STATE OF MICHIGAN

COURT OF APPEALS

AHMED AL-HAJJAJ,

Plaintiff/Counterdefendant-Appellee,

v

HARTFORD ACCIDENT AND INDEMNITY COMPANY,

Defendant/Counterplaintiff/Third-Party Plaintiff-Appellant,

and

AHMED ODAH SALEM ALDERAWI, SAFECO INSURANCE COMPANY OF ILLINOIS, SAM SAEIDI, GOLDEN INSURANCE AGENCY, LLC, and GOLDEN INSURANCE AGENCY OF OHIO, LLC,

Defendants,

and

PRIME TRANSPORTATION SERVICE, LLC, and BATOL ALYUNISI,

Third-Party Defendants-Appellees.

FOR PUBLICATION
January 26, 2023
9:20 a.m.

No. 359291
Wayne Circuit Court
LC No. 20-007521-NI

Before: HOOD, P.J., and SWARTZLE and REDFORD, JJ.

SWARTZLE, J.

In Michigan, an independent-insurance agent is ordinarily an agent of the insured, not the insurer. The key question in this interlocutory appeal is whether our Legislature abrogated this

principle of Michigan's common law when it amended the Insurance Code, MCL 500.100 *et seq*., in 2018.

A fair reading of the amendments confirms that, while our Legislature did arguably abrogate the common law, it did so in a narrow, limited way not relevant to most insurance transactions, including this one. Given this, and given the standard language used in the contract between the independent-insurance agent and insurer here, the trial court erred in concluding that the independent-insurance agent was the agent of the insurer in this instance and denying summary disposition on that basis. We reverse and remand for further proceedings consistent with this opinion.

I. BACKGROUND

The facts necessary for resolution of this interlocutory appeal are few. Ahmed Al-Hajjaj is the co-owner of Prime Transportation Service, LLC, and he sought insurance coverage for Prime's vehicles from Golden Insurance Agency, LLC. Al-Hajjaj talked with Sam Saeidi, a principal and insurance agent of Golden. For purposes of this appeal, there is no question that Golden is an independent-insurance agency, and it places policies for over ten different insurers, including Hartford Accident and Indemnity Company. Saeidi recommended that Al-Hajjaj purchase a policy for his company through Hartford, and Al-Hajjaj agreed to do so.

The policy application that Saeidi filled out with Al-Hajjaj listed "Prime LLC" as the company, as opposed to the full name, "Prime Transportation Service, LLC." More critically, the application incorrectly indicated that the company was a physical-therapy office that did not transport patients, when in fact the company provided medical-transportation services for patients. There is a factual dispute about whether Saeidi or Al-Hajjaj was at fault for these errors, but for purposes of this interlocutory appeal, the dispute is immaterial. Based on the application it received from Golden, Hartford issued an insurance policy to "Prime LLC."

Al-Hajjaj was subsequently injured in a vehicle collision, and he sought personal injury protection benefits from Hartford. As part of its coverage investigation, Hartford discovered the errors in the application. The insurance company rescinded the policy based on what it characterized as material misrepresentations in the application, and Al-Hajjaj sued Hartford, Golden, and others.

After the parties engaged in discovery, Hartford moved for summary disposition under MCR 2.116(C)(10), arguing that the errors in the application were material because the insurer would not have issued the policy if it had known about them. As for who was at fault for the inaccurate information in the application—Al-Hajjaj or Saeidi—the dispute was irrelevant according to Hartford because, even assuming that the errors originated with Saeidi, his errors as the agent must be imputed to Al-Hajjaj as the principal.

Al-Hajjaj opposed the motion on two primary grounds. First, plaintiff argued that Golden, the insurance agent, was a contractual agent of Hartford, the insurer. Golden had a contract with Hartford that gave the agency the authority to "solicit, quote and bind insurance" for certain lines of insurance offered by Hartford. The insurer could cancel any policy that Golden placed with the insurance company. The contract required Golden "[t]o provide all usual and customary services

of an insurance agent on all insurance policies you [Golden] place with us [Hartford], except as otherwise mutually agreed to," and Golden was specifically required "[n]ot to exceed the scope of your authority set forth herein." As a further limitation on the relationship, the agreement provided:

> 2.2 **Limitations**. You [Golden] have the authority and power to act as our agent only to the extent expressly granted in this Agreement and no further authority or power is implied. You are an independent contractor and not an employee of ours for any purpose, and your right to represent other companies is not restricted by this Agreement. Any authority granted hereunder to solicit, quote or bind insurance products on our behalf is non-exclusive, unless we agree otherwise in writing.

Because Golden was Hartford's agent, according to Al-Hajjaj, Golden's purported failure to correct misinformation in the application had to be subscribed to Hartford.

Second, and separate from the contract, Al-Hajjaj argued that our Legislature abrogated Michigan's common-law principle that an independent-insurance agent was an agent of the insured, not the insurer, for purposes of applying for and placing insurance policies. Specifically, with 2018 PA 449, our Legislature added two new definitions to Chapter 12 (Agents, Solicitors, Adjusters, and Counselors) of the Insurance Code:

> (b) "Agent of the insured" means an insurance producer who is not an appointed insurance producer of the insurer with which the insurance policy is placed. An agent of the insured is treated as representing the insured or the insured's beneficiary and not the insurer.
>
> (c) "Agent of the insurer" means an insurance producer who sells, solicits, or negotiates an application for insurance as a representative of the insurer and not the insured or the insured's beneficiary. [MCL 500.1201.]

According to Al-Hajjaj, Golden was an agent of Hartford because it was appointed as an "insurance producer" of Hartford, i.e., Golden had an agreement to place Hartford insurance policies.

The trial court denied Hartford's motion for summary disposition, concluding that the contractual relationship between Hartford and Golden meant that the latter was the agent of the former and not reaching the alternative statutory argument. Hartford applied for interlocutory leave to appeal, which this Court granted. *Al-Hajjaj v Hartford Accident & Indemnity Co*, unpublished order of the Court of Appeals, entered March 3, 2022 (Docket No. 359291). The parties submitted their briefs, and this Court heard oral argument in December 2022.

II. ANALYSIS

In this interlocutory appeal, we take up questions of statutory and contractual interpretation through the lens of a motion for summary disposition under MCR 2.116(C)(10). "We review de novo a trial court's decision to grant or deny a motion for summary disposition." *Sherman v City of St Joseph*, 332 Mich App 626, 632; 957 NW2d 838 (2020) (cleaned up). When deciding a motion for summary disposition under MCR 2.116(C)(10), we consider the evidence submitted in a light most favorable to the nonmoving party. *Payne v Payne*, 338 Mich App 265, 274; 979

NW2d 706 (2021). "Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Sherman*, 332 Mich App at 632.

Similarly, statutory interpretation is a question of law which we review de novo. *Sherman*, 332 Mich App at 632. "With respect to statutory interpretation, this Court is required to give effect to the Legislature's intent. The Legislature is presumed to intend the meaning clearly expressed, and this Court must give effect to the plain, ordinary, or generally accepted meaning of the Legislature's terms." *D'Agostini Land Co, LLC v Dep't of Treasury*, 322 Mich App 545, 554; 912 NW2d 593 (2018) (cleaned up). Similar principles apply to the interpretation of a contract. *Singer v American States Ins*, 245 Mich App 370, 374; 631 NW2d 34 (2001).

The parties dispute several matters, including whether Al-Hajjaj or Saeidi was at fault for the errors in the application, as well as whether those errors were material misrepresentations on which rescission could hinge. These questions are beyond the scope of this interlocutory appeal, however, and we instead keep our focus on two questions of law: (A) whether our Legislature abrogated the common-law principle regarding independent-insurance agents; and, if not, (B) whether the contract between Hartford and Golden made the latter the agent of the former for purposes of any errors in the application.

A. ABROGATION OF THE COMMON LAW

The record confirms that Golden is an independent-insurance agency, not a captive one, and it offers to place policies from at least ten different insurance companies. It has long been the common law of this state that, "[w]hen an insurance policy 'is facilitated by an independent insurance agent or broker, the independent insurance agent or broker is considered an agent of the insured rather than an agent of the insurer.' " *Genesee Food Servs, Inc v Meadowbrook, Inc*, 279 Mich App 649, 654; 760 NW2d 259 (2008) (quoting *West American Ins Co v Meridian Mut Ins Co*, 230 Mich App 305, 310; 583 NW2d 548 (1998)); see also *Johnson v USA Underwriters*, 328 Mich App 223, 237; 936 NW2d 834 (2019); *Zaremba Equip, Inc v Harco Nat'l Ins Co*, 280 Mich App 16, 37-38; 761 NW2d 151 (2008); *Mate v Wolverine Mut Ins Co*, 233 Mich App 14, 21; 592 NW2d 379 (1998); *Harwood v Auto-Owners Ins Co*, 211 Mich App 249, 254; 535 NW2d 207 (1995); *Mayer v Auto-Owners Ins Co*, 127 Mich App 23, 26; 338 NW2d 407 (1983); *New Hamilton Liquor Store, Inc v AmGuard Ins Co*, 474 F Supp 3d 922, 927 n 1 (ED Mich, 2020); 2 Restatement Agency, 2d, § 376, comment *a*, p 173.

This principle makes sense in the context of an independent-insurance agent, who can offer a single customer an array of options from any of the insurers with which the agent has contracted. A customer can approach an independent-insurance agent and expect to comparison shop between all the available insurers, unlike when a customer goes to a captive-insurance agent, who has but one insurer to offer. An independent-insurance agent who had to balance fiduciary duties of loyalty between competing insurers would effectively be frozen into inaction by a web of crossing and conflicting duties and interests. Instead, in recognition of the materially different circumstances faced by a customer who deals with an independent-insurance agent versus a captive-insurance agent, our courts have concluded that an independent-insurance agent owes its primary fiduciary of loyalty to the customer.

Al-Hajjaj argues that this principle of common law was abrogated by our Legislature. Under our Constitution of 1963, common-law principles remain in effect "until they expire by their own limitations, or are changed, amended or repealed." Const 1963 art 3, § 7; see also *Price v High Pointe Oil Co, Inc*, 493 Mich 238, 258-259; 828 NW2d 660 (2013). With respect to questions involving a statute, this means that this Court must read the statutory language "in light of the common law except to the extent that the Legislature has abrogated or modified it." *People v Mullins*, 322 Mich App 151, 162; 911 NW2d 201 (2017). Al-Hajjaj points to our Legislature's enactment of 2018 PA 449 and argues that this public act fundamentally changed agency law in Michigan.

"This Court does not lightly infer that our Legislature intended to abrogate or modify the common law. Rather, this Court presumes that the common law remains intact, even when the Legislature enacts a statute on the same or a similar subject." *Id.* at 163. Our Legislature must "clearly indicate" the intent to abrogate or modify the common law. *Id.* As our Supreme Court has explained, "[T]he Legislature should speak in *no uncertain terms* when it exercises its authority to modify the common law." *Dawe v Dr Reuven Bar-Levav & Assocs, PC*, 485 Mich 20, 28; 780 NW2d 272 (2010) (emphasis added) (cleaned up).

A review of 2018 PA 449 confirms that our Legislature did arguably abrogate the common law, but with respect to only a narrow circumstance not relevant here. Prior to enactment of the new public act, MCL 500.1201(a) defined "agent" as "an insurance producer," and, in turn, subdivision (e) defined "insurance producer" as "a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance." Our Legislature expressly limited the scope of these definitions to "this chapter" of the Insurance Code, i.e., Chapter 12 (Agents, Solicitors, Adjusters, and Counselors). MCL 500.1201 (2017). Cf *Ins Institute of Mich v Comm'r*, 486 Mich 370, 387; 785 NW2d 67 (2010) (recognizing that the Insurance Code is organized into separate chapters).[1]

With 2018 PA 449, our Legislature did not alter either of these definitions, though it moved the definition of "insurance producer" to subdivision (g). It did, however, add two new definitions involving an agent:

[1] The careful reader will observe that our Michigan Compiled Laws use "chapter" in two different contexts. First, the Compiled Laws are organized as "Chapters"—as examples, our Constitution of 1963 is listed as "Chapter 1", the Election Law is listed as "Chapter 168", and our Insurance Code is listed as "Chapter 500". Second, many acts within the Compiled Laws are themselves divided into chapters, such as the Insurance Code here. See, e.g., Chapter 1, "Scope of Code"; Chapter 6, "Kinds of Insurance; Reinsurance; Limit of Risk". As used in the Insurance Code, the term "chapter" refers to the chapters nested within the Code and not the primary chapters dividing the Compiled Laws. This is clear when one considers, for example, the term "This chapter" in MCL 500.1901, which logically makes sense only if the term refers to Chapter 19 nested within the Insurance Code; the term becomes nonsensical if one reads it as a reference to Chapter 500 of the Compiled Laws, i.e., the Insurance Code as a whole. This point becomes even more clear when one considers that references in the Michigan Compiled Laws to our Constitution are in the form of "the state constitution of 1963" and not "Chapter 1".

> (b) "Agent of the insured" means an insurance producer who is not an appointed insurance producer of the insurer with which the insurance policy is placed. An agent of the insured is treated as representing the insured or the insured's beneficiary and not the insurer.
>
> (c) "Agent of the insurer" means an insurance producer who sells, solicits, or negotiates an application for insurance as a representative of the insurer and not the insured or the insured's beneficiary. [MCL 500.1201, as amended by 2018 PA 449.]

As before, our Legislature specifically limited the reach of these definitions to Chapter 12 of the Insurance Code. MCL 500.1201. Applying these new statutory definitions, Al-Hajjaj argues that Hartford contractually appointed Golden as its agent and, therefore, under the amended version of MCL 500.1201, Golden acted as an "[a]gent of the insurer" (i.e., Hartford) and not as an "[a]gent of the insured" (i.e., Al-Hajjaj).

Al-Hajjaj reads this new statutory language too broadly. As already noted, our Legislature did not extend the reach of these definitions beyond Chapter 12 of the Insurance Code. There are several instances where our Legislature did extend statutory definitions to the entire Insurance Code, see e.g., MCL 500.102 (setting forth definitions that apply throughout "this act"); MCL 500.106 (same); see also MCL 500.100 (indicating that the "act" is synonymous with the "insurance code of 1956"), and our Legislature's decision *not* to do so with respect to MCL 500.1201 must be respected by our Judiciary, *Spalding v Swiacki*, 338 Mich App 126, 138; 979 NW2d 338 (2021). Had our Legislature intended to abrogate *in toto* the common-law principle with respect to independent agents, one would have expected it to apply the new definitions to the entire Insurance Code, not just a single chapter.

Moreover, these new definitions are best read as our Legislature's creation of two statutory "terms of art" applicable to a specific factual context. To see this, consider the fact that, beyond the definitions section, "agent of the insured" is used in only one other section in Chapter 12 (MCL 500.1211) and "agent of the insurer" is used in only two sections (MCL 500.1208a and MCL 500.1211). MCL 500.1208a(1) requires that "[a]n insurance producer shall not act as the agent of the insurer unless the insurance producer becomes an appointed agent of that insurer." This requirement preexisted the amendments in 2018, and it simply requires that there be an appointment before an insurance producer can do certain things for an insurer.

The substantive changes involving the new definitions in 2018 PA 449 are found in subsection (2) of MCL 500.1211. There, our Legislature added the following:

> (2) An *agent of the insured* may obtain coverage for a consumer through an *agent of the insurer* if all of the following apply:
>
> (A) The *agent of the insured* is licensed to act as an insurance producer in accordance with this chapter.
>
> (B) The *agent of the insured* has a relationship with the *agent of the insurer* under a written contract. The written contract under this subdivision must specify the extent of the *agent of the insured*'s authority to act and require the maintenance of

> an amount of professional liability insurance, commonly known as errors and omissions insurance.
>
> (C) The coverage being obtained is not a health insurance policy or a health maintenance contract. [MCL 500.1200(2) (emphasis added).]

A close reading confirms that the circumstance described in subsection (2) is a narrow, specific one—namely, where the consumer (insured) and insurance company (insurer) each have their own agent, and these two agents in turn have a written contractual relationship with each other. This arrangement is common in the wholesale-insurance sector, but the pre-2018 version of Chapter 12 made such agent-to-agent negotiations arguably unlawful. See MCL 500.1207(3) (pre-2018 PA 449) (prohibiting "an agent" from "reward[ing] or remunerate[ing] any person for . . . acting in any other manner as an agent").

When the insured and the insurer each have their own contractual agents, and those agents in turn have a contractual relationship with each other, it is not even clear to this Court that the common-law principle that an independent-insurance agent is the agent of the insured comes into play. To the extent that the principle might come into play in the circumstance set forth in MCL 500.1211(2), then our Legislature has abrogated that principle with its enactment of 2018 PA 449.

This abrogation is, however, neither complete nor broad. It is not complete, as it applies by its terms only to Chapter 12 of the Insurance Code, and specifically to the circumstance set forth in MCL 500.1211(2). It is not broad, as the circumstance in subsection (2) does not involve the mine-run of instances when a consumer works with an independent-insurance agent to compare various insurance policies and choose the one best for the consumer. In those mine-run of instances, there is only one agent—the independent-insurance agent. Simply put, "the statutory language . . . is not so comprehensive as to indicate that it is intended to completely abrogate the common law in this area." *Dawe*, 485 Mich at 31. If our Legislature intends to upend settled common law, then it must do so in more certain terms than those found in 2018 PA 449.

In sum, Al-Hajjaj correctly points out that our Legislature appears to have abrogated the common law when it enacted 2018 PA 449, though this is a Pyrric victory for him, as the abrogation is rather narrow and does not apply to the circumstance here, where Al-Hajjaj sought an insurance policy through Golden, an independent-insurance agent, and not through an agent-to-agent transaction. Accordingly, unless Golden and Hartford somehow contracted around the common-law principle, the principle would apply here. We turn next to this contractual question.

B. THE HARTFORD/GOLDEN CONTRACT

Hartford and Golden entered into an agency agreement, which covered Saeidi as a principal of Golden. By all accounts, this was a standard contract between an insurance company and an independent-insurance agent. The contract authorized Golden to "solicit, quote and bind insurance" on behalf of Hartford, but the contract also materially limited Golden's authority. Moreover, the contract recognized that Golden was an independent-insurance agent that had the right to select and place insurance policies with other insurers.

Clearly, there was an agency relationship between Hartford as insurer and Golden as independent-insurance agent. Hartford does not dispute this, but insists that the relationship was

a limited one, fully in-line with Michigan's common-law principle that an independent-insurance agent is an agent of the insured with respect to selecting and placing an application for insurance. Al-Hajjaj disagrees, arguing that the Hartford/Golden contract made Hartford chargeable with and bound by the information purportedly given to Golden with respect to the correct name of Prime Transportation Services, LLC and the company's line of work.

We do not read the Hartford/Golden contract as modifying the common-law principle with respect to Hartford and Golden. This contract is materially indistinguishable from the one described in *Genesee Food Services*, 279 Mich App at 651, where a similar dispute was at play involving the respective duties owed by an independent-insurance agent to the insured and the insurer. The Court recounted the general common-law principle that "the independent insurance agent or broker is considered an agent of the insured rather than an agent of the insurer." *Id.* at 654. In the face of contractual provisions like the ones here, the Court explained:

> Although defendants [the independent-insurance agents] had a limited fiduciary relationship with Citizens [the insurer] for purposes of accepting and binding Citizens according to the terms of the 1988 agreement, because defendants were independent insurance agents when they assisted plaintiffs [the insured], their primary fiduciary duty of loyalty rested with plaintiffs, who could depend on this duty of loyalty to ensure that defendants were acting in their best interests, both in terms of finding an insurer that could provide them with the most comprehensive coverage and in ensuring that the insurance contract properly addressed their needs. The primacy of this relationship between an insured and an independent insurance agent is reflected in Michigan caselaw, which, as stated earlier, holds that the independent insurance agent or broker is considered an agent of the insured rather than an agent of the insurer. [*Id.* at 656 (cleaned up).]

Here, as in *Genesee Food Services*, Golden owed its primary fiduciary duty of loyalty to Al-Hajjaj as its customer, rather than to Hartford as one of the ten insurers for which it placed policies. While Golden had a contractual duty to Hartford, this did not override or undermine the primary common-law duty that Golden owed to the insured, i.e., Prime Transportation Service, LLC. Given this, Golden was not acting as Hartford's agent with respect to the insurance application that Golden submitted on behalf of Prime Transportation Services, LLC.

III. CONCLUSION

Independent-insurance agents continue to owe their primary fiduciary duty of loyalty to their customers, i.e., the insureds, rather than the insurance companies whose policies they place. This common-law principle survived our Legislature's amendments to the Insurance Code in 2018 PA 449, except with respect to the narrow exception identified in this opinion and not relevant

here. The trial court erred when it concluded that the contract between Hartford and Golden altered this principle.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Brock A. Swartzle
/s/ Noah P. Hood
/s/ James Robert Redford