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District Court of Appeal of Florida, First District.

Laura IVESTER, Appellant,

v.

PARKWAY REGIONAL & SPECIALTY RISK,

Appellees.

No. 1D08-1520.

Nov. 21, 2003.

Nov. 26, 2008.

Background: Claimant appealed order of Judge of Compensation Claims (JCC), Alan M. Kuker, enforcing mediation settlement agreement.

Holding: The District Court of Appeal held that agreement was contingent on approval of a Medicare Set-Aside Agreement (MSA) by the Centers for Medicare & Medicaid Services (CMS), and, thus, absent such approval, claimant could void settlement.

Reversed and remanded.

West Headnotes

[1] Workers' Compensation 413  **1130**

413 Workers' Compensation


413XV Agreements as to Compensation; Compromise, Settlement, and Release

413XV(B) Construction, Operation, and Enforcement

413k1129 Operation and Effect in General

Cases

413k1130 k. In General. **Most Cited**

Workers' Compensation 413  **1141**

413 Workers' Compensation

413XV Agreements as to Compensation; Compromise, Settlement, and Release

413XV(B) Construction, Operation, and Enforcement

413k1141 k. Enforcement. **Most Cited**

Cases

Mediation settlement agreement between workers' compensation claimant and employer/carrier (E/C) was contingent on approval of a Medicare Set-Aside Agreement (MSA) by the Centers for Medicare & Medicaid Services (CMS), and, thus, absent CMS approval of MSA, claimant could void settlement.

[2] Appeal and Error 30  **893(1)**

30 Appeal and Error

30XVI Review

30XVI(F) Trial De Novo

30k892 Trial De Novo


30k893 Cases Triable in Appellate

Court

30k893(1) k. In General. **Most**

Cited Cases

An appellate court reviews a settlement agreement de novo.

[3] Evidence 157  **448**

157 Evidence

157XI Parol or Extrinsic Evidence Affecting Writings

157XI(D) Construction or Application of Language of Written Instrument

157k448 k. Grounds for Admission of Extrinsic Evidence. **Most Cited Cases**

A court may look beyond the language of a contract only when the document's terms are ambiguous.

[4] Appeal and Error 30  **893(1)**

30 Appeal and Error

30XVI Review

30XVI(F) Trial De Novo

30k892 Trial De Novo

30k893 Cases Triable in Appellate

Court

30k893(1) k. In General. Most

Cited Cases

Whether an agreement is ambiguous is a question of law, reviewed de novo.

An appeal from the Judge of Compensation Claims. Alan M. Kuker, Judge.

Mark L. Zientz of Law Offices of Mark L. Zientz, P.A., Miami, for Appellant.

Jack R. Simmons of Barnes & Simmons, P.A., Miami Lakes, for Appellees.

PER CURIAM.

*1 [1] Claimant appeals an order of the Judge of Compensation Claims (JCC) enforcing a mediation settlement agreement. Claimant argues that the agreement was contingent on approval of a Medicare Set-Aside Agreement (MSA) by the Centers for Medicare & Medicaid Services (CMS), and because no such approval occurred, Claimant could void the settlement. For the reasons explained below, we agree, and reverse.

The parties entered into a mediation agreement on March 26, 2007. At that time, Claimant was receiving social security disability benefits (SSD). A provision in the agreement stated:

This Agreement is contingent on CMS Approval of the MSA amount recommended by Gould & Lamb, as attached. If such MSA is not approved by CMS, then either Claimant or E/C can void this agreement.

Shortly after the agreement was signed, the Employer/Carrier (E/C) was advised by Gould & Lamb that, although Claimant was receiving SSD, she was not yet a Medicare beneficiary, and was not expected to be within thirty months. Gould & Lamb further advised that, under these circumstances, because the settlement was for less than \$250,000.00,

CMS approval of the MSA was unnecessary and the agency would not consider the matter at all. Based on this information, the E/C declined to submit the MSA for approval, informed Claimant's attorney of this development, and forwarded the final settlement and release documents for Claimant's signature.

Claimant refused to sign the documents because the contingency was not satisfied, and the E/C moved to enforce the settlement agreement. A final hearing was held on March 5, 2008, nearly one year after the mediation agreement was signed. Claimant's attorney represented to the JCC that her client was approximately one month away from becoming a Medicare beneficiary, and she was concerned that she would need approval of the MSA at that time, thus, underscoring the importance of the contingency.

Ultimately, the JCC agreed with the E/C's argument, and found the parties' intent concerning CMS approval of the MSA "was to avoid [C]laimant being responsible for an additional amount."The JCC found no set aside was necessary because the settlement didn't meet the \$250,000.00 threshold. Based on these findings, the JCC found the parties' intent was satisfied and entered an order enforcing the agreement.

[2][3][4] The only evidence on the issue of the parties' intent is the settlement agreement itself, which we review de novo. See *Munroe v. U.S. Food Serv.*, 985 So.2d 654 (Fla. 1st DCA 2008). A court may look beyond the language of a contract only when the document's terms are ambiguous. See *Churchville v. GACS, Inc.*, 973 So.2d 1212, 1215 (Fla. 1st DCA 2008). Whether an agreement is ambiguous is a question of law, reviewed de novo. *Id.*

Here, there is nothing ambiguous about the contingency provision: If there is no CMS approval, whatever the reason, Claimant can void the agreement. See also *Quinlan v. Ross Stores*, 932 So.2d 428, 429 (Fla. 1st DCA 2006) (upholding the JCC's finding that a final and enforceable agreement was

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never made where the parties intended finality of their settlement agreement to hinge, in part, on approval of the set-aside amount by CMS, and, because claimant died before this could happen, the contingency was not satisfied); *Munroe*, 985 So.2d at 655 (holding that conditioning a contract upon a party's approval shows a binding contract has not yet been formed).

*2 Based on the plain language of the agreement, Claimant could void the settlement because the contingency of CMS approval of the MSA did not occur. The JCC's order enforcing the agreement is REVERSED and REMANDED for proceedings consistent with this opinion.

BARFIELD, DAVIS, and HAWKES, JJ., concur.

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