STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1151

Kokeb Sime,
Respondent,

vs.

Alpha & Omega USA, Inc.,
Appellant.

Filed May 26, 2009
Reversed and remanded
Randall, Judge[*]

Hennepin County District Court
File No. 27-CV-07-22894

Kokeb Sime, 6119 Quail Avenue North, Brooklyn Center, MN 55429 (pro se respondent)

Jeffrey H. Olson, P.O. Box 44271, Eden Prairie, MN 55344 (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Klaphake, Judge; and Randall, Judge.

U N P U B L I S H E D O P I N I O N

RANDALL, Judge

In this contract dispute, appellant argues that the district court erred by incorrectly calculating the amount it owed respondent and by refusing to offset the judgment by the

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

amount of an insurance deductible owed by respondent under the contract. We reverse and remand.

FACTS

Appellant Alpha & Omega USA, Inc. is a corporation that provides services for disabled persons by using specially-equipped vans. Appellant uses independent contractors as drivers, who may either provide their own van or lease a van from appellant. Respondent Kokeb Sime drove as an independent contractor for appellant from December 29, 2006, to May 25, 2007. On January 29, 2007, he executed two contracts with appellant. The first contract pertained to his driving services and provided that he would earn a commission of 64% of the total amount he billed. The second contract was a van lease under which respondent agreed to pay appellant $0.19 per mile for every mile driven. The lease required respondent to provide insurance covering "[p]hysical damage insurance for the full value of the Vehicle, with a maximum deductible of $1,000." The lease also provided, "You are responsible for all damage to the Vehicle and for its loss, seizure or theft."

Upon ending his work as an independent contractor, respondent brought an action in Hennepin County Conciliation Court to recover amounts due under the contract, which action was removed to the district court. The district court found that respondent had billed a total of $19,483.03, and that, based on the 64% commission due under the contract, appellant owed respondent a total of $12,469.14 in commissions. It then offset this amount by $115.89 directly paid to respondent and $3,322.91 that respondent owed appellant as mileage for the van lease. The court then added $77.29 in fuel rebates owed

to respondent and subtracted $6,914.80 that had been paid to respondent by appellant during the course of his employment. The court concluded that respondent had not been paid $2,192.83 of what was owed to him. The court further reduced the amount owed to respondent based on various other expenses that respondent owed appellant. This included $150 for training courses, $117.15 to repair a seat belt in the van, and a charge of $90 debited against the respondent.

Upon the return of the van, appellant repaired damage to the roof. With respect to repair costs, the court found:

> [Appellant] had the roof of the Van repaired by Master Collision in Bloomington. The total cost of repairing the roof was $2,808.50. [Appellant] had insurance on the Van, which covered the cost of repair, minus a $1,000 deductible. [Appellant] argues that [respondent] is responsible for the $1,000 deductible under the Contract. However, there is nothing in the Contract or Lease that requires [respondent] to pay for [appellant's] insurance deductible. [Respondent] is not obligated to pay for [appellant's] $1,000 . . . insurance deductible.

Accordingly, the court calculated the difference between what the parties owed each other as $1,930.63. After adding in a filing fee and costs, it entered a judgment of $2,035.63 for respondent. This appeal followed.

D E C I S I O N

"If no ambiguity exists, interpretation [of a contract] is a question of law subject to de novo review." *Blonigen v. Blonigen*, 621 N.W.2d 276, 281 (Minn. App. 2001) (citing *Stowell v. Cloquet Co-op Credit Union*, 557 N.W.2d 567, 571 (Minn. 1997), *review denied* (Minn. Mar. 13, 2001). When a contract is unambiguous, "[t]his court is not

required to defer to the [district] court's findings." *Wolfson v. City of St. Paul,*, 535 N.W.2d 384, 386 (Minn. App. 1995), *review denied* (Minn. Sept. 28, 1995).

Appellant argues that the district court should have awarded respondent judgment of $735.81 instead of $1,930.63. Appellant reaches this number based on the difference between appellant's calculation that respondent was entitled to $12,274.32 in commissions and the district court's calculation that respondent was entitled to $12,469.14 in commissions and the refusal of the district court to offset the judgment by $1,000 for the cost of the insurance deductible paid by appellant to cover the roof repairs.

Appellant argues, "Respondent and Appellant agreed to the commission owed by Appellant to Respondent of $5,259.52: $12,274.32 less $6,914.80 already paid." According to appellant's accounting ledger, this number was arrived at from a total amount of $19,483.04 billed by respondent. Based on these numbers, appellant apparently calculated the commissions as 63% of the total amount billed. The contract, however, provides for a commission of 64%. Based on a 64% commission, appellant owed respondent a total of $12,469.14, which is the amount calculated by the district court. Therefore, the district court did not err in calculating the total commission owed by appellant to respondent.

Appellant then argues that the district court should have offset the amount of the insurance deductible it paid for repairs to the roof. "Unambiguous contract language must be given its plain and ordinary meaning." *Minneapolis Pub. Hous. Auth. v. Lor*, 591 N.W.2d 700, 704 (Minn. 1999). The district court found that "there is nothing in the Contract or Lease that requires [respondent] to pay for [appellant's] insurance

deductible." But the contract contained a provision holding respondent responsible for damage to the vehicle. Under the plain and ordinary meaning of the words "you are responsible for all damage to the vehicle," the cost of the insurance deductible to repair the vehicle is a cost for damage to the vehicle. We conclude that the contract held respondent responsible for the cost of the insurance deductible.

Because the contract required respondent to be responsible for the cost of the insurance deductible incurred by appellant, the district court made a mistake by refusing to offset the judgment by that amount. We reverse and remand for the district court to recalculate the judgment taking into account the amount of the insurance deductible owed to appellant by respondent.

Reversed and remanded.