STATE OF MICHIGAN

COURT OF APPEALS

HOUR MEDIA, L.L.C., Plaintiff-Appellant,	UNPUBLISHED June 9, 2011
v	No. 296697 Oakland Circuit Court
BRIAN SCHUBOT, Defendant-Appellee.	LC No. 2009-105143-CK

Before: SERVITTO, P.J., and HOEKSTRA and OWENS, JJ.

PER CURIAM.

In this action for breach of contract and unjust enrichment, plaintiff, Hour Media, LLC appeals as of right the trial court's order granting summary disposition to defendant, Brian Schubot, pursuant to MCR 2.116(C)(10) and denying its motion for summary disposition under MCR 2.116(I)(2). Because the existence of questions of fact precluded summary disposition in defendant's favor, we reverse and remand to the trial court.

Defendant is the president of Jules R. Schubot, Inc., which operates under the assumed name Jules R. Schubot Jewellers ("the Corporation"). In December 2007, defendant signed a "2008 Proposal" with plaintiff for advertising space in magazines published by plaintiff. The 2008 proposal bore the heading:

> 2008 HOUR Media Proposal for
> Jules R. Schubot Jewellers/Gemologists

The proposal listed several magazines in which the advertising would appear and the size, frequency, and costs of the advertisements. Defendant's signature is at the bottom of the 2008 proposal, and written below his signature are the words "accepted by Brian Schubot."

After the Corporation filed for bankruptcy, plaintiff sued defendant for breach of contract and unjust enrichment. Defendant moved for summary disposition under MCR 2.116(C)(8) and (C)(10). He argued that the 2008 proposal clearly showed that he signed in his representative capacity because the proposal, by including "Jules R. Schubot Jewellers/Gemologists in the heading," disclosed his principal. In the alternative, defendant argued that if resorting to parol evidence was necessary, the invoices and periodic statements sent by plaintiff, which concerned advertising services sold to and the account of "Schubot Jewelers," and plaintiff's request that he

sign a guarantee regarding payment of the amounts owed under the proposal, established that the parties intended to bind him only in a representative capacity. Plaintiff moved for summary disposition pursuant to MCR 2.116(I)(2), claiming that because defendant provided no indication he was signing as a representative of the Corporation, the 2008 Proposal was unambiguous that defendant signed in his individual capacity. Plaintiff further asserted that, at the very least, the parol evidence established a factual issue regarding the capacity in which defendant signed the proposal. The trial court granted defendant's motion for summary disposition and denied plaintiff's motion. The court considered the parol evidence, and concluded that there was no material question of fact that defendant signed the 2008 proposal in a representative capacity.

We review a trial court's decision on a motion for summary disposition de novo. *Moser v Detroit*, 284 Mich App 536, 538; 772 NW2d 823 (2009). The trial court did not indicate under which subrule it granted defendant's motion for summary disposition. However, because it considered matters outside of the pleadings, we construe the motion as being granted under MCR 2.116(C)(10). *Hughes v Region VII Area Agency on Aging*, 277 Mich App 268, 273; 744 NW2d 10 (2007). Summary disposition is proper under MCR 2.116(C)(10) if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." Summary disposition is proper under MCR 2.116(I)(2) "[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment[.]"

We also review de novo issues of contract interpretation, including whether a contract is ambiguous. *Holland v Trinity Health Care Corp*, 287 Mich App 524, 526; 791 NW2d 724 (2010).

On appeal, plaintiff argues that it was entitled to summary disposition because the 2008 proposal is unambiguous that defendant signed the proposal in his individual capacity. While we disagree with plaintiff's assertion, we find that summary disposition was not appropriate in defendant's favor either.

The goal of contract interpretation is to ascertain the intent of the parties. *Shay v Aldrich*, 487 Mich 648, 660; 790 NW2d 629 (2010). If the contract is unambiguous, it reflects the parties' intent as a matter of law and it must be enforced as written. *Holland*, 287 Mich App at 527. The parol evidence rule prohibits the use of extrinsic evidence to interpret unambiguous language in a contract. *Shay*, 487 Mich at 667. If a contract is ambiguous, however, parol evidence is admissible to determine the contracting parties' actual intent. *Id.*

> An ambiguity may either be patent or latent. This Court has held that extrinsic evidence may not be used to identify a patent ambiguity because a patent ambiguity appears from the face of the document. However, extrinsic evidence may be used to show that a latent ambiguity exists. With respect to a latent ambiguity, we have explained as follows: A latent ambiguity, however, is one "that does not readily appear in the language of a document, but instead arises from a collateral matter when the document's terms are applied or executed." Because "the detection of a latent ambiguity requires a consideration of factors outside the instrument itself, extrinsic evidence is obviously admissible to prove the existence of the ambiguity, as well as to resolve any ambiguity proven to exist."

> A latent ambiguity exists when the language in a contract appears to be clear and intelligible and suggests a single meaning, but other facts create the "'necessity for interpretation or a choice among two or more possible meanings.'" To verify the existence of a latent ambiguity, a court must examine the extrinsic evidence presented and determine if in fact that evidence supports an argument that the contract language at issue, under the circumstances of its formation, is susceptible to more than one interpretation. Then, if a latent ambiguity is found to exist, a court must examine the extrinsic evidence again to ascertain the meaning of the contract language at issue. *Id*. at 667-668.

Here, the proposal contained a heading indicating that it had been prepared "for Jules R. Schubot Jewellers/Gemologists." Brian Schubot's signature appears on the signature line at the bottom of the proposal, followed by the notation "accepted by Brian Schubot." These two facts alone signify a latent ambiguity as to the party entering into the contract—the heading because it was clearly not a proposal prepared for Brian Schubot, individually, and the notation because if Brain Schubot was signing in his individual capacity, there would be no need for him to also accept the proposal on his own behalf.

In addition, defendant submitted extrinsic evidence to support the argument that the proposal was ambiguous. Billings prepared for the services outlined in the Proposal indicate that the services were "Sold To: Schubot Jewelers." The bills were sent to the address of Schubot Jewelers—not to defendant's home address. Second, after the billings became past due, defendant met with plaintiff's president, at which time plaintiff's president asked defendant to sign a personal guarantee for the indebtedness, which defendant declined to do. Had defendant already been personally liable for the debt and had plaintiff believed that to be the case, there would be no need for plaintiff to request and defendant to sign a personal guarantee. Because the contract contained a latent ambiguity, and because some of the extrinsic evidence established that defendant signed the contract at issue in his corporate representative capacity, the trial court could properly review extrinsic evidence to determine the intent of the parties. *Shay*, 487 Mich at 667-668.

While the trial court did, in fact, examine parol evidence and concluded that there was no question defendant was signing on behalf of the corporation, we find that the evidence submitted by both parties is not conclusive as to defendant's signature. For example, plaintiff provided an affidavit of its president wherein the president explained that the request for a personal guarantee was an attempt on his part to modify the terms of the existing contract. According to the president, guarantees were requested of defendant and his father in exchange for plaintiff providing a longer payment plan for the outstanding balance and a waiver of the interest owed. And, as pointed out by plaintiff, in prior contracts between the parties defendant signed his name without any reference that he was signing in a corporate capacity, and defendant also paid some of the balances owed to plaintiff with his personal credit card. Given the above, there exists a genuine issue of material fact regarding whether defendant was signing the proposal in his individual or representative capacity. As such, summary disposition was inappropriate in defendant's favor.

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

/s/ Deborah A. Servitto
/s/ Joel P. Hoekstra
/s/ Donald S. Owens