STATE OF MICHIGAN

COURT OF APPEALS

BRONCO OIL COMPANY, d/b/a NORTHERN ENERGY, Plaintiff-Appellant, v CITIZENS BANK and PRIVATE BUSINESS, INC., Defendants-Appellees.	UNPUBLISHED November 5, 2009 No. 289871 Otsego Circuit Court LC No. 08-012560-CH

Before: Stephens, P.J., and Cavanagh and Owens, JJ.

PER CURIAM.

In this breach of contract action, plaintiff appeals as of right from the order of the circuit court granting summary disposition to defendants. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and defendant Citizens Bank entered into a business management agreement (BMA) in 2000, under which plaintiff sold its accounts receivable to Citizens Bank, and the latter assumed responsibility for managing the collections, for which purpose it in turn retained defendant Private Business, Inc. (PBI).

Plaintiff, maintaining that defendants were mismanaging the accounts receivable, severed its business relationship with both in August 2002, and then filed this action in March 2008. Defendants moved for summary disposition on the ground that any contract action was barred by express provisions in the parties' agreement limiting plaintiff's claims for damages.

The trial court identified three key sentences from § 9 of the BMA, which sets forth limitations on liability:

Sentence 1 states:

> Except for a breach by the Bank of this Agreement, the Business releases, discharges, and acquits the Banks, its officers, directors, employees, participants, agents, successors and assigns from any and all claims, demands, losses, and liability of any nature which the Business ever had,

> nor or later can, will or may have in connection with, or arising out of, the transactions described in this Agreement and the documentation thereof.

Sentence 2 states:

> IF ANY FORM OF LITIGATION IS INSTITUTED BY THE BUSINESS AGAINST THE BANK FOR VIOLATION OF THIS AGREEMENT, OR ANY WRONGFUL CONDUCT ASSOCIATED WITH THIS AGREEMENT, BUSINESS HEREBY EXPRESSLY WAIVES ITS RIGHT TO A JURY TRIAL.

And finally, Sentence 3 states:

> BUSINESS FURTHER AGREES THAT ITS DAMAGES WILL BE LIMITED, IN ANY CASE, TO THE AMOUNT OF THE SERVICE CHARGE PAID BY THE BUSINESS TO THE BANK DURING THE PRECEDING TWELVE (12) MONTH PERIOD.

The trial court held that the first sentence unambiguously allowed plaintiff to bring this action "*precisely because* Plaintiff has alleged that Defendant[1] breached the terms of the BMA." (Emphasis in the original). The court held that the second sentence was likewise unambiguous, and thus that, "if *any* action is brought against Defendant for violation of the agreement or for any conduct associated with the agreement, Plaintiff expressly waives its right to a jury trial." (Emphasis in the original). The trial court then characterized the third sentence as "essentially a continuation of Sentences 1 and 2," and declared that "the parties intended to limit the exposure of Defendant to certain types of damages—specifically, any damages *other than* the amount paid by Plaintiff as service fees to Defendant in the preceding twelve (12) months" (emphasis in the original), which the court interpreted as referring to the twelve months preceding the commencement of action. The court observed, "shortened limitation periods are specifically recognized as lawful, private contractual terms and have been routinely upheld in Michigan by our Supreme Court." The court then reasoned that, because plaintiff ended its relationship with defendants in 2002 but did not bring suit until 2008, plaintiff could prove no damages outside of the limitations set by the terms of the BMA, and thus that summary disposition was appropriate.

---

[1] The opinion and order granting summary disposition simply referred to "defendant" throughout. The trial court noted this lack of clarity in its subsequent order denying plaintiff's motion for reconsideration, and there stated that no implied or express contract existed between plaintiff and defendant PBI, but that PBI acted as Citizens Bank's agent in the matter, and thus that any negligent or contractual breach by PBI would "factually and legally constitute negligence or contractual breach by defendant Bank as the principal signatory to the express contract."

On appeal, plaintiff argues that the trial court erred in interpreting a limitation on damages as a limitation on bringing the cause of action, and also in holding that plaintiff had in fact waived its right to a jury trial.

We review a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). Contract interpretation likewise presents a question of law, calling for review de novo. *Sands Appliance Services, Inc v Wilson*, 463 Mich 231, 238; 615 NW2d 241 (2000). The primary goal in contract interpretation is to ascertain and effectuate the intent of the parties. *Old Kent Bank v Sobczak*, 243 Mich App 57, 63; 620 NW2d 663 (2000). To determine the parties' intent, we read the contract as a whole and attempt to apply its plain language. *Id.* Where the contractual language is not ambiguous, its construction is a question of law for the court. See *id.* at 63-64.

Plaintiff does not dispute the trial court's determination that the contractual language at issue was unambiguous, but reminds this Court that the statutory period of limitations on contract claims is six years,[2] then argues that the trial court clearly erred in counting the 12-month limitation on damages from when action was commenced, instead of when plaintiff terminated the contract.

Contractual periods of limitation on bringing causes of action that are shorter than that provided by the statutory default rule are enforceable. See *Rory v Continental Ins Co*, 473 Mich 457, 470; 703 NW2d 23 (2005). Plaintiff does not suggest that contractual limitations on damages are any less presumptively valid. Plaintiff emphasizes that the provision here at issue, what the trial court labeled as "Sentence 3," was not worded as a limitation on bringing a cause of action, but instead set forth as a limitation on damages. But where the limitation on damages causes the contract claim to fail in its entirety because it was brought too late, that distinction is one without a difference. Given that the trial court interpreted the damages limitation as wholly defeating the claim in light of how much time had passed before plaintiff brought suit, its implied characterization of the provision as a contractual period of limitations was a simple recognition that the effect of the limitation on damages was the same as would have been a similar limitation on bringing suit. Indeed, the court made clear that it was not mistaking the limitation on damages for a limitation on commencing action, having stated that, despite the six-year statute of limitations in contract cases, "the issue relates not to the period of limitations with respect to the breach of contract count, but to whether any such cause is action is barred by the BMA . . . ."

Examining the limitation language in context reveals that it does indeed set forth a timing limitation dating from the commencement of action, not from termination of the parties' contractual performance. The sentence concerning waiver of a jury trial immediately precedes the one prescribing the 12-month limitation on damages; the two together constitute all the language in § 9 that is set forth in capitals, which underscores their correlation. The passage thus begins, "IF ANY FORM OF *LITIGATION* IS INSTITUTED BY THE BUSINESS AGAINST

---

[2] See MCL 600.5807(8).

THE BANK FOR VIOLATION OF THIS AGREEMENT," then concludes, "BUSINESS *FURTHER* AGREES THAT ITS DAMAGES WILL BE LIMITED, IN ANY *CASE*, TO THE AMOUNT OF SERVICE CHARGE PAID . . . DURING THE PRECEDING TWELVE (12) MONTH PERIOD" (emphases added). The passage, taken as a whole, beginning with a reference to "litigation," then "further" limiting damages in any "case," thus clearly signaled its applicability in connection with litigation.

For these reasons, the trial court correctly granted defendants' motion for summary disposition.

Because summary disposition was appropriate where plaintiff was not entitled to any damages, the question of the validity of the jury-waiver provision is moot and need not be addressed. See *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998).

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Mark J. Cavanagh
/s/ Donald S. Owens