State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: January 19, 2012 512492

RICHARD WILLIAMS, on Behalf of Himself and All Other Retired Endicott Police Officers Similarly Situated,
Respondent-Appellant,

v

VILLAGE OF ENDICOTT,
Appellant-Respondent.

MEMORANDUM AND ORDER

Calendar Date: November 22, 2011

Before: Mercure, Acting P.J., Peters, Rose, Lahtinen and Garry, JJ.

Coughlin & Gerhart, L.L.P., Binghamton (Keith A. O'Hara of counsel), for appellant-respondent.

The Tuttle Law Firm, Latham (James B. Tuttle of counsel), for respondent-appellant.

Peters, J.

Cross appeals (1) from an order of the Supreme Court (Reynolds Fitzgerald, J.), entered December 7, 2010 in Broome County, which, among other things, denied plaintiff's and defendant's motions for summary judgment, and (2) from an order of said court, entered June 2, 2011, which denied plaintiff's and defendant's motions to renew.

Plaintiff retired from defendant's police department in 1998. The collective bargaining agreement (hereinafter CBA) in effect between defendant and plaintiff's union at that time provided that defendant "shall keep in full force and effect medical coverage and hospital coverage for each member of the bargaining unit, with benefits to be of a value at least equivalent to those presently in force[,] subject to the following conditions . . . All unit members retiring during the terms of this agreement agree that subsequent to their retirement, and in consideration of [defendant's] agreement to continue their health insurance coverage, they will continue to pay a contribution toward their annual health insurance premium and such contribution shall be a sum of $500.00 per annum for family coverage, and a sum of $200.00 per annum for individual coverage."[1] When plaintiff became eligible for Medicare Part B coverage in 2007, he was informed that the health insurance provided by defendant would not cover services that would be covered under Medicare Part B, even if he failed to enroll in the program. As a result, plaintiff enrolled in Medicare Part B and was charged a separate premium by Medicare, which was deducted from his Social Security benefits. When defendant refused plaintiff's request for reimbursement, plaintiff commenced this action seeking a declaration that the CBA required defendant to cover the costs associated with his Medicare Part B coverage. Following joinder of issue, plaintiff moved for summary judgment and defendant cross-moved for, among other things, summary judgment dismissing the complaint. Finding the CBA to be

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[1] The interpretation of this provision was previously before this Court when defendant attempted to increase the annual contributions that retirees were required to pay towards their health insurance premium (Hudock v Village of Endicott, 28 AD3d 923 [2006]). There, we found that "the language of the CBA unambiguously provides that for all times subsequent to the retirement of [the] plaintiffs and other officers who retired while the 1996-1999 CBA was in effect, those retirees are only required to pay defendant a contribution of $500 or $200 toward their annual medical insurance 'in consideration of [defendant's] agreement to continue their health insurance coverage'" (id. at 924).

ambiguous as to the specific coverage that defendant is obligated to provide, Supreme Court denied both motions. The parties' subsequent motions to renew were also denied by the court. The parties cross-appeal from both orders.

"In determining the obligations of parties to a contract, courts will first look to the express contract language used to give effect to the intention of the parties, and where the language of a contract is clear and unambiguous, the court will construe and discern that intent from the document itself as a matter of law" (Shook v Blue Stores Corp., 30 AD3d 811, 812 [2006] [internal quotation marks and citations omitted]; see Angelino v Michael Freedus, D.D.S., P.C., 69 AD3d 1203, 1205-1206 [2010]; Bauersfeld v Board of Educ. of Morrisville-Eaton Cent. School Dist., 46 AD3d 1003, 1005 [2007], lv denied 10 NY3d 704 [2008]). Whether a contract is ambiguous is a question of law to be resolved by the court (see W.W.W. Assoc. v Giancontieri, 77 NY2d 157, 162 [1990]; Stevens & Thompson Paper Co., Inc. v Niagara Mohawk Power Corp., 49 AD3d 1011, 1012 [2008]; CV Holdings, LLC v Artisan Advisors, LLC, 9 AD3d 654, 656 [2004]). "A contract is ambiguous if the language used lacks a definite and precise meaning, and there is a reasonable basis for a difference of opinion" (Pozament Corp. v AES Westover, LLC, 27 AD3d 1000, 1001 [2006] [citations omitted]; see Greenfield v Philles Records, 98 NY2d 562, 569 [2002]; CV Holdings, LLC v Artisan Advisors, LLC, 9 AD3d at 656).

We find an ambiguity as to whether Medicare Part B coverage is a component of the "medical coverage and hospital coverage" that defendant agreed to provide to retirees under the CBA. Notably, the CBA does not define what is encompassed by "medical coverage and hospital coverage" and is silent with respect to the treatment of costs associated with a federal medical insurance plan, such as Medicare. The provision in the CBA requiring defendant to provide "medical coverage and hospital coverage" with benefits "of a value at least equivalent to those presently in force" could be interpreted to mean, as defendant suggests, that subsequent to his retirement plaintiff is entitled to continued private health insurance coverage from defendant having, at a minimum, the same terms and conditions as those in effect at the time of his retirement. In that regard, the

parties do not dispute that the health insurance plan provided by defendant to plaintiff at the time of his retirement contains the same terms as that presently in effect, including the coordination of benefits provision that provides that the insurance becomes secondary upon plaintiff's eligibility for Medicare. Thus, under this reading, defendant has fulfilled its obligation under the CBA to provide health insurance coverage with benefits "of a value at least equivalent" to those in force at the time of plaintiff's retirement, and would have no obligation to cover the costs associated with plaintiff's Medicare Part B coverage.

On the other hand, the operative language could be read to require defendant to continue to provide and pay for a defined level of health insurance benefits – i.e, those in place at the time of retirement – without resort to any particular insurance plan or provider, subject to plaintiff's $500/$200 annual contribution. There is no dispute that, upon plaintiff's eligibility for Medicare Part B, the health insurance coverage provided by defendant became secondary to Medicare Part B, such that it would no longer cover any expenses or benefits that would be covered under Medicare. Therefore, under this interpretation, which is advocated by plaintiff, the health insurance coverage provided by defendant afforded him benefits of a lesser value than those in force at the time of his retirement. In order to maintain the level of benefits "of a value at least equivalent to those . . . in force" at the time of his retirement, plaintiff was required to enroll and participate in Medicare Part B, which carried with it a premium. Consequently, plaintiff must now pay more than the $500/$200 annual contribution limit set forth in the CBA in order to sustain benefits equivalent to those he was receiving at the time of his retirement. Inasmuch as the CBA limits plaintiff's contribution for equivalent health insurance coverage to $500/$200 per year, defendant would be obligated, under this reading of the language of the CBA, to cover the costs associated with his Medicare Part B coverage.

In our view, the parties have advanced two equally plausible and reasonable interpretations of the CBA provision in question, thereby evidencing an ambiguity that requires consideration of evidence outside the four corners of the CBA

relevant to the parties' intent (see Seymour v Northline Utils., LLC, 79 AD3d 1386, 1388 [2010]; Alternatives Fed. Credit Union v Olbios, LLC, 14 AD3d 779, 781 [2005]; CV Holdings, LLC v Artisan Advisors, LLC, 9 AD3d at 656). As the scant extrinsic evidence contained in the record does not dispositively establish the scope of health insurance coverage contemplated by the parties, the matter is not amenable to summary disposition (see Capital Dist. Enters., LLC v Windsor Dev. of Albany, Inc., 53 AD3d 767, 771 [2008]; Shook v Blue Stores Corp., 30 AD3d at 812-813).

Finally, inasmuch as our finding of ambiguity is not affected by consideration of the facts presented by defendant on its motion to renew, defendant was not entitled to renewal (see CPLR 2221 [e] [2]; Matter of Cohen Swados Wright Hanifin Bradford & Brett v Frank R. Bayger, P.C., 269 AD2d 739, 742 [2000]; Curry v Nocket, 104 AD2d 435, 436 [1984], lv denied 64 NY2d 606 [1985]; Rose v La Joux, 93 AD2d 817, 818 [1983]).

Mercure, Acting P.J., Rose, Lahtinen and Garry, JJ., concur.

ORDERED that the orders are affirmed, without costs.

ENTER:

Robert D. Mayberger
Clerk of the Court