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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

JAMES TOOLE,)	Appeal from the Circuit Court
)	of Winnebago County.
Plaintiff-Appellant,)	
)	
v.)	No. 06—L—219
)	
EXECUTIVE TRAVEL, INC., BRUCE)	
HAGSHENAS, CATHY CARTER-CYRS,)	
and MINOO HAGSHENAS,)	Honorable
)	J. Edward Prochaska,
Defendants-Appellees.)	Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Burke concurred in the judgment.

ORDER

Held: The trial court erred in granting defendants summary judgment on the basis that plaintiff's complaint was barred by the applicable five-year statute of limitations; the timeliness of the complaint hinged on the identity of a "contract" referenced in an agreement, and, because that agreement was ambiguous as to whether the "contract" was one or both of two other agreements (only one of which had clearly been terminated more than five years before plaintiff filed his complaint), it was not clear that the complaint was untimely filed.

Plaintiff, James Toole, sued defendants, Executive Travel, Inc., Bruce Hagshenas, Cathy Carter-Cyrs, and Minoos Hagshenas, pursuant to the Wage Payment and Collection Act (Act) (820 ILCS 115/1 *et seq.* (West 2006)) when he was not given various payments he was due pursuant to

the terms of an “Employment Agreement.” Defendants moved for summary judgment (735 ILCS 5/2—1005(c) (West 2008)), claiming, among other things, that the statute of limitations on plaintiff’s cause of action had run. The trial court granted summary judgment on this basis, and plaintiff timely appealed. We reverse and remand.

The facts relevant to resolving this appeal are as follows. On January 23, 1995, plaintiff executed an “Employment Agreement” with Executive Travel. The pertinent portions of that agreement provided:

“Commencing 1/30/95 [plaintiff] will act as the general manager for the Corporate Transportation Services (CTS) unit of Executive USTravel, and as the account manager for Sundstrand and any future accounts he may require for that division.”

The Employment Agreement then outlined plaintiff’s salary and moving bonus before indicating:

“In the event that Sundstrand pays [plaintiff] directly for his services regarding fleet and freight management, the above [salary] would be reduced by the Sundstrand payments to [plaintiff].

In addition to the base compensation, 30% of the profitability of the CTS division will be given to [plaintiff] in the form of profit sharing within 90 days after the close of our year with Sundstrand. ***

This contract shall remain in effect for as long as the Sundstrand contract is in effect.”

On January 30, 1995, Executive Travel and Sundstrand executed a “Travel Management Services Agreement” (Travel Agreement). Pursuant to this agreement, Executive Travel would

provide travel needs, such as by booking airline tickets, reserving hotel rooms, and facilitating passport and visa requirements, for Sundstrand travelers. This Travel Agreement was in effect from January 30, 1995, to January 30, 1998.

On February 20, 1995, Sundstrand and plaintiff, as vice president of Executive Travel, executed a “Freight Transportation and Auto Fleet Administrative Services Agreement” (Freight Agreement). Pursuant to this agreement, Executive Travel provided Sundstrand administrative assistance in managing Sundstrand’s freight transportation and auto fleet needs. The Freight Agreement was in effect for one year, with an option to renew annually thereafter.

On January 30, 1998, plaintiff, as vice president of Executive Travel, executed a new Travel Agreement with Sundstrand. Although the duties under this second Travel Agreement remained the same as under the original Travel Agreement, the financial arrangement differed. Barring early termination, the second Travel Agreement was in effect from January 30, 1998, until January 29, 2001.

On May 5, 2000, Sundstrand sent to plaintiff, as an employee of Executive Travel, a “Notice of Termination.” In this notice, Sundstrand provided Executive Travel with “the three months notice of termination of the Travel Management Services Agreement dated January 30, 1998.” Accordingly, the Travel Agreement ended effective August 5, 2000. However, with regard to the Freight Agreement, the notice of termination specifically provided that “[t]his termination notice applies only to the [Travel Agreement]; all other contracts between [Executive Travel and Sundstrand] remain in full force and effect.”

Six years later, on June 23, 2006, plaintiff sued defendants. During plaintiff’s deposition, he indicated that, prior to working for Executive Travel, he worked for Sundstrand. When plaintiff

began working for Executive Travel, the travel, freight transportation, and fleet management responsibilities he had with Sundstrand were outsourced to Executive Travel. Although the Freight Agreement was not executed until February 1995, plaintiff asserted that Executive Travel assumed Sundstrand's freight and fleet management as well as Sundstrand's travel needs on January 30, 1995. Thus, when asked what the term "the Sundstrand contract" in his Employment Agreement meant, plaintiff stated that it referred to not only the Travel Agreement but also the Freight Agreement, as Sundstrand and Executive Travel had had discussions prior to January 30, 1995, about Executive Travel providing Sundstrand with travel services as well as fleet and freight management.

Defendants moved for summary judgment, claiming, among other things, that plaintiff's claims were barred by the five-year statute of limitations applicable to actions brought under the Act. See *People ex rel. Department of Labor v. Tri State Tours, Inc.*, 342 Ill. App. 3d 842, 848 (2003) (because the Act does not provide a time within which claims must be brought, the five-year " 'catch-all' " limitations period found in section 13—205 of the Code of Civil Procedure (735 ILCS 5/13—205 (West 2008)) applies to actions brought under the Act). The trial court granted the motion on this basis. In doing so, the court found that, according to plaintiff's deposition generally, the parties agreed that "the Sundstrand contract" referred to in the Employment Agreement was the Travel Agreement. The Travel Agreement ended effective May 5, 2000, taking into consideration the three-month notice. Because plaintiff had until 90 days thereafter to seek profit sharing, the court found that plaintiff's cause of action accrued as of November 5, 2000, and that plaintiff had until November 5, 2005, to bring his claim. Thus, plaintiff's complaint, filed on June 23, 2006, was untimely.

At issue in this appeal is whether granting defendants' motion for summary judgment was proper. Summary judgment is appropriate when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2—1005(c) (West 2008). In ruling on a motion for summary judgment, the trial court determines whether a genuine issue of material fact exists. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). When determining whether a genuine issue of material fact exists, the pleadings are to be liberally construed in favor of the non-moving party. *Id.* Consequently, "[a]lthough summary judgment can aid in the expeditious disposition of a lawsuit, it remains a drastic means of disposing of litigation and, therefore, should be allowed only where the right of the moving party is clear and free from doubt." *Id.* We review *de novo* rulings on motions for summary judgment. *Id.*

Whether summary judgment was appropriate here, *i.e.*, whether a genuine issue of material fact exists, depends on the terms in the Employment Agreement. In reviewing the language of a contract, the "[trial] court must initially determine, as a question of law, whether the language *** is ambiguous as to the parties' intent." *Quake Construction, Inc. v. American Airlines, Inc.*, 141 Ill. 2d 281, 288 (1990). Where the terms of a contract are clear and unambiguous, the parties' intent is derived solely from that contract. *Id.* However, if the terms of the contract are ambiguous, parol evidence is admissible to determine the parties' intent. *Id.* Summary judgment is not proper when a contract contains ambiguous terms that require the admission of extrinsic evidence to interpret them. *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill. 2d 263, 272 (1992).

Here, the trial court's finding that plaintiff's cause of action was barred by the applicable five-year statute of limitations was premised on its conclusion that "the Sundstrand contract"

referenced in the Employment Agreement was the Travel Agreement. The trial court reached this conclusion based on unspecified statements in plaintiff's deposition wherein plaintiff allegedly admitted as much. After reading through plaintiff's deposition, we cannot agree. Plaintiff took the position in his deposition that "the Sundstrand contract" referred to both the Travel Agreement and the Freight Agreement. Although the Travel Agreement was terminated in 2000, nothing indicates when, if at all, the Freight Agreement was terminated. It is entirely possible that the Freight Agreement was still in effect for several years after the Travel Agreement was terminated and that, as a result, plaintiff's cause of action was not barred by the five-year statute of limitations. Thus, because the term "the Sundstrand contract" is ambiguous in this way, *i.e.*, it can refer to either the Travel Agreement, the Freight Agreement, or both, a genuine issue of material fact exists, and the trial court should not have granted defendants' motion for summary judgment.

For these reasons, the judgment of the circuit court of Winnebago County is reversed, and the cause is remanded.

Reversed and remanded.