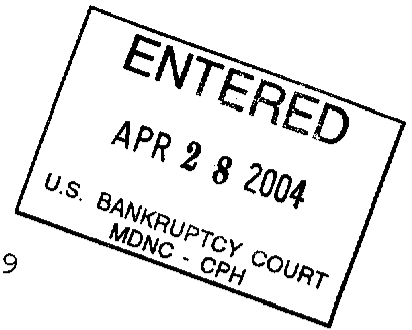


UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION



IN RE:)
)
Middlesex Certified, Inc.) Case No. 02-82959
d/b/a Mx Staffing,)
)
Debtor.)

ORDER

This matter came before the court on March 11, 2004, for hearing upon the Trustee's objection to Claim No. 24 filed by Alan H. Staple as a priority claim in the amount of \$4,650.00 and as a general unsecured claim in the amount of \$205,350.00. Samantha Cabe appeared on behalf of the Trustee, and Mr. Staple appeared pro se.

It is undisputed in this case that Mr. Staple began his employment with the Debtor in August or September of 2000, and that he was terminated without cause on August 29, 2002. On September 23, 2002, the Debtor filed a Chapter 7 case in this court, and Mr. Staple filed a claim on January 29, 2003 for payments allegedly due him under a termination clause in his Employment Agreement with the Debtor.

The termination provision in paragraph 11.2 of the Employment Agreement only provided for termination benefits for Mr. Staple if he was terminated without cause, and after the Salary Effective Date as that term is defined in the Employment Agreement. Paragraph 4.1 of the Employment Agreement defines the Salary Effective Date as "the date twelve (12) months from the date hereof." Trustee

contends that the word "hereof" refers to the date the Employment Agreement in the record was executed, which was April 2, 2002. Using the Trustee's interpretation, Mr. Staple was terminated on August 8, 2002, which is before the Salary Effective Date, and he is not therefore entitled to claim benefits under the termination provision of Paragraph 11.2. Mr. Staple on the other hand contends that the word "hereof" refers to the effective date of the contract, which is specified in Paragraph 2 of the Employment Agreement as October 16, 2000.¹ Thus, Mr. Staple asserts that the termination provision was triggered in October of 2001, well before his termination by the Debtor.

Under North Carolina law, "[i]n the construction of a contract, the parties' intentions control, and their intentions may be discerned from both their writings and actions." Walker v. Goodson Farms, Inc., 90 N.C. App. 478, 486, 369 S.E.2d 122, 126 (1988). "When the language of a contract is plain and unambiguous then construction of the agreement is a matter of law for the court." Whirlpool Corp. v. Dailey Construction, Inc., 110 N.C. App. 468, 471, 429 S.E.2d 748, 751 (1993). See also Dockery v. Quality Plastic Custom Molding, Inc., 144 N.C. App. 419, 421, 547 S.E.2d

¹ The preamble to the Employment Agreement provides that the parties "hereby enter into this Employment Agreement, effective as of the date specified in Paragraph 2." Paragraph 2 of the Employment Agreement states that Mr. Staple's "employment hereunder shall be at will commencing on October 16, 2000." No other date is mentioned in Paragraph 2, thus the effective date of the Employment Agreement is October 16, 2000.

850, 852 (2001). "However, if the terms of the contract are ambiguous then resort to extrinsic evidence is necessary." Id. See also Dockery, 144 N.C. App. at 422, 547 S.E.2d at 852. A term is ambiguous when "the language is fairly and reasonably susceptible to either of the constructions asserted by the parties." Holshouser v. Shaner Hotel Group Properties One Limited Partnership, 134 N.C. App. 391, 397, 518, S.E.2d 17, 23 (1999). See also St. Paul Fire & Marine Ins. v. Freeman-White Assoc., 322 N.C. 77, 83, 366 S.E.2d 480, 484 (1988); Dockery, 144 N.C. App. at 422, 547 S.E.2d at 852. The very fact that parties are disputing the interpretation of a term "is some indication that the language of the contract is, at best, ambiguous." St. Paul, 322 N.C. at 83, 366 S.E.2d at 484. See also Dockery, 144 N.C. App. at 422, 547 S.E.2d at 852. In this case, the word "hereof" is fairly and reasonably susceptible to either the Trustee's or Mr. Staple's construction and the court must therefore turn to extrinsic evidence to determine the parties' true intention.

When contract language is ambiguous and "the parties to a contract have, practically or otherwise, interpreted the contract, the courts will ordinarily adopt the construction the parties have given the contract ante litem motam." Davison v. Duke University, 282 N.C. 676, 713-14, 194 S.E.2d 761, 784 (1973). See also Bicket v. McLean Securities, Inc., 138 N.C. App. 353, 362, 532 S.E.2d 183, 188 (2000); Patterson v. Taylor, 5140 N.C. App. 91, 97, 535 S.E.2d

374, 378 (2000). Under Paragraph 4.1 of the Employment Agreement, the Debtor was to pay Mr. Staple an annual salary of \$210,000.00 after the Salary Effective Date. A copy of Mr. Staple's 2002 W-2 which was attached to his response indicates that from January of 2002 through August of 2002 when he was terminated, he received a salary at the rate of \$210,000.00 per annum (i.e., he received \$140,000.00 for eight months of work, or \$17,500.00 per month, which equates to an annual salary of \$210,000.00). Thus, the parties conducted themselves as though the Salary Effective Date had occurred in October 2001. Additionally, Mr. Staple testified at the hearing that negotiations took place in the summer of 2000, and he signed a copy of the Employment Agreement in August or September of 2000, around the time he began his employment with the Debtor. Claimant's Exhibit 1, a "Term Sheet" signed by both the Debtor and Mr. Staple in August 2000, supports his testimony and shows that during the negotiation of the Employment Agreement, the parties intended for Mr. Staple to be entitled to severance pay after one year of employment. According to Mr. Staple, the original Employment Agreement he signed in August or September of 2000 was lost, and he was asked to sign another copy of the Employment Agreement by the Debtor in April, 2002. The evidence presented at the hearing supports Mr. Staple's contention that the parties to the contract intended for the Salary Effective Date to be twelve months after the October 16, 2000 effective date of the contract,

approximately one year after Mr. Staple began his employment with the Debtor. As the Salary Effective Date was one year after the effective date, or October 16, 2001, Mr. Staple's termination benefits vested prior to his termination in August 2002.

While the court has concluded that Mr. Staple's termination benefits vested prior to his termination on August 29, 2002, the court is not convinced that Mr. Staple is entitled to the full amount set forth in his proof of claim. Paragraph 11.2 of the Employment Agreement provides that:

After the Salary Effective date, if the Company shall terminate the employment of Employee...without "Cause"...the Company shall pay to Employee, in addition to all salary and benefits earned and accrued as of the date of such termination, an amount equal to twelve (12) months of Employee's regular salary...minus all applicable deductions for federal, state and local taxes and any other deductions properly authorized by Employee.

This language indicates that following termination without cause, Mr. Staple would receive the amount of his regular paycheck from the Debtor for up to a year. The amount of those checks would be his salary less applicable taxes and other mandatory and voluntary deductions. Mr. Staple's W-2 for 2002 which was attached to his response shows that for an 8 month period, his gross wages were \$140,000.00, federal and state taxes of \$53,022.82 were deducted from his wages, and voluntary deductions of \$1,247.20 were made. Thus, over an eight month period, Mr. Staple received a net income of \$85,729.98, or approximately \$10,716.24 per month.

While Mr. Staple contends that he is entitled to one year of

such payments, the Employment Agreement also states in Paragraph 11.2 that "such payments shall cease at such time as the Employee accepts full-time employment with any other business firm." Mr. Staple testified at the hearing that he began working for another company in late February or early March of 2003. He did not state a date on which he accepted his current position, but given the time period in which Mr. Staple began new employment, he would not be entitled to more than 6 months of payments from the Debtor following termination of his employment. Thus, Mr. Staple is only entitled to a claim against the Debtor's estate of \$64,297.49. Although Mr. Staple asserts that \$4,650.00 of his claim is an unsecured priority claim, there was no evidence presented at the hearing which would justify granting priority status to any portion of the claim.

Now, therefore, it is ORDERED, ADJUDGED AND DECREED as follows:

(1) the Trustee's objection to the unsecured priority portion of Alan H. Staple's claim is sustained and the unsecured priority portion of the claim is disallowed; and

(2) the Trustee's objection to the general unsecured portion of the claim is sustained in part, and Alan H. Staple is allowed a general unsecured claim in this case in the amount of \$64,297.49.

This 27th day of April, 2004.



WILLIAM L. STOCKS
United States Bankruptcy Judge