

STATE OF MICHIGAN
COURT OF APPEALS

MICHELLE DOUCETTE and REATHA
TWEEDIE,

UNPUBLISHED
August 9, 2011

Plaintiffs,

and

GERALD R. PETERSON,

Plaintiff-Appellant,

v

No. 293124
Marquette Circuit Court
LC No. 07-044543-CZ

CITY OF MARQUETTE,

Defendant-Appellee,

and

WISCONSIN PUBLIC SERVICE
CORPORATION,

Defendant.

Before: RONAYNE KRAUSE, P.J., and SERVITTO and GLEICHER, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order denying his motion for summary disposition and granting defendant's motion for summary disposition.¹ Because defendant breached its contract with plaintiff, we reverse and remand.

¹ Plaintiff Gerald Peterson and defendant City of Marquette are the only parties to this appeal. As such, we will use the singular "plaintiff" to refer to Peterson and the singular "defendant" to refer to the City of Marquette.

Plaintiff is the former city manager of defendant. He was employed for over nine years by defendant, leaving his employment to retire in August 2005. According to plaintiff, he was entitled to the payment of his health insurance premiums by defendant in his retirement years. Plaintiff alleged that defendant did pay his health insurance premiums for approximately one year after his retirement, then abruptly discontinued the payments. Plaintiff thereafter initiated the instant lawsuit, asserting claims of estoppel, breach of contract, and a violation of equal protection. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10) and plaintiff moved for partial summary disposition in his favor under the same sub-rule. The trial court granted defendant's motion, finding that plaintiff's separation agreement with defendant did not bind the city to provide him with retiree health care benefits, and that because plaintiff knew or should reasonably have known that defendant could not be expected to extend the disputed benefits under a practice never adopted by defendant's city commission, defendant was not estopped from denying plaintiff the retiree health insurance benefit. This appeal followed.

On appeal, plaintiff first argues that the trial court erred in granting defendant's motion for summary disposition and dismissing his breach of contract claim. We agree.

On appeal, a trial court's decision whether to grant a motion for summary disposition is reviewed de novo. *Brown v Brown*, 478 Mich 545, 551; 739 NW2d 313 (2007). If the motion is brought under MCR 2.116(C)(10), we consider the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party. *Brown*, 478 Mich at 551-552. Our review is limited to the evidence that was presented to the trial court at the time the motion was decided. *Peña v Ingham Co Rd Comm*, 255 Mich App 299, 313 n 4; 660 NW2d 351 (2003). A MCR 2.116(C)(10) motion is properly granted when the proffered evidence fails to establish a genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Brown*, 478 Mich at 552.

The proper interpretation of a contract is a question of law that is reviewed de novo on appeal. *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). Whether contract language is ambiguous is also a question of law that will be reviewed de novo. *Farm Bureau Mut Ins Co v Nikkel*, 460 Mich 558, 563; 596 NW2d 915 (1999).

A contract must be interpreted according to its plain and ordinary meaning. *Holmes v Holmes*, 281 Mich App 575, 593; 760 NW2d 300 (2008). "The fundamental goal of contract interpretation is to determine and enforce the parties' intent by reading the agreement as a whole and applying the plain language used by the parties to reach their agreement." *Dobbelaere v Auto-Owners Ins Co*, 275 Mich App 527, 529; 740 NW2d 503 (2007). If contractual language is clear and unambiguous, its meaning is a question of law, and courts must interpret and enforce the contract as written. *Frankenmuth Mut Ins Co v Masters*, 460 Mich 105, 111; 595 NW2d 832 (1999). However, if contractual language is ambiguous, its meaning is a question of fact for the jury to decide. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 469, 663 NW2d 447 (2003).

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). If the contract, although inartfully worded or clumsily arranged, fairly admits of but one interpretation, it is not ambiguous. *Id.* A court may not

rewrite clear and unambiguous language under the guise of interpretation. Rather, courts “must give effect to every word, phrase, and clause in a contract and avoid an interpretation that would render any part of the contract surplusage or nugatory.” *Klapp*, 468 Mich at 468.

Plaintiff claimed breach of contract and promissory estoppel, alleging that he is entitled to “retiree health insurance” from defendant.² The trial court addressed plaintiff’s breach of contract claim as follows:

As to his breach of contract claim, Plaintiff Peterson contends the City breached his separation agreement under which he expected to receive retiree health insurance benefits. That separation agreement, does not explicitly refer to retiree health insurance benefits, but states only that “employees’ rights and benefits with respect to the qualified retirement plan sponsored by the city shall be controlled by the plan documents establishing such plans.” At the time of that contract, Plaintiff Peterson knew there was no record of the city commission establishing a retiree health insurance plan. In *Sittler v Board of Control of MTU*, 333 Mich 681 (1952), the Supreme Court held that a letter written by a department head offering a contract of employment to a professor did not constitute a binding contract on the Board of Control. Under then existing law, the only agency with authority to contract with professors was the MTU Board of Control and any contract not approved by the Board of Control was not a valid, binding contract enforceable against the University. Thus, to the extent Plaintiff Peterson contends the separation agreement contractually binds the city to provide him with retiree health insurance benefits under a plan that was not approved by the city commission, that contract commitment is not binding on the Defendant because the plan referred to was never approved by the city commission. Peterson’s contract claim, as to breach of retiree health insurance benefits, therefore, fails and is unenforceable.

We note first that plaintiff did not contend that the city breached his separation agreement. In his complaint, his motion for partial summary disposition, and now on appeal, he consistently contended that the city breached the *employment contract*, which he entered into with the city and which was undisputedly approved by the commission. The only relation the separation agreement has to the proceedings is whether it somehow altered or replaced the agreement, which we shall address later.

Plaintiff’s employment contract stated that he was entitled to the fringe benefits typically provided to department heads. Instead of delineating these benefits, his employment contract referred to the “the executive package of fringe benefits provided to Marquette City Department

² Under the “retiree health insurance plan,” defendant paid 100% of the insurance premiums for former employees and their dependents, so long as the former employee was withdrawing funds from his or her pension. We will use “retirement health insurance” to refer to the benefits, and “retiree health insurance plan” to refer to the overall plan.

Heads.” The fact that the city commission did not properly enact these benefits for department heads is irrelevant to plaintiff’s rights under his employment contract, which was made directly with the commission. Contrary to the trial court’s decision, the city commission’s failure to enact a retiree health insurance plan for department heads does not nullify the provision of plaintiff’s employment contract that gives him the same benefit, because defendant’s city commission agreed to provide that benefit to plaintiff. The city charter authorized the commission to appoint the city manager and set the city manager’s compensation (Marquette Charter, § 4.6). Thus, everything in plaintiff’s subsequently ratified employment contract was properly enacted per se, and is binding on defendant. See MCL 117.3(d).

The commission could have, had it wished, offered the same benefits to plaintiff even though they were not available to any other employee; the reference used in the employment contract is simply a shorthand method of referring to the fringe benefits for which plaintiff contracted. Thus, the trial court’s reliance on *Sittler v Board of Control of the Mich College of Mining and Technology*, 333 Mich 681; 53 NW2d 681 (1952), is misplaced. It is uncontested that the commission had the authority to bind defendant to the contract with plaintiff. And even though the department head retirement health benefit package was never formally adopted by the commission, there can be no serious question that they were aware that this benefit existed. A line item for this benefit would have been included in the city’s budget, which the commission would have had to repeatedly approve, and plaintiff sent a memorandum concerning the benefits to the mayor and city commissioners in 2000.

At the time plaintiff entered into his 1998 employment contract, the executive package of fringe benefits included retiree health insurance for an “employee receiving pension.” The only issue, then, is whether plaintiff was “receiving pension” when he began to draw benefits under the defined contribution plan.³

Whether plaintiff was receiving pension when he began to draw benefits under his defined contribution plan is addressed by plaintiff’s 1996 and 1998 employment contracts. The 1996 contract states:

The City Manager shall be entitled to the executive package of fringe benefits provided to Marquette City Department Heads which includes pay for work related injuries, sick leave, funeral leave, holidays, personal days, hospitalization, a paid \$50,000.00 whole term life insurance policy, **paid pension (MERS-Plan B-4)**, a City match of employee contributions to a voluntary deferred compensation plan”

³ The defined contribution plan did not exist at the time plaintiff entered into his employment contract. The plan that existed when plaintiff signed his employment agreement was the defined benefit plan, also called the MERS-Plan B-4. In June 1998, the commission replaced the MERS-Plan B-4 defined benefit plan with a defined contribution plan, and plaintiff converted to the defined contribution plan pursuant to his employment contract. After his separation with defendant, plaintiff began to draw benefits from the defined contribution plan.

The same provision from the 1998 contract states:

The City Manager shall be entitled to the executive package of fringe benefits provided to Marquette City Department Heads which includes pay for work related injuries, sick leave, funeral leave, holidays, personal days, hospitalization, and \$50,000.00 life insurance policy, **paid pension (MERS-Plan B-4 or other as may be adopted)**, a City match of employee contributions to a voluntary deferred compensation plan

* * *

If the City authorizes the adoption of a **defined contribution pension plan** under the Michigan Employees Retirement System (MERS), the City Manager shall be permitted to convert one half of his earned sick days as a contribution to the plan. All contributions to the defined benefit plan made by the City on his behalf plus a minimum 5% interest shall be transferred at his option to a defined contribution plan if generally adopted for management employees. Minimum contributions by the City shall be 12% of pay. [1998 employment agreement, p 1 (emphasis added).]

Based on the clear language of these provisions, “pension” referred to the “MERS-Plan B-4 or other as may be adopted.” Thus, plaintiff was “receiving pension” when he began to draw benefits under the defined contribution plan later adopted by the commission. As such, defendant was obligated under the 1998 employment contract to pay plaintiff retiree health insurance.

While not specifically stated in its brief, defendant appears to suggest that plaintiff somehow “snuck in” the change from a defined benefit plan to a defined contribution plan that significantly shortened the vesting period (to two years) to benefit himself. However, the commission approved the change to a defined contribution plan. And, that the two-year vesting period benefitted plaintiff does not alter the terms of the separate contract that the commission entered into with plaintiff. The commission contributed to the language of, and had ultimate approval over, both the employment contract and the change to a defined contribution plan. It is difficult to follow how plaintiff could have fleeced the commission in such circumstances. We hold that a valid contract existed, and defendant is liable for damages for breaching plaintiff’s employment agreement when it stopped paying plaintiff retiree health insurance in July 2006.

The language contained in the separation agreement does not alter this conclusion. The separation agreement contains a provision, at paragraph 3, indicating that plaintiff’s rights and benefits with respect to the qualified retirement plan sponsored by the City “shall be controlled by the plan documents establishing such plans.” The health insurance benefits provided to retirees are not, though, a part of the qualified retirement plan. Indeed, as we indicated with respect to plaintiff, the entitlement to retiree health insurance benefits is a separate, contractually agreed upon employment provision. Thus paragraph 3 does nothing to modify the 1998 employment contract. And, paragraph 6(b), provides, “The releases in this paragraph do not affect any vested right Employee may have under all current City policies or the terms of qualified retirement plan sponsored by the City . . .” Under the terms of the qualified retirement

plan, plaintiff was undisputedly vested in his pension. The pension, then, was a vested right. As previously indicated, because plaintiff's 1998 employment contract provided for retiree health insurance for an employee receiving pension and plaintiff was, in fact, receiving pension, defendant breached plaintiff's employment agreement when it stopped paying plaintiff retiree health insurance in July 2006.

Accordingly, we reverse and remand for determination of damages in proceedings consistent with this opinion. Given our resolution of defendant's legal breach of contract claim, it is not necessary to address his equitable, promissory estoppel claim.

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

/s/ Amy Ronayne Krause
/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher