

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
THIRD DISTRICT  
JULY TERM, A.D. 1993

SCOTT A. FERRIS, etc., et al., \*\*

Appellants, \*\*

vs. \*\*

CASE NO. 92-2717

TELESAT CABLEVISION, INC., etc., \*\*

Appellee. \*\*

Opinion filed November 23, 1993.

An appeal from the Circuit Court for Dade County, David L. Tobin, Jr., Judge.

Scott A. Ferris, for appellants.

Hodgson, Russ, Andrews, Woods & Goodyear and Cormac C. Conahan and Larry Corman, for appellee.

Before NESBITT, BASKIN, and GERSTEN, JJ.

PER CURIAM.

Scott A. Ferris filed a class action against Telesat Cablevision, Inc. alleging breach of contract and fraud. The trial court dismissed the fraud claim and issued summary judgment in favor of the cable company on the breach of contract claim. We reverse the summary judgment, and affirm dismissal of the action for fraud.



In March 1983, Telesat entered into an agreement with Snapper Village Condominium Association in which Telesat provided basic cable service to residents of Snapper Village. For an additional fee, residents could receive premium channels such as HBO and Showtime.

In July 1989, Telesat and Snapper Village executed a second, extension agreement for "Tier 2" service that allowed for an additional fifteen channels. Residents requesting Tier 2 service, in addition to paying more, were required to lease a converter box. The complaint alleged that those residents who leased the converter box received a remote control unit at no extra cost.

When Ferris, a Snapper Village resident, subscribed to the basic and movie channel cable service in February 1987, he received a remote control unit. At that time he signed a converter/decoder lease agreement that acknowledged the receipt of one converter for which Ferris would be liable if it were damaged. Ferris gave Telesat a refundable deposit for the equipment. Telesat provided the remote control unit for no additional fee.

Ferris requested and received the Tier 2 service when the extension agreement went into effect in July 1989. The Tier 2 service contract did not indicate any charge for remote control rental or capability, and Ferris continued to use the remote control unit at no additional cost. Ten months later, on April 20, 1990, Telesat sent written notice to Snapper Village residents that, effective May 1, 1990, it was going to charge a \$3.00 per month fee to Tier 2 subscribers who were using a Telesat remote control.



Ferris returned Telesat's remote control unit to avoid paying the monthly fee for it. When Ferris replaced Telesat's remote control unit with his own commercially bought unit, he discovered that Telesat had discontinued his cable equipment's remote control capability. Ferris filed a class action suit, on behalf of himself and all residents of Snapper Village similarly situated, against Telesat for breach of contract and fraud, claiming that the new charge for the remote control unit was essentially a disguised service rate increase. Telesat moved to dismiss the complaint and moved for partial summary judgment as to the breach of contract issue. After a hearing, the trial court granted Telesat's summary judgment motion on the contract claim and dismissed the fraud count. The trial court then entered final judgment in Telesat's favor and awarded them attorneys' fees and costs.

Thus, the dispute in this case is whether the cable company breached its contract with Ferris either when it began charging a monthly fee for use of a remote control unit, or when it adjusted the cable signal converter to preclude the use of remote controls other than those provided by the cable company.

Rules of contract interpretation provide that where a contract is completely silent concerning a particular subject, the court should not, under the guise of construction, impose on the parties contractual rights and duties that they themselves omitted when they entered into the contract. Martin L. Robbins, M.D., P.A. v. I.R.E. Real Estate Fund, Ltd., 608 So. 2d 844 (Fla. 3d DCA 1992), review denied, 620 So. 2d 761 (Fla. 1993). Ordinarily,



construction of a contract is a question of law, provided that the language used is unambiguous and not subject to conflicting inferences. Quayside Assocs., Ltd. v. Harbour Club Villas Condominium Ass'n, 419 So. 2d 678 (Fla. 3d DCA 1982). If language used in a contract creates ambiguity, then extrinsic evidence is admissible to determine the intent of the parties and what reasonable interpretation should be given these ambiguous terms. Royal Dev. & Management Corp. v. Guardian 50/50 Fund V, Ltd., 583 So. 2d 403, 405 (Fla. 3d DCA 1991); Morton v. Morton, 307 So. 2d 835 (Fla. 3d DCA 1975), cert. denied, 324 So. 2d 90 (Fla. 1975). A phrase in a contract is ambiguous when it is uncertain of meaning and disputed. Laufer v. Norma Fashions, Inc., 418 So. 2d 437, 439 (Fla. 3d DCA 1982).

Applying this rule to the instant facts, the Telesat/Snapper Village contract promised to provide the use of certain cable transmission "equipment" and/or "service" to each subscriber for a monthly charge. It is unclear, however, what the terms "service" or "equipment" included. Where the terms of a written instrument are disputed and reasonably susceptible to more than one construction, this presents an issue of fact properly resolved by a jury and not by summary judgment. Quayside, 419 So. 2d at 679. Because the parties disagree as to what the terms "equipment" or "service" encompass, and the terms are reasonably susceptible of more than one meaning, it is proper to submit this question to be resolved by the trier of fact.

Furthermore, by initially providing Ferris with a remote control for several months without charging an additional fee for



its use, then later imposing a separate monthly charge for remote control, Telesat has introduced ambiguity concerning its intent under the Ferris/Telesat contract. The court may consider the course of dealing or conduct of the parties to determine the meaning of their written agreement. Oakwood Hills Co. v. Horacio Toledo, Inc., 599 So. 2d 1374, 1376 (Fla. 3d DCA), review denied, 609 So. 2d 40 (Fla. 1992). The trial court erred in deciding the breach of contract issue as a matter of law and ordering summary judgment in Telesat's favor.

Accordingly, we reverse the summary judgment against Ferris on breach of contract, and remand this issue to the trial court. We affirm dismissal of Ferris's attempted fraud class action, because Florida does not recognize fraud class actions arising from breach of contract. Lance v. Wade, 457 So. 2d 1008, 1009 (Fla. 1984).

Affirmed in part and reversed in part and remanded.