered into a settlement agreement under which defendant agreed to extend the term of the lease. Among other provisions, the written settlement agreement stated that "This Agreement does not alter the parties [sic] obligations and rights under the Lease going forward."

Defendant's attorney then inquired of plaintiff's attorney whether the amendment to the lease eliminated "pass through" or "triple net" charges, referring to such costs as taxes, common-area maintenance costs, or insurance. The original lease unambiguously provided that the tenant was to pay a pro rata share of these pass through charges, although apparently plaintiff had never

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<sup>1</sup> In fact, the tenant was really United American Companies, L.L.C., but although defendant raised the affirmative defense that it was not the real party in interest, defendant never seriously pursued that defense. Defendant has acted as the tenant throughout the proceedings.

bothered to bill defendant for them. Plaintiff's counsel replied with an email that stated, in relevant part:

Attached is a copy of the Lease Amendment your client signed on April 17<sup>th</sup> 2006[.] See section 4 where it references Base Rent. This is where I took the language from for the new lease amendment. I have been advised by my client that there are no pass through for this lease, as has been the case since their occupancy and there will not be any going forward. You will note in the Second Lease Amendment that it provides that all other terms in the Lease remain the same. The only things changing are the dollar per square footage amount and the lease term.

Defendant concluded that the lease amendment should therefore explicitly state that there would be no pass through charges. Defendant drafted a proposed lease amendment accordingly and moved to enforce the settlement agreement and have the trial court order plaintiff to sign its lease amendment. Plaintiff contended that it had done nothing more than state that for the time being, it was gratuitously choosing not to bill defendant for the pass through charges.

At a hearing, the trial court concluded that plaintiff's email was a legally enforceable agreement. The trial court also found that the language was unambiguous and clearly provided that the only terms of the lease that would be changed by the amendment are the term and the dollar amount per square foot; in all other respects, including the pass through provision, the lease would remain the same. The trial court did not issue a written order to that effect or explicitly direct defendant in so many words to sign plaintiff's version of the lease amendment. Plaintiff subsequently moved for a show cause hearing requiring defendant to show cause why it had not signed plaintiff's lease amendment and asking the trial court to order defendant to comply with the settlement agreement. The trial court was unimpressed by defendant's argument that there was no order with which it needed to comply, but nevertheless denied plaintiff's motion to show cause and entered a final opinion and order reiterating its previous oral ruling that plaintiff's version of the lease amendment was binding on the parties. It is from that determination that defendant appeals.

We review de novo as a question of law the proper interpretation of a contract, including a trial court's determination whether contract language is ambiguous. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003). MCR 2.507(G) governs settlement agreements and provides that such agreements are not enforceable unless made in open court or evidenced by a writing signed by the party to be charged. *Columbia Assoc, LP v Dep't of Treasury*, 250 Mich App 656, 668-669; 649 NW2d 760 (2002). Settlement agreements are contracts and governed by the same rules as any other contract. *Reicher v SET Enterprises, Inc*, 283 Mich App 657, 663, 665; 770 NW2d 902 (2009). "If the contractual language is unambiguous, courts must interpret and enforce the contract as written, because an unambiguous contract reflects the parties' intent as a matter of law." *In re Smith Trust*, 480 Mich 19, 24; 745 NW2d 754 (2008). A contract is ambiguous if it allows two or more reasonable interpretations, or if the provisions cannot be reconciled with each other. *Meagher v Wayne State Univ*, 222 Mich App 700, 721-722; 565 NW2d 401 (1997).

As the trial court stated,

An e-mail written by the plaintiff attorney is an agreement in writing subscribed by the parties attorney against whom the agreement is authored, therefore pursuant to MCR 2.507([G]), it is a legally enforceable agreement. The language of the e-mail is unambiguous and the parties' intent can be gleaned from the actual language used. After stating there will be no pass through for release, plaintiff's attorney clearly stated that the second lease amendment provides that all other terms in the lease remain the same. The only things changing are the dollar per square footage amount and lease term. The language used by the plaintiff's attorney clearly reiterates the Settlement Agreement that the lease terms will remain the same. From the language, it is clear to this Court plaintiff did not intend to amend the second or rather amend the Settlement Agreement to eliminate the pass through provisions.

We agree with the trial court entirely. The trial court properly determined that plaintiff's version of the second agreement to the lease agreement, which did not include elimination of the pass through charge provision, reflected the terms of the settlement agreement, while defendant's version attempted to add a term not part of the settlement agreement. This Court must honor the parties' contract, and not rewrite it. *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 197; 747 NW2d 811 (2008).

We decline to address defendant's argument that plaintiff lacks standing to enforce the trial court's order because defendant failed to properly present this issue within the statement of questions presented. MCR 7.212(C)(5); *Mich's Adventure, Inc v Dalton Twp*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 292148, issued October 21, 2010), slip op, p 5 n 4. In any event, defendant waived this issue by stipulating that it would agree to the settlement agreement despite not being the proper tenant. "A party may not waive objection to an issue and then argue on appeal that the resultant action was error." See *Bonkowski v Allstate Ins Co*, 281 Mich App 154, 168; 761 NW2d 784 (2008).

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ Stephen L. Borrello  
/s/ Amy Ronayne Krause