STATE OF MICHIGAN

COURT OF APPEALS

WOODVIEW MOBILE ASSOCIATES,

Plaintiff-Appellant,

v

THOMAS MCCANN,

Defendant-Appellee.

UNPUBLISHED
August 10, 2001

No. 221378
Midland Circuit Court
LC No. 98-007639-CK

Before: Holbrook, Jr., P.J. and Hood and Griffin, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition and dismissing its claim for breach of an escrow agreement. We reverse.

We review the trial court's decision de novo to determine if defendant was entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). The court granted defendant's motion under MCR 2.116(C)(10). In reviewing such a motion, we considers the pleadings, along with any affidavits, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the nonmoving party. The motion is properly granted if the affidavits and other documentary evidence show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Smith*, *supra*.

The primary goal in the construction or interpretation of any contract is to honor the intent of the parties. *UAW-GM Human Resource Center v KSL Corporation*, 228 Mich App 486, 491; 579 NW2d 411 (1998). This Court must look for the parties' intent from the words used in the instrument. *Id*. If the contract language is clear and unambiguous, its meaning is a question of law for the court to determine. *Id*; *Zurich Insurance Company v CCR and Company (On Rehearing)*, 226 Mich App 599, 604; 576 NW2d 392 (1997). On the other hand, where the contract language is unclear or susceptible to multiple meanings, interpretation becomes a question of fact. *UAW-GM Human Resource Center*, *supra* at 491. In other words, where a contract's 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. *D'Avanzo v Wise & Marsac*, 223 Mich App 314, 319; 565 NW2d 915 (1997). A contract is

ambiguous if its words may reasonably be understood in different ways. *UAW-GM Human Resource Center, supra* at 491; *D'Avanzo, supra* at 319. In an instance of contractual ambiguity, factual development is necessary to determine the intent of the parties and summary disposition is inappropriate. *Id*.

We conclude that the escrow agreement is ambiguous because it unclear whether defendant was required to merely procure a license to operate, or was required to do what was necessary to procure a discharge permit, and whether defendant was obligated to reimburse plaintiff for work performed by plaintiff in securing a discharge permit. The escrow agreement provided that plaintiff would be entitled to be reimbursed by defendant if (1) the license to operate the property was not issued by July 1, 1989 or (2) defendant failed to perform work on the lagoon system and obtain such discharge permits as shall permit the license to be issue (sic) to purchaser." In addition to these provisions for reimbursement, the recitals provided that the current license had not yet been issued due to certain requirements with regards to the lagoon system handling sewage disposal, and that the escrow agreement was intended to ensure that defendant would take any necessary steps to cure any violations which would impede the prompt issuance of a license to the purchaser. These terms are ambiguous because it is unclear whether defendant had to merely procure a license to operate, as opposed to doing what was required to procure a discharge permit. Moreover, there are questions of fact regarding whether defendant breached the escrow agreement. Defendant submitted evidence that he applied for both renewal of his groundwater discharge permit and a new surface water permit, and made other efforts towards obtaining a permit. Plaintiff, on the other hand, contended that it expended funds in obtaining the discharge permit and that defendant refused reimbursement.

Considered in its entirety, *Perry v Sied*, 461 Mich 680, 689; 611 NW2d 516 (2000), the meaning of the agreement is obscure and its construction is dependent on other and extrinsic facts. Because further factual development is necessary to determine the intent of the parties, summary disposition is inappropriate. *D'Avanzo, supra* at 319.

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

/s/ Donald E. Holbrook, Jr.
/s/ Harold Hood
/s/ Richard Allen Griffin