

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

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VIRGINA OLINEK

Plaintiff-Appellant,

v

SCOTT P. NEVEL,

Defendant-Appellee.

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UNPUBLISHED

August 16, 1996

No. 181086

LC No. 94-002627 AV

Before: McDonald, P.J., and White, and P. J. Conlin,\* JJ.

PER CURIAM.

Plaintiff brought this land contract forfeiture proceeding against defendant alleging a failure to make payments under the contract. The dispute centered on whether defendant's obligations under the land contract had been discharged when payment under a credit life insurance policy that satisfied plaintiff's mortgage debt on the property was triggered by plaintiff's husband's death. The district court found that the parties had agreed that such an event would discharge defendant's obligations. The circuit court affirmed. On appeal, plaintiff argues that the trial court's findings of fact were clearly erroneous. We reverse.

I

Plaintiff and her husband, Frank H. Olinek (decedent), purchased the subject property in 1978. The purchase was financed through a mortgage given to Manufacturers Bank. Under the terms of the mortgage, the Olineks were to pay the bank \$215.90 each month. This included a \$5.58 premium for credit life insurance, which would pay off the mortgage balance in the event either plaintiff or decedent died. In 1986, plaintiff and decedent sold the property to defendant on a land contract. Defendant, a licensed real estate sales person, drafted the land contract. Defendant agreed to purchase the property for \$30,000 by making a down payment of \$8,710.88, and paying the balance of \$20,789.12, plus 9.75% interest on the balance, by making monthly payments of \$215.90 to the bank. Defendant made the monthly payment to the bank in cash. The parties chose this arrangement because it would allow defendant to pay off the mortgage without notifying the bank of the sale, thereby avoiding the effect of a

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\* Circuit judge, sitting on the Court of Appeals by assignment.

due-on-sale clause in the mortgage. At the time the parties entered into the land contract, defendant was unaware that the monthly mortgage payment included a premium for credit life insurance. He did not learn of the insurance until after he started making the mortgage payments. Defendant testified at trial that he willingly paid the insurance premium, believing that he would be relieved of his obligations if plaintiff or decedent died. Plaintiff, however, testified that defendant complained about having to pay the insurance premiums and requested that she discontinue the insurance, and that she informed him she could not.

Decedent died on October 17, 1992. The credit life insurance policy paid off the mortgage. Defendant then asserted that because the credit life insurance satisfied plaintiff's mortgage obligation, his payment obligation under the land contract was discharged and he was entitled to a deed. Defendant refused to make further payments, although plaintiff insisted that he was to continue making payments directly to her. Plaintiff brought a forfeiture proceeding in the district court.

The district court found that there had been a meeting of the minds between the parties that defendant would benefit from the credit life insurance and be relieved of his obligations if plaintiff or decedent died. The court entered judgment for defendant. Plaintiff appealed the district court's decision to the circuit court. The circuit court found that the land contract was ambiguous because it could be interpreted either to provide for discharge of the parties' obligations upon full payment of the mortgage, or to provide that payment of the mortgage only discharged the mortgagor's obligations. Looking to extrinsic evidence surrounding the land contract, the circuit court concluded that the parties' objective actions evinced a meeting of the minds that the credit life insurance would discharge defendant from his land contract obligations. The circuit court affirmed the district court's order.

## II

Construction of an unambiguous and unequivocal contract is a question of law for the court. *In re Loose*, 201 Mich App 361, 366; 505 NW2d 922 (1993). A written contract is ambiguous if its language is subject to two or more reasonable interpretations. *Petovello v Murray*, 139 Mich App 639, 642; 362 NW2d 857 (1984). Ambiguous terms are to be strictly construed against the drafter of the written contract. *Sturgis Savings & Loan Ass'n v Italian Village, Inc*, 81 Mich App 577, 580; 265 NW2d 755 (1978). However, the interpretation of words used in a contract must faithfully adhere to whatever meaning remains once the ambiguity is identified. *Kidder v Collum*, 61 Mich App 281, 284 232 NW2d 384 (1975). Courts have frequently considered it necessary to imply certain terms from either ambiguous or nonexistent language by looking to the circumstances surrounding the transaction to determine the actual intent of the parties at the time of the contracting, even where essential terms are not expressly stated by either party. *Redinger v Standard Oil Company*, 6 Mich App 74, 79; 148 NW2d 225 (1967).

The land contract in this case does not specifically address whether defendant was obliged to continue making payments to plaintiff if the mortgage debt was satisfied before defendant made all the monthly payments as required by the contract. It was therefore appropriate to look to the circumstances surrounding the transaction to determine the parties' intent. *Redinger, supra*, at 79. The

district court found that the circumstances of this transaction indicated that plaintiff and decedent were less interested in profiting from the sale of their house than they were in delegating their mortgage responsibilities to a third person without notifying the bank. This finding is not clearly erroneous. However, the district and circuit courts seem to have assumed that if the parties' primary intent was that defendant take over plaintiff's and decedent's mortgage obligations, it logically followed that plaintiff and decedent also intended that they would allow defendant to benefit from the life insurance proceeds in the event of one of them should die. This finding cannot logically be deduced from the evidence. The mere fact that plaintiff and decedent were primarily interested in passing on their mortgage obligation to defendant does not necessarily indicate that they were also willing to allow defendant to be relieved of this obligation to pay for the property in the event one of them died.

Furthermore, the conclusion that there was meeting of the minds is directly contradicted by both parties' testimony. Defendant did not even know about the insurance when the land contract was signed. He testified that when he learned of it he was willing to pay the credit life premium because he believed it to be a good value that might benefit him. He never testified, however, that any agreement had been reached with plaintiff or decedent regarding the proceeds of the policy upon death. His testimony therefore indicates that his belief he would benefit from the insurance was purely subjective, and not grounded in any communication, explicit or implicit, with plaintiff or decedent. Plaintiff testified that she and defendant did not discuss the credit life premium until a month after the contract was signed, and that defendant merely requested that she discontinue the credit life insurance. Plaintiff's testimony is also void of any reference to an agreement that defendant would benefit from the insurance. The trial court's finding that such an agreement was reached is clearly erroneous. There was no evidence of such an agreement, either implicit or explicit.

Furthermore, although the parties apparently intended, in effect, to delegate the mortgage obligation to defendant, they also apparently intended that defendant would pay a total of \$30,000 by making a down payment of \$8,710.88 and paying the remaining \$20,789.12, with 9.75% interest on the unpaid debt, in monthly installments of \$215.90. Nothing in the contract obligates the sellers to provide a deed upon the discharge of the underlying mortgage. Rather, that obligation is triggered "upon payment in full of all sums owing hereon, less the amount then owing on any unpaid mortgage..." The amount "owing hereon" is a total of \$30,000. It was contemplated that that amount be paid by defendant. It is not suggested that if plaintiff had won the lottery and had chosen to pay off the mortgage note for her own peace of mind, defendant would thereby be discharged of his obligation to pay off the balance of the contract directly to plaintiff. The trial court's interpretation of the contract improperly disregarded the contract's payment terms, and its finding of fact with respect to plaintiff's and decedent's intent was clearly erroneous. Under the district and circuit courts' rulings, defendant would be permitted to obtain title to the property notwithstanding that he had paid only a portion of the purchase price.

Further, defendant never assumed the mortgage. The land contract did not relieve plaintiff and decedent from their obligation under the mortgage and note, and the credit life insurance was procured to discharge their obligation to the bank, not defendant's. Had defendant defaulted or abandoned the contract, plaintiff would have been responsible to pay off the mortgage.

Additionally, our conclusion is consistent with the basic principle that ambiguities in contracts should be construed against the drafter. *Sturgis Savings & Loan, supra*, at 580. Although defendant drafted the contract without knowledge of the credit life insurance policy, he was nonetheless responsible for the contract's lack of clarity and specificity concerning the bank's role in this transaction.

Lastly, our decision results in no windfall to plaintiff. Plaintiff will receive no more than any co-owner of property receives when another co-owner covered by a credit-life policy dies. Plaintiff and decedent purchased insurance so that the insurance company would pay off the debt in the event one of them died. To the extent plaintiff received title to the property without paying off the mortgage in its entirety, she received the benefit of the insurance contract. That plaintiff was selling the property on land contract changes nothing, she was still the co-owner of the property. Instead of receiving the property itself without having to pay off the mortgage, she will receive the value of the property without having to pay off the mortgage. In either case, she has been relieved of an obligation because she and her husband insured against their deaths.

Defendant must, however, be given a full credit against the balance due for all sums paid, including those used by the bank to fund the insurance. 46A CJS, Insurance, § 1442.

Reversed and remanded for entry of order in accordance with this opinion. We do not retain jurisdiction.

Costs to plaintiff.

/s/ Helene N. White  
/s/ Gary R. McDonald  
/s/ Patrick J. Conlin