COURT OF APPEALS
DECISION
DATED AND FILED

March 24, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP2793 **Cir. Ct. No. 2013CV146**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

INVESTIGATION & RECOVERY ASSOCIATES, LLC,

PLAINTIFF-APPELLANT,

V.

CUMIS INSURANCE SOCIETY, INC.,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Dodge County: BRIAN A. PFITZINGER, Judge. *Affirmed*.

Before Kloppenburg, P.J., Sherman, and Blanchard, JJ.

¶1 PER CURIAM. Investigation & Recovery Associates, LLC (IRA, or the collection agency) appeals a summary judgment order that dismissed its action for breach of contract and related claims against CUMIS Insurance Society, Inc. (CUMIS, or the insurance company). The collection agency raises several

issues that revolve around its interpretation of two contractual clauses. As we will explain below, we reject the collection agency's interpretation of the contract language at issue, and therefore affirm without addressing the additional issues raised by the collection agency.

¶2 The interpretation of a contract presents a question of law subject to independent review by an appellate court. ***Ehlinger v. Hauser***, 2010 WI 54, ¶47, 325 Wis. 2d 287, 785 N.W.2d 328.

¶3 The parties' contract sets forth the terms by which the collection agency would provide the insurance company with debt collection services on several types of surety claims.

¶4 Paragraph 6 of the contract, entitled "COUNTER-CLAIMS & THIRD PARTY CLAIMS," provides that:

> [IRA] assumes in good faith that the debts [CUMIS] asks [IRA] to collect are valid and not in dispute. If a counterclaim or third party complaint is filed against [CUMIS] or [IRA] as [CUMIS]'s representative in a collection case, [IRA] would request that [CUMIS] retain its own counsel or if [CUMIS] prefers, [IRA] would negotiate an hourly fee with [CUMIS] for the defense of those matters.

¶5 The collection agency interprets the first sentence of this provision to be "a warranty/representation by CUMIS that the debt it assigned to IRA was legally valid—that if IRA accepted a given debt for collection as instructed, there was no legal impediment to collecting the debt in full, i.e., from both the collateral and borrower." Based on that interpretation, the collection agency argues that the insurance company breached this provision by assigning for collection certain "Collateral and Skip" accounts in which the debt could be pursued only against the collateral, because the borrower had paid a premium to insure against personal

liability in the case of default, and that the provision also changed a directive regarding which borrowers of already-assigned accounts were immune from personal liability.

¶6 We reject the collection agency's interpretation of Paragraph 6 for two reasons. First, Paragraph 6 does not include any explicit language about creating a warranty that assigned debts would be collectible in full. Rather, it addresses who would bear the cost of defending litigation about the validity of a debt raised in a counterclaim or third party complaint. Second, even if we were to assume for the sake of argument that the terms of the provision could be construed to create a limited warranty, the term "valid debt" plainly refers to a debt that is in fact owed, not the manner in which it could be collected. There is nothing in paragraph 6 that remotely suggests that debts that are collectible only against collateral are not valid. Therefore, Paragraph 6 has no bearing either on the assignment to the collection agency of debts that can only be collected against collateral or on the insurance company's alleged change in directive regarding which borrowers were immune.

¶7 Paragraph 9 of the contract, entitled "CANCELED ACCOUNTS," provides that:

> [IRA]'s normal fee applies to the amount referred for collection. In contingent fee cases, [IRA] profits by collecting accounts and not canceling them. Sometimes, because of the legal process, those who owe money that [CUMIS] has asked [IRA] to collect from, will attempt to negotiate with [CUMIS] and ask [CUMIS] to have [IRA] cancel the account. That most certainly is [CUMIS]'s prerogative, however, [IRA]'s fee will be due. If [IRA] finds that the account has been paid prior to assignment and is reported to [IRA] within five (5) business days of placement, [IRA] will be entitled to a fee of 10% of balance due, but not to exceed $250.00. [IRA] will be entitled to

> full commission on all accounts reported as paid … five (5) or more business days after placement.

¶8 The collection agency contends that Paragraph 9 applies to all accounts that the insurance company assigns to the collection agency but later cancels, for whatever reason. Based upon that interpretation, the collection agency argues that the insurance company breached the contract when it refused to pay the collection agency commissions for accounts that the insurance company cancelled: (1) because the insurance company had inadvertently sent the accounts to more than one collection agency; or (2) because the accounts involved Puerto Rican borrowers against whom the insurance company had made a business decision not to pursue collection; or (3) because the insurance company had either mistakenly asked the collection agency to collect from immune borrowers or, pursuant to its changed directive, had classified additional borrowers as immune from personal liability, when either the insurance company or the credit union it was insuring had already collected the collateral prior to assigning the debt, or the collateral could not be found or was not worth repossessing.

¶9 The circuit court ruled that Paragraph 9 applies only to accounts where CUMIS has resolved the debt on its own through direct negotiation with the borrower. The collection agency asserts that the insurance company's interpretation "simply makes no business sense" because it fails to address other situations in which the collection agency would be deprived of its opportunity to earn its commission in whole or in part. However, the issue is not whether the provision makes business sense, or whether some other provision would have made more sense from the collection agency's point of view. The issue is whether the plain language of Paragraph 9 demonstrates an agreement between the parties allowing the collection agency to collect commissions on accounts that are

cancelled for any reason. We agree with the circuit court that it does not. The plain language of Paragraph 9 addresses only those accounts that the insurance company has cancelled as the result of direct negotiation with the borrower. The parties could have, but did not, address additional scenarios for recovering commissions on accounts cancelled for other reasons.

¶10 We conclude that our interpretations of Paragraph 6 and Paragraph 9 are dispositive of the appeal. Accordingly, we do not address additional arguments raised by the collection agency.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2013-14).