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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
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1999

In re:) Case No. 96-15177
)
FRETTER, INC.,) Chapter 11
) Jointly Administered
Debtor.)
) Judge Pat E. Morgenstern-Clarren
)
) **MEMORANDUM OF OPINION AND**
) **ORDER PARTIALLY RESOLVING**
) **THE OFFICIAL COMMITTEE OF**
) **UNSECURED CREDITORS'**
) **OBJECTION TO THE CLAIM OF**
) **MAYTAG CORP.**

Maytag Corporation ("Maytag") filed a claim in this case in the principal amount of \$1,219,527 for merchandise it delivered to Fretter, Inc. ("Fretter").¹ The Official Committee of Unsecured Creditors ("the Committee") objects to the claim on the ground that Fretter entered into a Settlement and Release Agreement ("the Agreement") with Maytag pre-petition that resolved the dispute between them in its entirety and released Fretter from any further liability. (Docket 1997). Maytag asserts that the Agreement permits it to recover on its claim in this bankruptcy proceeding. (Docket 2112). If Maytag has the right to file a claim, the Committee objects to the amount as filed. This opinion addresses only the preliminary question of whether Maytag released its claim.

¹ The claim is designated No. 295 by claims agent Logan & Co., Inc.

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JURISDICTION

The Court has jurisdiction to determine this matter under 28 U.S.C. § 1334 and General Order No. 84 entered on July 16, 1984 by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B).

FACTS

The parties filed briefs in support of their positions and argued the issue in hearings held on July 15, 1999 and September 16, 1999. Both sides rely solely on the language of the Agreement to prove their case, agreeing that the language is unambiguous and that no evidence in support should be considered. These are the undisputed facts, based on the briefs and the arguments of counsel:

Pre-petition, Fretter and Maytag disagreed over amounts claimed to be due to Maytag. While the details are not identified, the parties agree that Maytag's claim was approximately \$2.5 million. They resolved the problem by entering into the Agreement, which was "made and effective" on October 20, 1995. The present dispute centers on the mutual releases in that Agreement and the rights, if any, retained by Maytag to collect additional amounts from Fretter.

The Agreement provides:

1. Mutual Releases. Excluding the rights of Creditor [i.e. Maytag] and the obligations of Fretter as set forth in Paragraph 2 below and Paragraph 3 below, which rights of Creditor and obligations of Fretter are NOT hereby released by Creditor's execution of this Agreement, Creditor hereby irrevocably releases, acquits, holds harmless and forever discharges Fretter and its respective shareholders, officers, directors, employees, affiliates, subsidiaries, agents, representatives, successors and assigns of and from any and all manner of costs, expenses, liabilities, causes, rights, claims, debts, causes of action, demands and the payment of any sum of money whatsoever for any thing or matter whatsoever, whether known or unknown, contingent or liquidated, at law or in equity, which has or may have ever arisen through the date hereof relating in any way to any products and/or services hereinbefore sold, leased or otherwise provided to Fretter.

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Excluding the rights of Fretter set forth in Paragraph 3 below, which rights of Fretter are NOT hereby released, Fretter hereby irrevocably releases, acquits, holds harmless and forever discharges Creditor and its respective shareholders, officers, directors, employees, affiliates, subsidiaries, agents, representatives, successors and assigns of and from any and all manner of costs, expenses, liabilities, causes, rights, claims, debts, causes of action, demands and the payment of any sum of money whatsoever for any thing or matter whatsoever, whether known or unknown, contingent or liquidated, at law or in equity, which has or may have ever arisen through the date hereof relating in any way for the debt owed by Fretter to Creditor for any products and/or services hereinbefore sold, leased or otherwise provided to Fretter. Excluded from this Release, however, shall be any claims arising out of or related to personal injuries and property damages attributable to Creditor's products.

2. Payment. In exchange for Creditor's release provided in Paragraph 1 above, Fretter agrees to pay to Creditor the sum of money upon the terms written below Creditor's signature on this agreement.

3. Miscellaneous. Creditor and Fretter hereby agree that in the event Fretter becomes a debtor under the protection of a Bankruptcy Court or similar state statute, (A) Creditor shall have the right to file in the court proceeding a claim for the full amount of the debt owing as of the date of the execution of this Agreement subject to all defenses, claims, counterclaims and offsets which Fretter reserves the right to assert in defense of Creditor's asserted claim; and (B) for mutual consideration herein, Fretter agrees that it will not pursue against the Creditor any claim, other than as set forth in subsection (A) of this Paragraph and the last sentence of Paragraph 1 above, arising under any Federal or State bankruptcy, insolvency or other similar statute.

The payment terms listed below Maytag's signature state that \$1.3 million is to be paid to Maytag, with the money to be wire transferred no later than 24 hours after execution and delivery of the Agreement by Maytag and Fretter's receipt of Maytag's transfer instructions. The signatures are not dated and there is no evidence as to the instruction date. Nevertheless, the parties agree that the money was paid and the payment date is not an issue.

Fretter filed its Chapter 11 case on September 24, 1996. Maytag timely filed a general unsecured claim in the principal amount of \$1,219,527 plus interest, attorney fees, and expenses.

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The claim also asserts a right to setoff under 11 U.S.C. § 553 in the amount of \$77,193.12.

The Agreement provides that Michigan law controls.

THE POSITIONS OF THE PARTIES

Maytag and the Committee both start from the position that the Agreement is unambiguous. From there, however, they draw opposite conclusions. Maytag contends that the Agreement expressly gave it two rights: (a) the right to receive \$1.3 million at the time of signing; and (b) the right to file a claim in any bankruptcy for the amount that would otherwise have been due at the time that it entered into the Agreement, subject to Fretter's defenses, claims, counterclaims, and offsets. Maytag asserts that this was the consideration for accepting a lower amount in October 1995 than was otherwise due. The Committee argues that Maytag was only entitled to a claim "in the event the Debtor commenced a bankruptcy or similar state court proceeding after execution of the Settlement Agreement but prior to payment of the Settlement Sum." (Committee's Objection at ¶ 11) (emphasis in original). At oral argument, the Committee's counsel amplified that this was intended to address the possibility that Fretter would file bankruptcy before paying the \$1.3 million, in which case Maytag would have the right to file a claim in the bankruptcy proceeding for the full amount owed rather than the compromise amount of \$1.3 million.

DISCUSSION

This dispute involves a question of contract interpretation that is governed by Michigan law. See *Walbridge Aldinger Co. v. Walcon Corp.*, 207 Mich. App. 566, 570, 525 N.W.2d 489, 491 (1995). "Under Michigan law, '[t]he primary goal in the construction or interpretation of any contract is to honor the intent of the parties'." *Sault Ste. Marie Tribe of Chippewa Indians v. Engler*, 146 F.3d 367, 372 (6th Cir. 1998) (quoting *Rasheed v. Chrysler Corp.*, 445 Mich.109,

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517 N.W.2d 19, 29 at n. 28 (1994). "The Court 'must look for the intent of the parties in the words used in the instrument'. " *Id.* (quoting *Michigan Chandelier Co. v. Morse*, 297 Mich. 41, 297 N.W. 64, 67 (1941)). If the terms of a contract are unambiguous, those terms express the intent of the parties and must be enforced as written. *Farm Bureau Mut. Ins. Co. of Michigan v. Nikkel*, 460 Mich. 558, 596 N.W.2d 915 (1999). In such a case, it is inappropriate to look beyond the written words to determine the parties' intentions. *Manufacturers Nat'l Bank v. Auto Specialties Mfg. Co. (In re Auto Specialties Mfg. Co.)*, 18 F.3d 358, 361 (6th Cir. 1994).

"A contract is . . . ambiguous when its words may reasonably be understood in different ways." *Raska v. Farm Bureau Mut. Ins. Co.*, 412 Mich. 355, 362, 314 N.W.2d 440, 441 (1982). See also *Equitable Life Assurance Society v. Poe*, 143 F.3d 1013, 1016 (6th Cir. 1998) ("A contract is ambiguous when its terms are reasonably and fairly susceptible to multiple understandings and meanings."). In deciding if a contract is ambiguous, terms are given their plain meaning. *Heniser v. Frankenmuth Mut. Ins.*, 449 Mich. 155, 534 N.W.2d 502 (1995). Disagreement between the parties regarding the meaning of a contract's terms does not by itself constitute ambiguity. *Poe*. "Whether or not ambiguity exists with respect to a contract provision is a question of law for [the] court to decide." *Poe*, 143 F.3d at 1016.

The parties concur that the Agreement is unambiguous and that other evidence is not needed to determine their intent in entering into it.² On review, the Court agrees with this assessment and for the reasons stated below, concludes that the Agreement permits Maytag to file a claim in this case.

² Although Maytag and the Committee agree on this point, they also both cite alleged facts and circumstances outside of the four corners of the Agreement. Those outside matters are irrelevant once the parties admit that the Agreement is unambiguous. *In re Auto Specialties Mfg. Co.*, 18 F.3d at 362.

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The Committee asserts that the Agreement provides for a full release by Maytag in exchange for the payment of \$1.3 million, and that all claims were released as a result of the payment of the settlement sum. Paragraph 1 of the Agreement does provide for a release of Maytag's claims. That paragraph, however, specifically excludes "the rights of [Maytag] . . . as set forth in Paragraph 2 . . . and Paragraph 3 . . . , which rights of [Maytag] . . . are NOT released by [Maytag's] execution of [the] Agreement[.]" (Emphasis in original). Paragraph 2 provides for Fretter's payment of the agreed \$1.3 million and Paragraph 3 provides that "in the event Fretter becomes a debtor under the protection of a Bankruptcy Court . . . [Maytag] shall have the right to file in the court proceeding a claim for the full amount of the debt owing as of the date of the execution of the Agreement," with Fretter retaining specified rights in defense of the claim. The Committee argues that Paragraph 3 merely protected Maytag's right to file a claim in the period between executing the Agreement and paying the \$1.3 million. While this might have been a reasonable restriction on Maytag's Paragraph 3 rights, that simply is not what the paragraph says. To the contrary, a straightforward reading of Paragraph 3 is that Maytag's right to file a claim is limited only in the sense that the claim amount is subject to being reduced. There is no time limitation stated. As the Agreement is unambiguous and must be enforced as written, Maytag has the right to file a claim in this case because the Agreement reserved that right.

In arguing for a different result, the Committee points to the Agreement's recitals. Those recitals, however, do not contain the limiting language that the Committee would have the Court read into the Agreement.

Finally, the Committee states that it would be inequitable and unconscionable to allow Maytag to file its claim. (Committee's Objection ¶ 13). Maytag makes the same argument in

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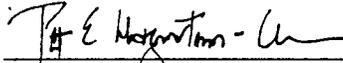
reverse. (Maytag Response ¶ 13). As neither side has explained how equity is relevant to the above legal analysis, the Court will not address it further.

CONCLUSION

For the reasons stated, the Committee's Objection to Maytag's claim is overruled to the extent it is based on the release argument. This decision does not resolve the Committee's Objection in its entirety because the Agreement provides that Maytag's claim is "subject to all [of Fretter's] defenses, claims, counterclaims and offsets" and the Committee has objected to the amount of Maytag's claim on that basis. A status conference will be held on **November 19, 1999 at 10:30 a.m.** to set a briefing schedule and evidentiary hearing date for the remaining issues.

IT IS SO ORDERED.

Date: 21 Oct 1999



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Larry Lichtman, Esq.
Dean Gamin, Esq.

By: Joyce L. Gordon, Secretary

Date: 10/21/99