

STATE OF MICHIGAN

IN THE 20TH CIRCUIT COURT FOR THE COUNTY OF OTTAWA
SPECIALIZED BUSINESS DOCKET
414 Washington Street
Grand Haven, MI 49417
616-846-8315

FGC MIDWEST BLUEBERRY REAL ESTATE LLC, an Indiana limited liability company; **MIDWEST BLUEBERRY HOLDING LLC**, an Indiana limited liability company; and **BLUE CROP GROUP LLC**, an Indiana limited liability company,
Plaintiffs,

v

TBF HERITAGE FARMS LLC, a Michigan limited liability company; **TBF MIDWEST FARMS LLC**, a Michigan limited liability company; **TRUE BLUE BERRY MANAGEMENT LLC**, a Michigan limited liability company; **SHELLY HARTMANN**, and **DENNIS HARTMANN**,
Defendants.

OPINION AND ORDER

File No. 20-6368-CB

Hon Jon A. Van Allsburg

At a session of said Court, held in the Ottawa County
Courthouse in the City of Grand Haven, Michigan
on the 5th day of November, 2021
PRESENT: HON. JON A. VAN ALLSBURG, CIRCUIT JUDGE

Plaintiffs bring a second motion for summary disposition pursuant to MCR 2.116(C)(10). Proceedings on plaintiffs’ claims against the three LLC defendants have been stayed.¹ Therefore, plaintiffs’ motion pertains solely to the two individual defendants: Shelly Hartmann and Dennis Hartmann.² Plaintiffs’ motion for summary disposition is granted.

¹ See Order filed May 29, 2021.

² At the time that plaintiffs filed their motion, both the LLC defendants and the Hartmanns were represented by the same law firm. On March 15, 2021, this firm filed a brief in opposition to plaintiffs’ motion on behalf of both the LLC defendants and the Hartmanns. A hearing on the motion was held March 22, 2021 and the Court took the motion

This is an action alleging breach of a Termination and Release Agreement dated February 7, 2020 (Agreement). Plaintiffs are the owners of a commercial blueberry farm. Plaintiffs are defined collectively in the Agreement as “Landlord.” Defendants are blueberry farmers who lease the blueberry farm from the plaintiffs. Defendants are defined collectively in the Agreement as “Tenant.” The purpose of the Agreement is to resolve a dispute between the plaintiffs and the defendants regarding unpaid rent. Shelly Hartmann signed the Agreement twice: once in her individual capacity, and once in her capacity as a member of defendant True Blue Berry Management LLC (True Blue).³ Dennis Hartmann also signed the Agreement twice: once in his individual capacity, and once in his capacity as a member of True Blue.

Plaintiffs’ motion focuses on paragraph 6 of the Agreement, which provides, in pertinent part:

6. Termination Fee. Tenant shall pay to the Landlord the sum of \$150,000 less the Winter Taxes (the “Termination Fee”). If Tenant does not pay the Termination Fee to Landlord on or before June 8, 2020, then Landlord may enter a ... judgment against the following entities ... in the amount of \$500,000 in the Ottawa County Circuit Court: TBF Midwest Farms, LLC ... TBF Heritage Farms, LLC ... and True Berry Management, LLC....

The parties agree that on February 13, 2020, defendants⁴ paid the Winter Taxes in the amount of \$12,326.82 as required by paragraph 6. It is likewise undisputed that on or about July 1, 2020, defendants⁵ sent a check to plaintiffs in the amount of \$137,673.82 – which is \$150,000, less Winter Taxes. However, plaintiffs refused to accept the check, contending that it was untimely. Plaintiffs argue that there is no genuine issue of material fact that both Shelly Hartmann and Dennis Hartmann have breached the Agreement and that plaintiffs are entitled to judgment in

under advisement. Subsequent to the hearing, the Hartmanns retained separate counsel. See order filed May 14, 2021. The Hartmanns’ new counsel has not filed a response to plaintiffs’ motion.

³ True Blue has two members: Shelly Hartmann and Dennis Hartmann. In addition, Shelly Hartmann is the registered agent for each of the three LLC defendants.

⁴ Neither of the parties states which of the defendants paid the Winter Taxes. Exhibit 2 to plaintiffs’ brief indicates that it was plaintiff Midwest Blueberry Holding Group LLC that paid the Winter Taxes.

⁵ The check was drawn on True Blue’s account and was signed by Shelly Hartmann.

their favor against both Shelly Hartmann and Dennis Hartmann. In a prior motion for summary disposition decided by the court's Opinion and Order of July 19, 2021, the court denied a request to enter judgment against the Hartmanns in the amount of \$500,000. The court denied plaintiffs' motion for reconsideration on July 29, 2021, which sought entry of a judgment against the Hartmanns in the amount of the \$150,000 Termination Fee, as this had not been argued or briefed in the prior motion. Plaintiffs have now refiled their motion for summary disposition, seeking entry of judgment against the Hartmanns in the amount of the Termination Fee.

A (C)(10) motion tests the factual basis for a claim or defense. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). "Summary disposition may be granted if the evidence demonstrates that there is no genuine issue with respect to any material fact, and the moving party is entitled to judgment as a matter of law." *Haliw v City of Sterling Heights*, 464 Mich 297, 302; 627 NW2d 581 (2001). The court must determine whether there is a genuine and material factual dispute sufficient to warrant a trial. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 617-618; 537 NW2d 185 (1995). A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ. *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

This case involves the interpretation of a settlement agreement. "A settlement agreement is a binding contract." *Reicher v SET Enterprises, Inc*, 283 Mich App 657, 665; 770 NW2d 902 (2009). Such an agreement is "governed by the legal rules applicable to the construction and interpretation of other contracts." *Id.* at 663. "The primary goal in interpreting contracts is to determine and enforce the parties' intent." *Edmore v Crystal Auto Sys, Inc*, 322 Mich App 244, 262; 911 NW2d 241 (2017) (quotation marks and citation omitted). Contracts must be read as a whole, and their terms given their commonly used meanings unless defined in the contract. *Hastings Mut Ins Co v Safety King, Inc*, 286 Mich App 287, 292, 294; 778 NW2d 275 (2009)

"The language of a contract is to be given its ordinary, plain meaning; technical, constrained constructions should be avoided." *Edmore*, 322 Mich App at 262. Moreover, "[i]nartfully worded or clumsily arranged contract terms do not render a contract ambiguous if it fairly admits to one interpretation. *Id.* As a result, the court "must avoid interpretations that would render any part of a contract surplusage or nugatory and must also, if possible, seek an

interpretation that harmonizes potentially conflicting terms.” *Id.* at 263. “Parties are free to contract as they see fit, and courts must enforce contracts as written unless they are in violation of law or public policy.” *Id.*

The Court’s main goal when interpreting contracts is to honor the intentions of the parties, and the best evidence are the words used in the contract. *Kyocera Corp.*, 313 Mich App at 446. “When contract language is clear, unambiguous, and has a definite meaning, courts do not have the ability to write a different contract for the parties, or to consider extrinsic testimony to determine the parties’ intent.” *Id.* (quotation marks and citation omitted). If a contract’s language is unambiguous, this Court “construe[s] and enforce[s] the contract as written.” *In re Estate of Koch*, 322 Mich App 383, 398; 912 NW2d 205 (2017).

“A contract is ambiguous when its provisions irreconcilably conflict,” *id.*, or if a term is “equally susceptible to more than a single meaning,” *Barton-Spencer v Farm Bureau Life Ins Co of Mich.*, 500 Mich 32, 40; 892 NW2d 794 (2017). “The determination of whether contract language is clear and unambiguous is a question of law.” *Mahnick v Bell Co.*, 256 Mich App 154, 159; 662 NW2d 830 (2003).).

Pursuant to paragraph 6, only the three LLC defendants are liable for the \$500,000 judgment. It is indisputable that under the terms of the Agreement, neither Shelly Hartmann nor Dennis Hartmann is individually liable for this amount. Plaintiffs’ present motion for summary disposition argues that Shelly Hartmann and Dennis Hartmann remain individually liable for the Termination Fee as they are defined as “Tenants” under the terms of the Termination and Release Agreement, even though they are not liable for the \$500,000 pocket judgment. Plaintiff’s assert that these remedies are not mutually exclusive, and that giving effect to both remedies is the only contractual interpretation that gives effect to every term of the contract.

The court concludes that the contract between the parties is not ambiguous. The parties’ contract *includes* the individual defendants with respect to liability for the Termination Fee but *excludes* the individual defendants from liability for the pocket judgment. In order to give effect to every word of the contract, the court finds that the contract retains the individual defendants’ liability for the Termination Fee. If the parties had intended to release the individual defendants’ liability for the Termination Fee upon entry of the pocket judgment, they could have expressed

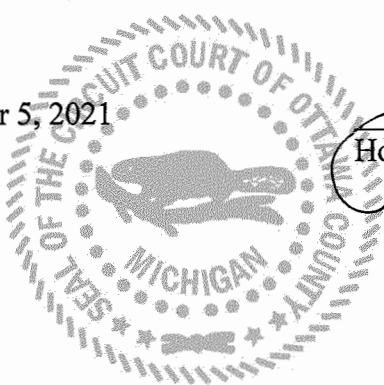
that intent. The court cannot properly find such an intent based upon the contract's silence on this point. As noted above, "[i]nartfully worded or clumsily arranged contract terms do not render a contract ambiguous if it fairly admits to one interpretation." *Edmore*, 322 Mich App at 262.

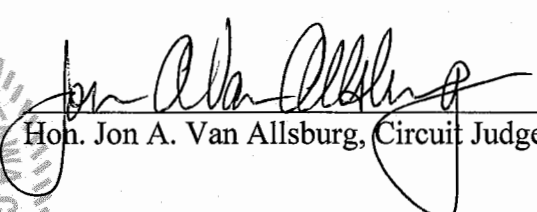
Shelly Hartman and Dennis Hartman are the members of True Blue. True Blue is one of the three LLC defendants that are potentially liable for the \$500,000 pocket judgment. The members of an LLC are the owners of the LLC. Cambridge & Christopoulos, *Michigan Limited Liability Companies* (February 2015 Update), § 6.1, p 268. "The interest an LLC member owns is known as a membership interest or an interest." *Id.*, § 6.2, p 269 (emphasis deleted). "Being a member in an LLC is like being a partner in a partnership or a shareholder in a corporation." *Id.* Therefore, because the Hartmanns are the members of True Blue, if the Hartmanns pay the Termination Fee to plaintiffs, then True Blue shall be entitled to a credit in that amount against the pocket judgment against it.

Plaintiffs' motion for summary disposition is GRANTED. Shelly Hartmann and Dennis Hartmann shall pay the plaintiffs \$137,673.82 to satisfy their obligation to pay the Termination Fee.

IT IS SO ORDERED.

Dated: November 5, 2021




Hon. Jon A. Van Allsburg, Circuit Judge