

No. 1-15-1577

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GAS PLUS CORPORATION,)	Appeal from the
)	Circuit Court
Plaintiff/Counter-Defendant—Appellee,)	Cook County.
)	
v.)	
)	No. 12 L 13653
GEORGE TSOURDINIS,)	
)	
Defendant/Counter-Plaintiff—Appellant.)	

GEORGE TSOURDINIS,)	
)	
Third-Party Plaintiff—Appellant,)	
)	
v.)	
)	Honorable
PHILLIP DEGERATTO,)	William E. Gomolinski
)	and Casandra Lewis,
Third-Party Defendant—Appellee,)	Judges Presiding.

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Howse and Ellis concurred in the judgment.

ORDER

¶ 1 *Held:* Summary judgment was properly granted when (1) the \$12,000 bonus was not an annual bonus, and (2) Tsourdinis received bonuses in excess of the annual net profits bonus and was not damaged. The trial court's holding that Tsourdinis was terminated for cause was not against the manifest weight of the evidence.

¶ 2 Defendant George Tsourdinis was employed by plaintiff Gas Plus Corporation (Gas Plus), owned by third-party defendant Phillip DeGeratto, from 1998 to 2008. Following Tsourdinis's termination, Gas Plus filed a conversion claim against Tsourdinis and Tsourdinis filed a counterclaim for breach of an employment compensation agreement for bonuses and severance. Tsourdinis also filed the same claims against DeGeratto in a third-party complaint. The trial court granted summary judgment in favor of Gas Plus and DeGeratto on the bonus provisions of the agreement. After a bench trial on all remaining claims, the trial court found in favor of Tsourdinis on Gas Plus's conversion claim, but ruled in favor of Gas Plus and DeGeratto on Tsourdinis's claim for severance under the agreement.

¶ 3 Tsourdinis appeals, arguing that (1) Gas Plus breached the employment agreement by failing to pay a \$12,000 annual bonus as general manager of the Washington Gas Plus location, as well as 10% of the annual net profits of the Madison Gas Plus location; (2) Gas Plus breached the agreement by failing to pay Tsourdinis severance after his termination without cause; (3) Gas Plus violated section 5 of the Illinois Wage Payment and Collection Act (the Act) (820 ILCS 115/5 (West 2006)) by failing to pay Tsourdinis his final compensation pursuant to the agreement; and (4) DeGeratto is personally liable for Gas Plus's violation under the Act.

¶ 4 Gas Plus operates self-service gas stations, car washes, and convenience stores. DeGeratto is the owner and president of Gas Plus. Gas Plus has three Chicago locations: 3940 West Washington Boulevard (Washington location), 4800 West Madison Street (Madison location), and 6000 South Western Avenue (Western location). Tsourdinis was hired in 1998, and was employed as the general manager for Gas Plus. When he was hired, Gas Plus only operated the Washington location, but opened the Madison location in 2003 and later the Western location in 2005. Tsourdinis received a salary of \$950 per week.

¶ 5 In February 2003, DeGeratto, with assistance from his corporate attorney, drafted a letter detailing Tsourdinis's bonus compensation with Gas Plus (compensation letter). The compensation letter stated:

"This letter will summarize our agreement concerning your bonus compensation at Gas Plus. You will receive, in addition to your base salary, a bonus of twelve thousand dollars for your services as general manager of the Washington location. You will also be entitled to an annual bonus of 10% of the net profits generated at the Madison location. This bonus will be paid to you at the end of the fiscal year as soon as the accountants can determine what the net profits are.

Finally, in recognition of your dedication and commitment to Gas Plus, I have agreed that in the event your employment is terminated without cause by Gas Plus, you will receive one month's base salary plus 3 weeks of salary for each year of service as severance."

¶ 6 In 2003, Tsourdinis received a \$12,950 bonus. In 2004, Tsourdinis received a \$5,000 bonus. He did not receive a bonus in 2005 or 2006. In 2007, Tsourdinis received a \$5,000 bonus.

¶ 7 As part of Tsourdinis's duties as general manager at the Washington location, Tsourdinis was responsible for periodically retrieving shift reports from the Illinois State Lottery Ticket vending machines at the location. The shift reports were generated by the machines and reflected the amount of sales at that machine from the time and date of the previous report. The

reports indicate which tickets have been purchased, the denomination of bills collected, and the total amount of cash in the machine since the last time the money was removed. Tsourdinis was also supposed to collect the money from the vending machines at the time the report was generated and to deposit the money in the Gas Plus safe for deposit.

¶ 8 In February 2008, DeGeratto was alerted to a discrepancy by the Gas Plus bookkeeper Latasha Rodgers. She had discovered that there were 36 sets of shift reports missing from the two lottery vending machines at the Washington location, for a total of 72 missing reports. Rodgers testified at trial that the shift reports were the only record of the lottery activity during the reported time period because the machine would refresh to a new data collection after a report was run. There should be no gaps in shift reports.

¶ 9 Rodgers was responsible for entering the information from the shift reports as well as other paperwork related to the location's business into the accounting system. These check-out reports were stapled together and filed in boxes at the Washington location. Rodgers did not notice the gaps initially because the accounts balanced. When Rodgers noticed the gaps in reports, she went through the check-out reports to investigate the missing shift reports. The gaps in the reports had not been discovered initially because the paperwork had balanced, meaning that the cash deposits balanced with the paperwork. There was no surplus of cash when the shift reports were missing. She notified DeGeratto of the missing reports

¶ 10 DeGeratto met with Tsourdinis to discuss the missing shift reports. Tsourdinis denied knowledge of the missing shift reports, but admitted that as the general manager, it was his responsibility. It was uncontested that the shift reports were run from inside the vending machine with a code known only to Tsourdinis and DeGeratto. Tsourdinis denied taking money

or lottery tickets. DeGerrato asked Tsourdinis to take a few days off work while he continued an investigation.

¶ 11 After an investigation with Rodgers, DeGeratto did not find any of the missing shift reports nor did he find any documents to show a shortage in money collected or lottery tickets sold. Following the investigation, DeGeratto met with Tsourdinis again and terminated his employment because of the missing shift reports that Tsourdinis could not explain. DeGeratto also believed that money and lottery tickets were missing in connection with the shift reports.

¶ 12 In December 2012, Gas Plus filed the underlying complaint for conversion against Tsourdinis. The conversion complaint alleged that Tsourdinis took wrongful possession of \$48,544 in cash and \$27,946 in lottery tickets.

¶ 13 In January 2013, Tsourdinis filed his counterclaim against Gas Plus for breach of an employee compensation agreement. Tsourdinis alleged that under the terms of the compensation letter, Gas Plus was required to pay him a \$12,000 annual bonus for 2003 through 2007, as well as 10% of the net profits of the Madison location from 2003 through 2007. He stated that he received a total of \$22,950 in bonus compensation, but was still due at least \$38,000, plus 10% of the net profits from the Madison location. Tsourdinis also alleged that DeGeratto terminated him without cause and under the compensation letter, he was due severance in the amount of \$32,617. Tsourdinis raised two additional claims under the Act for failure to bonus and failure to pay severance. At the same time, Tsourdinis filed a third-party complaint against DeGeratto personally and alleged the same counts against DeGeratto.

¶ 14 In October and November 2013, the parties filed cross motions for summary judgment on the counts of Tsourdinis's counterclaim and third-party complaint related to the bonus

compensation. Both parties agreed that no question of material fact existed and the resolution of the claim turned on the construction of the bonus agreement.

¶ 15 In April 2014, the trial court issued a written memorandum order and opinion disposing of the cross motions for summary judgment. As for the provision in the compensation letter regarding the \$12,000 bonus, the court held that based on the clear and unambiguous contract language, the bonus was a one-time bonus that was paid. The court granted summary judgment on this claim in favor of Gas Plus and DeGeratto and denied Tsourdinis's motion. On the issue of the provision regarding the annual bonus of 10% of the net profits of the Madison location, the court found that Tsourdinis was entitled to a bonus, but found a question of fact as to whether the Madison location generated net profits for the years in question. The court reserved its ruling as to whether Gas Plus breached the agreement and/or violated the Act. The court allowed Tsourdinis to conduct discovery on the question of the net profits of the Madison location between 2003 and 2008.

¶ 16 In July 2014, the parties stipulated that the net profits of the Madison location from January 1, 2003, to December 31, 2007, were \$34,627.84. In September and October 2014, the parties filed cross motions for summary judgment on the issue of the 10% net profits bonus. Tsourdinis argued that there was no question of material fact that since the Madison location earned net profits during the time he was employed, he was entitled to a bonus under the compensation letter. According to Tsourdinis, Gas Plus and DeGeratto breached the agreement since no bonus was paid. Gas Plus and DeGeratto argued that Tsourdinis has not established that he was damaged by any breach because he received \$10,950 in additional bonuses during that time period which set off the \$3,462, amount due under the compensation letter. Gas Plus and DeGeratto also asserted that Tsourdinis waived his claim for the bonus by failing to take any

action requesting payment prior to filing the instant counts. In November 2014, the trial court granted summary judgment in favor of Gas Plus and DeGeratto and denied Tsourdinis's motion.

¶ 17 In May 2015, a bench trial was conducted before a different judge in the trial court. The bench trial concerned Gas Plus's conversion claim against Tsourdinis, and Tsourdinis's claim for severance under the compensation letter and related claims under the Act. After the trial, the trial court entered a written judgment order. The court held that Gas Plus failed to prove by a preponderance of the evidence that Tsourdinis converted the alleged missing funds. The court also found that Gas Plus and DeGeratto "demonstrated that they had reasonable grounds to dismiss Tsourdinis as it was his responsibility to account for the tickets, money and accounting reports from the Lottery Ticket Vending Machines and he failed to do so as relates to the missing reports and the alleged missing money." The court entered judgment on Gas Plus's complaint in favor of Tsourdinis. Judgment on the counter-complaint was entered in favor of Gas Plus, and judgment on the third-party complaint was entered in favor of DeGeratto.

¶ 18 This appeal followed.

¶ 19 On appeal, Tsourdinis argues that (1) the trial court erred in granting summary judgment in favor of Gas Plus and DeGeratto on his claims for bonus compensation; (2) the trial court erred in entering judgment in favor of Gas Plus and DeGeratto on his claim for severance; and (3) Gas Plus and DeGeratto violated the Act by breaching the compensation letter's terms for bonus compensation and severance. Gas Plus has not appealed the judgment for Tsourdinis on the conversion claims.

¶ 20 We first consider Tsourdinis's claims related to the bonus compensation.

¶ 21 Summary judgment is appropriate where the pleadings, depositions, and admissions on file, together with any affidavits and exhibits, when viewed in the light most favorable to the

nonmoving party, indicate that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2010). We review cases involving summary judgment *de novo*. *Ragan v. Columbia Mutual Insurance Co.*, 183 Ill. 2d 342, 349 (1998).

¶ 22 "Whether a contract is ambiguous is a matter of law for the court to determine." *Guerrant v. Roth*, 334 Ill. App. 3d 259, 264 (2002). "The primary goal of contract interpretation is to give effect to the parties' intent by interpreting the contract as a whole and applying the plain and ordinary meaning to unambiguous terms." *Joyce v. DLA Piper Rudnick Gray Cary LLP*, 382 Ill. App. 3d 632, 636-37 (2008). "As a general rule, the parties' intentions are determined from their final agreement." *Kehoe v. Commonwealth Edison Co.*, 296 Ill. App. 3d 584, 590 (1998). Illinois follows the "four corners rule" for contract interpretation, in that, "[a]n agreement, when reduced to writing, must be presumed to speak the intention of the parties who signed it. It speaks for itself, and the intention with which it was executed must be determined from the language used. It is not to be changed by extrinsic evidence." *Air Safety, Inc. v. Teachers Realty Corp.*, 185 Ill. 2d 457, 462 (1999) (quoting *Western Illinois Oil Co. v. Thompson*, 26 Ill. 2d 287, 291 (1962)). "If the language of the contract is facially unambiguous, then the contract is interpreted by the trial court as a matter of law without the use of parol evidence." *Id.* (citing *Farm Credit Bank of St. Louis v. Whitlock*, 144 Ill. 2d 440, 447 (1991)). If, however, a contract is capable of being understood in more than one way, then the contract is ambiguous and only then may a court consider parol evidence to aid in resolving the ambiguity. *Id.*

¶ 23 Moreover, a court must not rewrite a contract to suit one of the parties and must enforce the contract as written. *Miner v. Fashion Enterprises, Inc.*, 342 Ill. App. 3d 405, 417 (2003). A

contract will not be rendered ambiguous simply because the parties disagree on its meaning and the court will not strain to find an ambiguity where none exists. *Rich v. Principal Life Insurance Co.*, 226 Ill. 2d 359, 372 (2007). Further, any ambiguity in the agreement is construed against the drafter. *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 479 (1998).

¶ 24 First, we consider the provision of the compensation letter regarding the \$12,000 bonus. The compensation letter stated, "You will receive, in addition to your base salary, a bonus of twelve thousand dollars for your services as general manager of the Washington location." Both parties assert that this provision is unambiguous, but ascribe different interpretations of the unambiguous language. We agree that the plain language of this provision is unambiguous.

¶ 25 According to Tsourdinis, this provision required Gas Plus and DeGeratto to pay him an annual bonus of \$12,000 for his work as general manager of the Washington location. Tsourdinis contends that "there is no limiting or conditional terms to create anything other than an explicit promise to pay" Tsourdinis an annual bonus of \$12,000. Tsourdinis asserts that the operative language is "in addition to [his] base salary," which the plain, ordinary meaning would intend to supplement his salary each year that he held that position as general manager of the Washington location.

¶ 26 In contrast, Gas Plus and DeGeratto argue that the plain language shows the parties' intention that the \$12,000 bonus would be paid once. According to Gas Plus and DeGeratto, the operative language is "a bonus," which is written in the singular, demonstrating an intent that the bonus was a one-time payment. They also point out that if the compensation letter had intended for the \$12,000 bonus to be annual, then the word "annual" would have been used. For example, the net profits bonus that followed in the compensation letter was drafted specifically as an

"annual bonus." Thus, the intention of the parties was for the \$12,000 bonus to be a one-time payment in addition to Tsourdinis's salary in 2003, which was paid to Tsourdinis.

¶ 27 We agree with the interpretation of Gas Plus and DeGeratto. The plain language of the \$12,000 bonus provision shows that the intent of the parties was for a single payment. "A" is defined as "used as a function word before singular nouns when the referent is unspecified." *Merriam Webster's Collegiate Dictionary* 1 (10th ed. 1995). Here, it was used to describe "a bonus of \$12,000," a singular bonus. Further, we reject Tsourdinis's contention that the phrase "in addition to [his] base salary," meant the bonus was meant to be paid every year absent any language specifically indicating that intent. As Gas Plus and DeGeratto observed, the sentence immediately following this provision specifically included language, the word "annual," in providing the net profits bonus. The absence of that language in this provision is significant and we will not interpret the provision as requiring anything greater than as written. The language of the provision explicitly provided a singular bonus of \$12,000 in addition to Tsourdinis's base salary in 2003. Since Gas Plus unequivocally paid Tsourdinis this bonus, we find that there was no breach of contract as to this bonus provision. Summary judgment was properly granted in favor of Gas Plus and DeGeratto.

¶ 28 Next, we consider the annual net profits bonus provision. For this provision, the compensation letter stated, "You will also be entitled to an annual bonus of 10% of the net profits generated at the Madison location. This bonus will be paid to you at the end of the fiscal year as soon as the accountants can determine what the net profits are." The parties stipulated the net profits of the Madison location from 2003 to 2007 was \$34,627.84. Neither party contests that Tsourdinis would be entitled to \$3,462 as 10% of the net profits from the Madison location.

¶ 29 However, Gas Plus and DeGeratto maintain that Tsourdinis is not due any damages. First, they contend that Tsourdinis has waived his claim for net profits by failing to assert any right to a payment of the net profits. Second, they assert that Tsourdinis cannot establish damages for a breach of contract. It is undisputed that Tsourdinis received bonus payments totaling \$10,950 between 2003 and 2007. According to Gas Plus and DeGeratto, it would not be reasonable to conclude that Tsourdinis was damaged by a breach of contract when he received more than what he was owed as a bonus payment, but the bonuses were not specifically designated as payments for the net profit bonus.

¶ 30 " 'In order to state a cause of action for breach of contract, a plaintiff must allege (1) an offer and acceptance; (2) consideration; (3) definite and certain terms of the contract; (4) plaintiff's performance of all required contractual conditions; (5) defendant's breach of the terms of the contract; and (6) damage resulting from the breach.' " *CNA Int'l, Inc. v. Baer*, 2012 IL App (1st) 112174, ¶ 45 (quoting *Weis v. State Farm Mutual Automobile Insurance Co.*, 333 Ill. App. 3d 402, 407 (2002)).

¶ 31 Here, defendant was due \$3,462 from the net profits bonus from 2003 to 2007. During that time period, he received bonuses totaling \$10,950, more than three times the net profits bonus. Given that Tsourdinis received bonuses in excess of what was due under the compensation letter, we cannot find any damage suffered by Tsourdinis for an alleged breach of the contract. We are unpersuaded by Tsourdinis's assertion that the bonuses received did not include the net profits bonus because Gas Plus and DeGeratto did not specifically indicate as such. It is undisputed that Tsourdinis received bonuses in excess of what was due under the compensation letter. Therefore, we hold that no violation of the compensation letter occurred and summary judgment was proper.

¶ 32 Since we have found that summary judgment was proper on Tsourdinis's claims for both the \$12,000 bonus and net profits bonus, we further affirm summary judgment on the related claims under the Act.

¶ 33 We next turn to Tsourdinis's claim that the trial court erred in finding that he was terminated for cause and was not entitled to severance under the compensation letter. Following a bench trial, we will not disturb the trial court's findings of fact unless they are against the manifest weight of the evidence. *Southwest Bank of St. Louis v. Pouloukefalos*, 401 Ill. App. 3d 884, 890 (2010). A finding is against the manifest weight of the evidence only if the opposite conclusion is apparent or if the finding appears to be arbitrary, unreasonable or not based on the evidence. *Id.*

¶ 34 After a bench trial on Gas Plus's conversion claim and Tsourdinis's severance claim, the court concluded that Gas Plus had failed to show by a preponderance of the evidence that Tsourdinis converted the alleged missing money. However, the court also found that Gas Plus and DeGeratto had established reasonable grounds to dismiss Tsourdinis, and as such, he was terminated for cause and ineligible for severance under the compensation letter. Tsourdinis argues that the trial court's finding is against the manifest weight of the evidence because Gas Plus "never proved that any money was missing and also failed to prove that Tsourdinis lost the missing shift reports."

¶ 35 The severance provision of the compensation letter provides:

"Finally, in recognition of your dedication and commitment to Gas Plus, I have agreed that in the event your employment is terminated without cause by Gas Plus, you will receive one

month's base salary plus 3 weeks of salary for each year of service as severance."

¶ 36 "Generally, the burden is on the employer to prove that the employee was guilty of conduct justifying termination. Thus, it is a question of fact, to be determined by the trier of fact, whether an employee has been discharged for good cause." *Staton v. Amax Coal Co.*, 122 Ill. App. 3d 631, 634 (1984). Black's Law Dictionary defines "good cause" as "A legally sufficient reason." Black's Law Dictionary 213 (7th ed. 1999).

¶ 37 Tsourdinis relies on the supreme court decision in *Mitchell v. Jewel Food Stores*, 142 Ill. 2d 152 (1990). We find Tsourdinis's reliance to be misplaced. In *Mitchell*, the issue before the court concerned whether an employee was terminated for "just cause," which included several bases, such as "dishonesty or other misconduct in connection with work," under the employee manual when he turned in an inaccurate timecard. *Id.* at 156-57. The case was limited to an interpretation of that specific termination clause and whether the plaintiff was wrongfully terminated for dishonesty or misconduct under that clause. In contrast, the issue before us in this case is whether Tsourdinis was entitled severance because his termination was "without cause" as stated in the compensation letter.

¶ 38 Tsourdinis attempts to use the specific language of the clause in *Mitchell* to assert that he could only be discharged for cause if misconduct has been shown, and absent misconduct, he would be entitled to severance under the compensation letter. However, no such language defining a termination with or without "cause" is present in this case. Tsourdinis's argument to construe the provision by inserting a misconduct requirement is not well taken. Further, Tsourdinis appears to be asserting that this provision meant that his employment could not be terminated. That is not the case. The plain language of the provision sets forth that he would be

entitled to severance if he was terminated without cause, it offers no promise of employment or limitations on a basis for a discharge. Therefore, the question before us is simply whether the evidence presented at the bench trial sufficiently established that Tsourdinis was terminated for cause.

¶ 39 The evidence at trial established that Rodgers discovered 36 sets of shift reports were missing over the course of 2007 from the two lottery vending machines at the Washington location, for a total of 72 missing shift reports. She, along with DeGeratto, investigated the missing shift reports to see if they had been misplaced or any other explanation. The investigation did not discover the reports or a reason for their absence. It is undisputed that the shift reports are run every few days from the vending machines and no gap in time should appear between shift reports. It was also undisputed that only DeGeratto and Tsourdinis had the code to run the shift reports. When DeGeratto notified Tsourdinis of the missing shift reports, Tsourdinis admitted it was his responsibility to account for the missing shift reports. Tsourdinis also admitted that he could not explain the missing shift reports.

¶ 40 The evidence of 72 missing shift reports and Tsourdinis's admission that it was his responsibility to account for these reports supported a finding of termination for cause and offered "a legally sufficient reason." We find these facts are sufficient to support the trial court's conclusion that Gas Plus and DeGeratto showed by a preponderance of the evidence that Tsourdinis was terminated for cause. We find that the trial court's decision was not against the manifest weight of the evidence.

¶ 41 Because Tsourdinis's breach of contract claim for severance was the basis for his corresponding claim under the Act, that claim must fail as well and we affirm the finding in favor of Gas Plus and DeGeratto.

No. 1-15-1577

¶ 42 Based on the foregoing reasons, we affirm the decision of the circuit court of Cook County.

¶ 43 Affirmed.