COURT OF APPEALS
DECISION
DATED AND FILED

October 14, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-0222 **Cir. Ct. No. 01CV005999**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

MICHAEL HUPY & ASSOCIATES, S.C.,

PLAINTIFF-APPELLANT,

V.

AMERITECH PUBLISHING, INC., D/B/A AMERITECH ADVERTISING SERVICES,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Milwaukee County: THOMAS P. DONEGAN, Judge. *Affirmed*.

Before Fine, Curley and Vergeront, JJ.

¶1 PER CURIAM. Michael Hupy & Associates, S.C., appeals from the trial court's grant of summary judgment in favor of Ameritech Publishing, Inc., d/b/a Ameritech Advertising Services. Michael Hupy & Associates sued Ameritech for misrepresentation and breach of contract after Ameritech changed

the placement of the firm's advertisement in the Milwaukee Ameritech Yellow Pages Directory. The trial court concluded that evidence of an alleged prior oral agreement on advertisement-placement was barred by the parole-evidence rule because there was an integrated contract. The firm alleges that the trial court erred because the parole-evidence rule does not prevent the introduction of Ameritech's alleged misrepresentation to Michael Hupy that the firm's advertisement would have a priority position in the Yellow Pages as long as the firm purchased a full-page advertisement. We affirm.

I.

¶2 Michael Hupy & Associates, S.C., began to purchase full-page advertisements in the attorney section of the Milwaukee Ameritech Yellow Pages Directory in 1989. The firm's contract with Ameritech Publishing, Inc., provided, as relevant:

> I HAVE READ AND UNDERSTOOD THE TERMS AND CONDITIONS ON THE FACE AND REVERSE SIDE, PARTICULARLY THE PARAGRAPH WHICH LIMITS MY REMEDIES AND PUBLISHER'S MAXIMUM LIABILITY IN THE EVENT OF ANY ERROR OR OMISSION.
>
> ….
>
> 5. We maintain publishing standards and specifications which change from time to time. We will not publish Advertising Units unless they comply with them. Our rejection of any Advertising Unit will not be a rejection or cancellation of other Advertising Units. We reserve the right to print your Advertising Units *on any page and in any position on a page within the specified classified heading.*
>
> ….
>
> 9. *This document is our complete agreement. It replaces and supersedes (and you should not rely upon) any prior oral or written representations or agreements.* IF YOU

> WISH TO NEGOTIATE ANY ONE OR MORE DIFFERENT TERMS THAN THOSE ABOVE, INCLUDING HIGHER LIABILITY LIMITS, YOU MAY DO SO. However, any change to this document or to these terms must be in writing, signed by both you and us, and dated by both you and us at least fourteen (14) weeks prior to the Issue Date of the directory.

(Uppercasing in original; emphasis added.) As a general practice, Ameritech placed the full-page advertisements at the front of each advertisement section. Accordingly, from 1989 to 1999, the firm's advertisement was given priority placement at the front of the attorney advertising section.

¶3 In 2000, Ameritech introduced two-page advertisements. Ameritech representatives told Michael Hupy that the firm would lose its priority position if it did not purchase a two-page advertisement. The firm purchased a one-page advertisement and lost its priority position to customers who purchased two-page advertisements.

¶4 The firm sued Ameritech for common-law misrepresentation and breach of contract.[1] In its complaint, the firm alleged that, beginning in 1989, Ameritech representatives told Michael Hupy that the firm would retain its position in front of other advertisers as long as it purchased a full-page advertisement:

[1] The firm also claimed that Ameritech violated WIS. STAT. § 100.18 (fraudulent advertising) (2001–2002) (All references to the Wisconsin Statutes are to the 2001–2002 version unless otherwise noted.). This claim is inadequately briefed on appeal. Although the firm asks us to determine whether the parole-evidence rule applies to § 100.18, it does not provide any analysis or argument beyond mere assertion. Accordingly, we do not address this issue. *See* ***Barakat v. Department of Health and Soc. Servs.***, 191 Wis. 2d 769, 786, 530 N.W.2d 392, 398 (Ct. App. 1995) (we will not review arguments that are "amorphous and insufficiently developed").

> Since 1989, on repeated occasions, representatives of Ameritech, acting within the scope of their employment and authority, represented and promised to Michael Hupy & Associates, S.C., that, as long as the law firm continued to pay for full[-]page ads, the law firm would not lose its "position" in the Milwaukee directory; further, at all times material hereto, and on repeated occasions, employees of Ameritech Publishing, Inc., acting within the scope of their employment and authority, made statements to Michael Hupy & Associates, S.C.[,] concerning the importance of maintaining full[-]page advertising in the Milwaukee book so as to maintain position in the book as "book position" under the classification or heading of "Attorneys" was extremely important in obtaining new clients and that those persons who are near the front of the classification maintain a significant advantage over law firms' smaller ads and ads farther back within the heading.[2]

(Footnote added.)

¶5 Ameritech moved for summary judgment. It contended that the parole-evidence rule precluded the introduction of the alleged oral agreement on the placement of the firm's advertisement because the express terms of the contract were clear: "[T]he contract … [was] clear that [Ameritech Publishing, Inc.] reserved the right to publish the advertising on any page within the applicable topical heading. The contract also made clear that [it] contained the entire agreement between the parties and that the Hupy firm should not rely on any alleged oral representations."

¶6 The firm asserted that the alleged oral representation on advertisement-placement was admissible because the parole-evidence rule does not preclude evidence of misrepresentation or a claim of promissory estoppel.

[2] The complaint was amended twice for reasons not relevant to this appeal. Both of the amended complaints "realleg[ed] and reassert[ed]" the allegations in the original complaint. Accordingly, we quote from the original complaint.

¶7 As noted, the trial court granted the motion for summary judgment. It determined that the firm's claims were barred by the parole-evidence rule:

> What we have, it appears to me, [is] a written, unambiguous contract; and I think it is integrated by knowing business people.
>
> ….
>
> As to whether we get to the misrepresentation claim, my approach to the argument here is that, if the contract is limited to its terms, [the] misrepresentation claim can't stand because that parol[e-]evidence rule excludes any evidence of misrepresentations.

II.

¶8 Our review of the trial court's grant of summary judgment is *de novo*, and we apply the same standards as did the trial court. ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 315–317, 401 N.W.2d 816, 820–821 (1987). First, we examine the pleadings to determine whether a proper claim for relief has been stated. ***Id.***, 136 Wis. 2d at 315, 401 N.W.2d at 820. If the complaint states a claim and the answer joins the issue, our inquiry then turns to whether any genuine issues of material fact exist. ***Id.*** WISCONSIN STAT. RULE 802.08(2) sets forth the standard by which summary judgment motions are to be judged:

> The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, 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.

¶9 The trial court correctly determined that the firm's claims were barred by the parole-evidence rule. The parole-evidence rule provides that:

> "When the parties to a contract embody their agreement in writing and intend the writing to be the final expression of their agreement, the terms of the writing may not be varied or contradicted by evidence of any prior written or oral

> agreement in the absence of fraud, duress, or mutual mistake."

In re Spring Valley Meats, Inc., 94 Wis. 2d 600, 607, 288 N.W.2d 852, 855 (1980) (quoted source omitted). The threshold question is whether the parties intended the written agreement to be final and complete or whether they intended any prior agreements to be part of their total agreement. ***Id.***

¶10 The firm relies on ***Bank of Sun Prairie v. Esser***, 155 Wis. 2d 724, 456 N.W.2d 585 (1990), to argue that the parole-evidence rule does not preclude the misrepresentation claim. In ***Esser***, Leah Esser signed a "Continuing Guarantee" on a note so that her brother could borrow money from the Bank to purchase a truck. ***Id.***, 155 Wis. 2d at 727, 456 N.W.2d at 586. Esser's brother defaulted on the truck loan and the Bank sued Esser for the amount of the truck loan and the amount of an earlier business loan her brother had taken out, alleging that Esser accepted responsibility for the business loan when she signed the Guarantee. ***Id.***, 155 Wis. 2d at 728, 456 N.W.2d at 586–587.

¶11 Esser claimed that the Bank had fraudulently induced her to sign the Guarantee to cover the business note because "'it was my understanding that it [the Guaranty] was only for the purpose of the [new] loan'; … 'I did not fully and completely read all of the relevant documents before I signed them.'" ***Id.***, 155 Wis. 2d at 728–729, 456 N.W.2d at 587 (alteration in original). The Bank argued that the parole-evidence rule prevented the introduction of Esser's misrepresentation-evidence because it contradicted the express language of the Guarantee. ***Id.***, 155 Wis. 2d at 730–731, 456 N.W.2d at 588. The case went to trial and a jury found for Esser on the misrepresentation claim. ***Id.***, 155 Wis. 2d at 729, 456 N.W.2d at 587.

¶12 In analyzing the misrepresentation claim, ***Esser*** noted that "all the circumstances must be considered, including the intelligence and experience of the misled individual and the relationship between the parties, to determine whether the individual acted reasonably when relying on the misrepresentation." ***Id.***, 155 Wis. 2d at 734, 456 N.W.2d at 589. Applying this standard to the facts of the case, ***Esser*** held that the determination of whether Esser's reliance on the Bank's representations was reasonable was a question of fact that was properly submitted to the jury. ***Id.***

¶13 The firm relies on ***Esser*** and contends that summary judgment was improper in this case because the reasonableness of Michael Hupy's reliance on Ameritech's alleged misrepresentation is a disputed question of fact. We disagree. Unlike ***Esser***, this case does not present a situation where, arguably, one of the parties lacked sophistication. Michael Hupy has been a lawyer in this state for thirty-one years and is an experienced trial attorney.[3] He signed a contract that specifically said: "This document is our complete agreement. It replaces and supersedes (and you should not rely upon) any prior oral or written representations or agreements." Nothing could be more clear. Moreover, the contract expressly reserved to Ameritech the unfettered right to "print [Michael Hupy & Associates'] Advertising Units on any page and in any position on a page within the specified classified heading." This is clear as well.

¶14 In light of the clear terms of the contract and Michael Hupy's experience as an attorney, we conclude, as a matter of law, that Michael Hupy's

[3] Michael Hupy became a member of the Wisconsin Bar in 1972. *See* http://www.wisbar.org/lawyersearch/resdetails.asp?ID=1014322 (last accessed Sept. 30, 2003).

reliance on Ameritech's alleged oral representation was not justified. *See* ***Ritchie v. Clappier***, 109 Wis. 2d 399, 406, 326 N.W.2d 131, 134 (Ct. App. 1982) ("If the facts are undisputed, whether the party claiming fraud was justified in relying on a misrepresentation is a question of law."). It is well established that, when the language of a contract is unambiguous, "[t]he language … must be understood to mean what it clearly expresses." ***Cernohorsky v. Northern Liquid Gas Co.***, 268 Wis. 586, 592, 68 N.W.2d 429, 433 (1955). It would significantly weaken the need for certainty in commercial transactions to say, as Hupy would have us say, that the clear language of the contract can be avoided by a party's assertions that the other party made oral representations that conflicted with one of the contract's clear terms.

¶15 The firm also contends that the parole-evidence rule can be circumvented here by promissory estoppel. Again, we disagree.

> The rationale for the doctrine [of promissory estoppel] simply disappears when the parties finally enter into a contract. If the doctrine can be applied as an alternative to a breach of contract action which is barred by the parol[e-] evidence rule, then the parol[e-]evidence rule would be nugatory.

Durkee v. Goodyear Tire & Rubber Co., 676 F. Supp. 189, 192 (W.D. Wis. 1987) (interpreting Wisconsin law). The trial court's grant of summary judgment was proper. *See* ***Matthew v. American Family Mut. Ins. Co.***, 54 Wis. 2d 336, 343, 195 N.W.2d 611, 614 (1972) (Summary judgment may be granted on the basis of a written integrated contract.).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.