IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

MUTUAL SERVICE CASUALTY INSURANCE COMPANY, MUTUAL SERVICE LIFE INSURANCE COMPANY AND MODERN SERVICE INSURANCE COMPANY, a/k/a MSI INSURANCE,	)	
Plaintiffs-Appellees,	)	8-83 87-691
vs.	)	230
CLAYTON M. GILLIAM,	)	
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Polk County (CL 059-34683), Peter Keller, Judge.

Defendant appeals the decision of the district court which entered a judgment for plaintiffs against him for $9,619.35. **AFFIRMED.**

Robert B. Hanson of Hanson, Bjork & Russell, Des Moines, for defendant-appellant.

Paul A. Curtis of Gamble, Riepe, Webster, Davis & Green, Des Moines, for plaintiffs-appellees.

Heard by Schlegel, P.J., and Sackett and Habhab, JJ.

SCHLEGEL, J.

Defendant Clayton Gilliam, a former insurance agent for plaintiffs MSI Insurance, appeals the decision of the district court which entered a judgment for plaintiffs against him in the amount of $9,619.35. Defendant claims the trial court erred by: 1) holding that the Agent Finance Plan Agreement did not contain a covenant not to compete; and 2) finding that he was unjustly enriched by not repaying advances made by plaintiffs. Our review is for the correction of errors at law. Iowa R. App. P. 4. We affirm.

Plaintiffs MSI are an associated group of insurance companies incorporated in the State of Minnesota. Defendant Gilliam is an individual and resident of Des Moines, Iowa. Gilliam was employed as an independent insurance agent for MSI Insurance from October 1, 1982, until approximately September 15, 1983. Upon employment, Gilliam signed an Agent's Contract and a Career Agent's Compensation Plan Agreement. Gilliam's contract was subsequently superseded by another Agent's Contract and associated Agent Finance Plan Agreement executed on or about January 1, 1983. According to this agreement, in effect at the time of Gilliam's termination, MSI would loan money to Gilliam to enable him to maintain his standard of living while he was getting started in the business, and this loan would be forgiven upon termination of employment if the following

conditions under paragraph 8A of the Agent Finance Plan Agreement were met:

> 8. Loan Repayment After Termination of Agent's Contract.
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> * * *
>
> [A.] Any deficiency in the agent's loan account shall be paid by the agent to the companies; provided, however, for each month of the 24 calendar month period immediately following such termination, the companies shall cancel 4-1/6% of such deficiency if during such month:
>
> > (1) [T]he agent does not either directly or indirectly, by and for the agent or as an agent for another or through others as their agent, engage in or be licensed as agent, solicitor, representative, or broker, or in any way be connected with the property, casualty, health, or life insurance business, within a 25 mile radius of the agent's business location at the time of termination; or
> >
> > (2) in any jurisdiction where (1) is held to be invalid either by statute or judicial decision, the agent does not either personally or through any other person, agency or organization, solicit or sell, either at renewal time or otherwise, to the companies' policyholders whose business was carried under the agent's assigned number at the time of termination, any insurance coverage competitive with insurance coverage sold by the companies.
>
> Provided further, that once the agent fails to qualify for cancellation in a given month, he shall be entitled to no further cancellation.

Gilliam received $9,619.35 under the Agent Finance Plan Agreement. He admitted at trial that he engaged in the property, casualty, health or life insurance business within a 25-mile radius immediately upon termination of his contracts with MSI.

The trial court found that Gilliam did not establish by clear, satisfactory and convincing proof that the Agent Finance Plan Agreement should be reformed, and that paragraph 8A of the agreement did not contain a covenant not to compete, but rather a condition upon which all or a portion of the loan to Gilliam may be forgiven. The trial court also found that Gilliam would be unjustly enriched if allowed to keep the monies loaned to him as equity and good conscience require it. The court ordered Gilliam to pay MSI $9,619.35 plus interest and costs.

As a preliminary matter, Gilliam argues that the trial court was in error in holding him to a burden of proof commensurate with a request for reformation of a written instrument. See, Kufer v. Carlson, 230 N.W.2d 500, 503 (Iowa 1975). "Reformation . . . does not mean changing terms of an instrument but refers to a change in the instrument to reflect the real agreement of the parties." Id. (emphasis added). Interpretation, on the other hand, "involves ascertaining the meaning of contractual words." Fashion Fabrics of Iowa v. Retail Investors, 266 N.W.2d 22, 25 (Iowa 1978) (emphasis added).

We agree that the trial court erred in applying the "clear, satisfactory and convincing" standard of proof applicable to a request for contract reformation. Gilliam has at no time requested relief in the form of reformation; we are called upon to decide this issue as a matter of law

and not as a court sitting in equity. See Kufer, 230 N.W.2d at 504. Gilliam has consistently maintained that the Agent Finance Plan Agreement should be interpreted as creating a covenant not to compete and that certain provisions of the agreement between the parties are unenforceable. We agree that this case involves basic principles of contract interpretation. Although we find the trial court was in error with respect to this matter, we do not think such error affects the outcome.

I. Gilliam first contends that paragraph 8A of the Agent Finance Plan Agreement contained a covenant not to compete which was unenforceable. He argues that the $9,619.35 was not a "loan" as stated in the agreement, but intended as advances on earned commissions and the agreement imposed repayment of the advances as liquidated damages or a penalty for a violation of the covenant not to compete. MSI argues that the language contained in paragraph 8A does not contain a covenant not to compete, but rather a condition upon which all or a portion of the loan to Gilliam may be forgiven.

Upon examination of the language contained in paragraph 8A of the Agent Finance Plan Agreement, we note that its provisions are strikingly similar to cases in which we have examined covenants in an employment contract prohibiting competition after termination of the employment. See, e.g., Ma & Pa, Inc. v. Kelly, 342 N.W.2d 500, 501 (Iowa

1984); Iowa Glass Depot, Inc. v. Jindrich, 338 N.W.2d 376, 379-80 (Iowa 1983); Tasco, Inc. v. Winkel, 281 N.W.2d 280, 281 (Iowa 1979). The instant case, however, is distinguishable from these cases due to the fact that Gilliam, as an independent contractor and not an employee, received monies under the terms of a specific loan agreement, repayment of which was conditioned upon the fulfillment of the provisions of paragraph 8A of the agreement. In light of the unique nature of these facts, we are not totally convinced that this case involves a covenant not to compete in the usual sense.

"When the court is asked to interpret a contract which the parties made for themselves the object is to ascertain the meaning and intention of the parties as expressed in the language used." State v. Starzinger, 179 N.W.2d 761, 764 (Iowa 1970). "The court will not resort to rules of construction where the intent of the parties is expressed in clear and unambiguous language." Gendler Stone Products Co. v. Laub, 179 N.W.2d 628, 630-31 (Iowa 1970). In the instant case the Agent Finance Plan Agreement was, on its face, a loan agreement. Moreover, Mike Myhre, MSI's District Manager, testified that the payments under the Agent Finance Plan Agreement were loans. Gilliam also testified that he understood he was receiving a loan under the agreement, and in fact, received CACP statements every month which indicated how much he owed on the loan. Myhre

explained these monthly statements to Gilliam. Gilliam further testified that his understanding was aided by a careful review of the agreement with his lawyer. When defendant violated the terms of the loan, he was required under paragraph 8A of the Agent's Finance Plan Agreement to repay the loan made to him by MSI Insurance.

Even if we consider the possibility that paragraph 8A contains a covenant not to compete, the evidence supports the trial court's determination that the clause is reasonable under the standards enunciated in Ehlers v. Iowa Warehouse Co., 188 N.W.2d 368, 370 (Iowa 1971). Moreover, selling is not Gilliam's only skill and he would not have been overburdened by compliance with paragraph 8A. The record shows that Gilliam possesses both a B.A. degree and an M.S. degree, and in fact, experienced some difficulty in succeeding in the insurance business. See, Ma & Pa, Inc., 342 N.W.2d at 502-03.

II. Apparently in the alternative, Gilliam also contends that the trial court erred in finding that he would be unjustly enriched if he failed to repay the "advances" made by MSI. The doctrine of unjust enrichment rests upon the equitable principle that one shall not be permitted to unjustly enrich himself at the expense of another or to receive property or benefits without making compensation therefor. City of Pella v. Fowler, 215 Iowa 90, 96, 244 N.W. 734, 737 (1982). We agree with the trial

court that Gilliam would be unjustly enriched if allowed to keep the monies owed to MSI Insurance.

We hold that the trial court's decision that Gilliam is in breach of his Agent Finance Plan Agreement with MSI Insurance is supported by substantial evidence.

AFFIRMED.