

DISTRICT OF COLUMBIA COURT OF APPEALS

Nos. 11-CV-938 & 11-CV-1275

UNOCAL CORPORATION, APPELLANT,

v.

CAB-990-08

eLAWFORUM CORPORATION, APPELLEE.

Appeals from the Superior Court of the District of Columbia
Civil Division

(Hon. Alfred S. Irving, Jr., and Hon. Ronna L. Beck, Trial Judges)

(Argued May 22, 2012

Decided August 30, 2012)

Before BLACKBURNE-RIGSBY and BECKWITH, *Associate Judges*, and KING, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

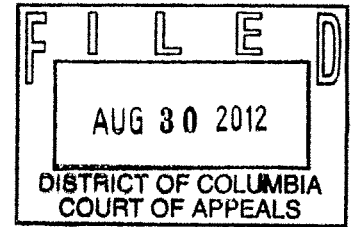
PER CURIAM: Appellant Unocal Corporation (“Unocal”) challenges the trial court’s award of summary judgment in favor of appellee eLawForum Corporation (“eLawForum”). Unocal claims that the trial court erred in awarding summary judgment where there were unresolved issues of material fact as to eLawForum’s breach of contract claims. We affirm.

I.

In January 2004, Unocal and eLawForum entered into a written contract (“Services Agreement”) pursuant to which eLawForum would assist Unocal in locating and retaining an outside law firm to handle its environmental legal matters at a favorable cost.¹ Section 2(b) of the Services Agreement addressed the payment due to eLawForum for its services to Unocal:

¹ The agreement explicitly identified the services to be rendered by eLawForum, including “[retention of] highly qualified outside counsel[,]” “reduc[tion] of legal service cost[,]” and “legal service cost certainty upfront through an all-inclusive fixed fee that shifts excess legal service cost risk to counsel[.]”

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For each retention of outside counsel under this Agreement, [Unocal] will pay eLawForum a fee (the "Fee") equal to 25% of the difference ("Cost Savings") between the amount the Company would spend under its outside counsel fee structures as calculated through the eLawForum Process (the "Benchmark"), and the fixed-fee proposal accepted by [Unocal]. The payment schedule for the Fee shall be based on the term of the agreement [Unocal] enters into with outside counsel. The Fee shall be payable in installments during such term commencing when outside counsel is selected (the "Selection Date") and on each anniversary of the Selection Date. The installments will be in amounts proportionate to the Cost Savings projected for the coming year under the agreement between the Company and outside counsel. The Fee is eLawForum's sole fee for any retentions under this agreement.

On August 17, 2004, following a competitive search by eLawForum, the Washington firm of Howrey, Simon, Arnold & White, LLP ("Howrey") was retained for Unocal at a reduced rate through its arrangement with eLawForum.

Following entry into a written agreement with Howrey ("Howrey Agreement"), assigning 200 environmental law matters to Howrey for resolution, eLawForum submitted an invoice to Unocal for the first installment of its fee. Unocal's General Counsel, David Brady, sent a memorandum to eLawForum disputing the payment amount cited in the invoice, which led to a meeting between the parties to resolve the disagreement. As a result of the meeting, the two parties composed an additional letter agreement ("Letter Agreement"), which reduced the Benchmark amount in accordance with Unocal's wishes and specifically addressed the way in which the installment payment amounts were calculated, accommodating any "holdbacks and holdback releases for the Unocal Environmental Litigation Deal . . . with Howrey Simon." The spreadsheet appended to the Letter Agreement detailed the installment payment amounts, including hypothetical numbers "where actual numbers are to be supplied in calculating future payments to eLawForum."² In accordance with the modified agreement, a new invoice

² In a December 2005 email, eLawForum appended what it claimed was an addendum to the 2004 Services Agreement, replacing language in section 2(b) of the contract, concerning fees due to eLawForum, with a specific calculus stating that "the Fee shall be payable in five (5) equal installments during such term commencing when outside counsel is selected[.]" Appellant challenges the legitimacy of this addendum, which is neither dated nor signed by the parties, and we need not consider its substance or legitimacy to make our determination in this case.

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was sent to Unocal reflecting the reduced Benchmark and Unocal paid the first two installments to eLawForum in August 2004 and August 2005, respectively, for a total paid sum of \$4,610,868. Unocal was purchased by Chevron Corporation and, shortly after making the second payment in August 2005, Unocal terminated the Howrey Agreement,³ claiming that upon termination, eLawForum was no longer entitled to any additional payment as no further cost savings would result.

eLawForum filed a complaint against Unocal on February 8, 2008, alleging that Unocal breached its contractual obligations by failing to pay the full fee to eLawForum, and requesting judgment be entered in eLawForum's favor in the amount of seven million dollars. In response, Unocal filed a motion to dismiss for lack of personal jurisdiction, pursuant to Super. Ct. Civ. R. 12(b). The court denied the motion on grounds that sufficient contacts existed to establish personal jurisdiction pursuant to the District of Columbia's long-arm statute, D.C. Code §§ 13-423 (a)(1) & (b) (2001), and because Unocal "[did] not contradict any of the facts" supporting eLawForum's claim of jurisdiction.⁴ The parties then filed cross-motions for summary judgment, both claiming

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³ Unocal terminated the Howrey Agreement pursuant to the Agreement's termination clause, which granted Unocal "the right to terminate [the agreement] or any Services pursuant thereto at any time with or without cause, upon notice to [Howrey]. If Unocal elects to terminate [Howrey], [Howrey] shall be entitled to compensation for the Services performed up to the date of termination." Unocal then directly hired Howrey, without the involvement of eLawForum, more than a year later.

⁴ We can quickly dispose of Unocal's threshold argument that the trial court erred in denying its Super. Ct. Civ. R. 12 (b)(2) motion to dismiss for lack of personal jurisdiction. eLawForum had the burden of establishing personal jurisdiction over Unocal and did so pursuant to the District's long-arm statute. *See* D.C. Code § 13-423 (a)(1); *Holder v. Haarmann & Reimer Corp.*, 779 A.2d 264, 269 (D.C. 2001). eLawForum's principal place of business was located in the District of Columbia and Unocal's contractual relationship with eLawForum placed Unocal on notice that it might be haled into court in this jurisdiction. *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 327 (D.C. 2000) (en banc). The foreseeability of litigation in this jurisdiction is furthered by the fact that the forum selection clause of the Services Agreement identified the District as a venue for any future legal disputes arising from the agreement. Finally, the District has a tangible interest in providing a forum for its resident company, eLawForum, and Unocal fails to identify any way in which litigation in the District would present any undue burden. *See Shoppers Food Warehouse, supra*, 746 A.2d at 328; *Fisher v. Bander*, 519 A.2d 162, 165 (D.C. 1986) (finding personal jurisdiction valid where the choice of forum does not unduly burden the party seeking to defeat

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that the contract was unambiguous. Following a motions hearing, the trial court found eLawForum's interpretation of the contract to be "the stronger and the more logical argument" and granted eLawForum's motion for summary judgment, awarding eLawForum the seven million dollar balance of the total fee agreed upon in the Letter Agreement. This appeal followed.

II.

We review *de novo* the trial court's grant of summary judgment to eLawForum, mindful of our well-settled law affirming summary judgment where there is no "genuine issue of material fact." Super. Ct. Civ. R. 56 (c); *Glekas v. Boss & Phelps, Inc.*, 437 A.2d 584, 586 (D.C. 1981). In this context, we find no genuine issues of material fact where the plain language of the agreement is unambiguous, leaving "no question as to the parties' intent." *Gryce v. Lavine*, 675 A.2d 67, 69 (D.C. 1996); *see also Debnam v. Crane Co.*, 976 A.2d 193, 197 (D.C. 2009) (stating that "we examine the document on its face, giving the language used its plain meaning" when determining ambiguity). A contract is conversely defined as ambiguous where its language is "reasonably susceptible of different constructions or interpretations, or of two or more different meanings." *Nat'l Trade Prods. v. Info. Dev. Corp.*, 728 A.2d 106, 109 (D.C. 1999). However, a contract is not ambiguous simply "because the parties disagree over its meaning and [we] are enjoined not to create ambiguity where none exists." *Tillery v. District of Columbia Contract Appeals Bd.*, 912 A.2d 1169, 1177 (D.C. 2006) (citations and internal quotation marks omitted).

Unocal argues that the contract suffers several problematic ambiguities, with central emphasis on whether the fee due to eLawForum was fixed or dependent upon actual cost savings. However, reading the language of the agreement in its entirety, *Debnam*, *supra*, 976 A.2d at 197, as "a reasonable person in the position of the parties[.]" *Psaromatis v. English Holdings I, LLC*, 944 A.2d 473, 481 (D.C. 2008), we cannot agree and instead conclude that the contract's meaning is clear without the aid of extrinsic evidence. The Services Agreement explicitly states that a fee was due to eLawForum for "each retention of outside counsel," and provides a specific calculus underlying the amount of the fixed fee in the Letter Agreement. In contrast, flexibility is given to the amounts of the individual installment payments, which fluctuate in accordance with specific figures identified in the Letter Agreement, accounting for any unanticipated actual costs that might decrease the cost savings enjoyed by Unocal. However, changes to the amount of individual installment payments do not reflect an overall change in the total fee due to eLawForum, which was earned on the date that Unocal retained Howrey

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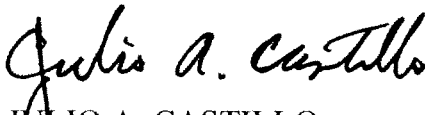
jurisdiction). Therefore, Unocal's motion to dismiss for lack of personal jurisdiction was properly denied.

as outside counsel by way of eLawForum's services. This interpretation is soundly supported by the Services Agreement, which enumerates eLawForum's promised actions which were, by their nature, rendered at the time of counsel's retention at a fixed, agreed upon rate. Unocal's alternative argument that it owed eLawForum no fee upon termination of Unocal's independent contract with Howrey is unpersuasive. The Services and Letter Agreements indicate only that a lump sum was due to eLawForum upon initial retention of outside counsel, regardless of premature termination of the original five-year term of the underlying retention contract. Unocal's obligation to pay eLawForum this agreed upon fee is not altered simply because the agreement allowed for the payments to be made in installments.

Unocal offers alternative grounds for contractual ambiguity, arguing that the Services and Letter Agreements, which lacked a termination clause, should be construed alongside the Howrey Agreement, particularly the at-will termination clause. We find this argument untenable for several reasons. First, eLawForum is not a signatory to the Howrey Agreement, which explicitly served only to establish an attorney-client relationship between Unocal and Howrey. Further, the absence of an explicit termination clause from the Services and Letter Agreements does not demonstrate intent to incorporate the at-will termination provision of the Howrey Agreement, particularly since eLawForum's fee was due upon retention of outside counsel and such a provision would be unnecessary. Unocal additionally argues that, even where the termination clause was not incorporated, the termination of the Howrey Agreement precluded Unocal from realizing any cost savings from Howrey's services, and ended the justification for payment of a fee to eLawForum. Unocal's termination of the independent contract with Howrey did not free Unocal of its obligation to pay a fee for the previously rendered services it received from eLawForum. We are not persuaded by Unocal's alternative interpretation of the agreement and see no basis for concluding that there is ambiguity in the contractual language. Summary judgment was therefore properly granted to eLawForum.

Accordingly, it is ORDERED and ADJUDGED that the judgment on appeal is hereby AFFIRMED.

ENTERED BY DIRECTION OF THE COURT:


JULIO A. CASTILLO
Clerk of the Court

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