STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1642

City of Owatonna,
Appellant,

vs.

Rare Aircraft, Ltd., defendant and third party plaintiff,
Respondent,

vs.

David Beaver,
Third Party Defendant.

Filed June 16, 2009
Reversed and remanded
Larkin, Judge

Steele County District Court
File No. 74-CV-07-563

James G. Golembeck, Elisa M. Hatlevig, Jardine, Logan & O'Brien, P.L.L.P., 8519 Eagle Point Boulevard, Suite 100, Lake Elmo, MN 55042; and

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Ronald L. Moersch, Mary L. Hahn, Hvistendahl, Moersch & Dorsey, P.A., 311 South Water Street, P.O. Box 651, Northfield, MN 55057-0651 (for respondent)

Considered and decided by Schellhas, Presiding Judge; Hudson, Judge; and Larkin, Judge.

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

LARKIN, Judge

In this appeal from judgment entered after a court trial on appellant's action to terminate a fixed-base-operator agreement based on respondent's alleged default, appellant argues that the district court erred by (1) relying on extrinsic evidence to conclude that the minimum products-liability/completed-operations-insurance provision in the fixed-base-operator agreement was ambiguous; (2) concluding that respondent's products-liability/completed-operations-insurance policy reasonably complied with the minimum-insurance provision; and (3) finding that respondent's occupation of property that is not included in the fixed-base-operator agreement is not a material breach. Because the minimum products-liability/completed-operations-insurance provision is unambiguous, respondent's policy does not comply with the provision, and respondent failed to cure its default after notice, appellant was entitled to terminate the fixed-base-operator agreement under the terms of the agreement. We therefore reverse and remand for entry of judgment in favor of appellant consistent with this opinion.

FACTS

The City of Owatonna, the appellant, initiated an action to terminate the fixed-base-operator agreement (FBO agreement) between the city as owner of the Owatonna Degner Regional Airport and respondent Rare Aircraft, Ltd. as the fixed-base operator at the Owatonna airport, alleging that Rare Aircraft defaulted under the terms of the FBO agreement. The city claimed that Rare Aircraft breached the FBO agreement by failing to comply with a minimum products-liability/completed-operations-insurance provision

(minimum PL/CO-insurance provision) and by occupying city property that was not included in the FBO agreement.

After a court trial, the district court determined that the minimum PL/CO-insurance provision was ambiguous and construed the ambiguity against the city as the drafter of the provision. The district court concluded that Rare Aircraft's interpretation of the ambiguous provision was reasonable and that Rare Aircraft's products-liability/completed-operations insurance policy (PL/CO policy) complied with the FBO agreement. The district court also concluded that Rare Aircraft's use of city property that is not included in the FBO agreement does not constitute a breach of the FBO agreement. The district court held that Rare Aircraft did not breach its obligations under the FBO agreement, the city did not have the right to terminate the FBO agreement pursuant to a termination clause, and Rare Aircraft validly exercised its option to renew the FBO agreement. This appeal follows.

D E C I S I O N

"Whether a contract is ambiguous is a question of law, on which the reviewing court owes no deference to the district court's determination." *Murray v. Puls*, 690 N.W.2d 337, 343 (Minn. App. 2004), *review denied* (Minn. Mar. 15, 2005). "A contract is ambiguous if it is reasonably susceptible to more than one construction." *Blackburn, Nickels & Smith, Inc. v. Erickson*, 366 N.W.2d 640, 644 (Minn. App. 1985), *review denied* (Minn. June 24, 1985). "A writing is ambiguous if, judged by its language alone and without resort to parol evidence, it is reasonably susceptible of more than one meaning." *Metro Office Parks Co. v. Control Data Corp.*, 295 Minn. 348, 351, 205

N.W.2d 121, 123 (1973). When a contractual provision is clear and unambiguous, courts will not "rewrite, modify, or limit the effect of a contract provision by a strained construction." *Dorsey & Whitney LLP v. Grossman*, 749 N.W.2d 409, 418 (Minn. App. 2008). A contract's unambiguous language "must be given its plain and ordinary meaning, and shall be enforced by courts even if the result is harsh." *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346-47 (Minn. 2003) (quotation omitted).

The city claims that Rare Aircraft's PL/CO policy, which provides coverage in the amount of $1,000,000 per occurrence and $100,000 per person, does not satisfy the minimum PL/CO-insurance provision of the FBO agreement. The minimum PL/CO-insurance provision requires Rare Aircraft to maintain, "[p]roduct liability insurance/completed operations insurance in the minimum amount of $1,000,000." The district court concluded that the minimum PL/CO-insurance provision is ambiguous based on extrinsic evidence regarding the aviation insurance industry's customary use of relevant industry terms. The district court explained that "[t]he 2003 FBO contract fails to require 'combined single limits,' much less 'aggregate' or 'each occurrence' coverage." The district court determined that Rare Aircraft's PL/CO policy is a "reasonable interpretation of an ambiguous clause" and that the policy complies with the FBO agreement, despite its $100,000 per-person sublimit. The city argues that the district court erroneously relied on extrinsic evidence to determine that the minimum PL/CO-insurance provision was ambiguous.

Rare Aircraft makes only one argument in support of its claim that the FBO agreement is ambiguous on its face. Rare Aircraft asserts that the minimum PL/CO-

insurance provision is ambiguous because the city does not object to Rare Aircraft's satisfaction of another minimum-insurance provision within the FBO agreement with a policy that includes a deductible. The relevant provision requires Rare Aircraft to provide hangar-keeper's liability insurance in the minimum amount of $500,000. Rare Aircraft argues that it is inconsistent for the city to allow a deductible with regard to the minimum hangar-keeper's liability-insurance provision but not allow a sublimit with regard to the minimum PL/CO-insurance provision. We fail to see the logic behind this argument.

Deductibles are distinguishable from sublimits. As a result of its deductible, Rare Aircraft is responsible for a portion of a loss that is covered by its hangar-keeper's liability insurance. *See The American Heritage College Dictionary* 369 (4th ed. 2007) (defining "deductible" as "[a] clause in an insurance policy that exempts the insurer from paying a specified amount in the event of a claim"). But despite the deductible, there remains available hangar-keeper's liability insurance coverage of $500,000. The deductible does not affect the amount of available coverage. Conversely, the per-person sublimit in Rare Aircraft's PL/CO policy limits the amount of available coverage for a single person to $100,000. Because Rare Aircraft's deductible does not affect the amount of available insurance coverage, allowing a deductible with regard to the minimum hangar-keeper's liability-insurance provision is not inconsistent with disallowing a sublimit under the minimum PL/CO-insurance provision, and this variance in treatment does not create ambiguity on the face of the FBO agreement.

The district court emphasized the city's failure to include industry terms such as "combined single limit," "aggregate," and "each occurrence" in the minimum PL/CO-insurance provision and found this failure to be inconsistent with normal industry practice. Similarly, Rare Aircraft asserts that the city's failure to use the industry term "combined single limit" permits the inclusion of sublimits. We disagree. The absence of the term "combined single limit" does not render the minimum PL/CO-insurance provision ambiguous on its face. "Minimum" is defined as "[t]he least possible quantity or degree" or alternatively as "[t]he lowest degree or amount reached or recorded; the lower limit of variation." *See The American Heritage College Dictionary* 885 (4th ed. 2007). The plain and ordinary meaning of the term "minimum" clearly defines the minimum PL/CO-insurance provision's coverage amount as $1,000,000. Simply put, "minimum" means minimum.

The plain language of the minimum PL/CO-insurance provision establishes one and only one minimum insurance amount of $1,000,000. The $1,000,000 minimum precludes any sublimit that reduces the available coverage to an amount less than $1,000,000. Because the minimum PL/CO-insurance provision is unambiguous on its face, it is unnecessary and inappropriate to rely on extrinsic evidence regarding industry practice and industry terms in an effort to create ambiguity. *See Metro Office Parks*, 295 Minn. at 351, 205 N.W.2d at 123. We also note that the plain reading of the minimum PL/CO-insurance provision imposes the same obligation on Rare Aircraft that would result if the industry term "combined single limit" had been included.

We next address whether Rare Aircraft's policy complies with the unambiguous requirement. Although Rare Aircraft's PL/CO policy provides the required $1,000,000 per occurrence coverage, its $100,000 per person sublimit falls far short of the $1,000,000 minimum PL/CO-insurance provision. Thus, the district court erred by concluding that Rare Aircraft is in compliance with the agreement's minimum PL/CO-insurance provision.

We now consider the effect of this failure to comply. The FBO agreement provides the city with a right to terminate the agreement if Rare Aircraft fails to perform or observe any of its obligations under the agreement for a period of 30 days after written notice of the default. The city notified Rare Aircraft that its PL/CO-insurance policy does not comply with the terms of the FBO agreement, and Rare Aircraft did not cure its default within 30 days of notice. The city was therefore entitled to terminate the FBO agreement, and the district court erred in ruling to the contrary. Moreover, because the FBO agreement expressly conditions Rare Aircraft's option to renew on the requirement that Rare Aircraft is not in default on any of its obligations under the agreement, the district court erred by concluding that Rare Aircraft validly exercised its option to renew the FBO agreement.

In sum, we conclude that (1) the FBO agreement's minimum PL/CO-insurance provision is unambiguous, (2) Rare Aircraft's PL/CO policy, which contains a $100,000 per person sublimit, does not comply with the $1,000,000 minimum PL/CO-insurance provision, (3) Rare Aircraft's non-compliance constitutes a default under the terms of the FBO agreement, (4) because Rare Aircraft failed to cure its default within 30 days of

receiving notice, the city was entitled to terminate the FBO agreement, and (5) Rare Aircraft was not entitled to exercise its option to renew due to its default. Accordingly, we reverse and remand for entry of judgment in favor of the city consistent with this opinion. Because we reverse based on Rare Aircraft's failure to comply with the minimum PL/CO-insurance provision, we do not reach the city's argument that Rare Aircraft's use of city property that is not included in the FBO agreement constitutes a material breach of the agreement.

Reversed and remanded.

Dated: _____

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The Honorable Michelle A. Larkin
Minnesota Court of Appeals