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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0676**

David M. Jarvi,
Respondent,

vs.

Viking Savings Association, F. A.,
Appellant.

**Filed December 23, 2008
Affirmed
Crippen, Judge***

Douglas County District Court
File No. 21-CV-07-2310

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Considered and decided by Connolly, Presiding Judge; Bjorkman, Judge; and Crippen, Judge.

UNPUBLISHED OPINION

CRIPPEN, Judge

Appellant Viking Savings Association disputes the district court's summary judgment for respondent David Jarvi, who sued on the claim that appellant's failure to

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

pay to him the redemption proceeds of 17 Series EE U.S. Savings Bonds was a breach of contract. Appellant contends that the judgment rests on a misconstruction of federal regulations governing the distribution of bond redemption proceeds. Because the district court accurately followed regulatory language, we affirm.

FACTS

In January 1999 Clarice Jarvi became co-owner of 17 Series EE U.S. Savings Bonds with respondent, her son. Later that year, Clarice Jarvi died, leaving respondent as the sole registered owner of the bonds. In June 2004, appellant paid \$23,902 upon redemption of the bonds. Because appellant paid redemption proceeds to respondent's father and sister (and her husband), respondent later brought a suit claiming appellant's breach of its obligation to pay the proceeds to him.

Respondent and his father, Roy Jarvi, presented the bonds to appellant for the 2004 redemption. Respondent endorsed the bonds with his signature, address, and social security number. The parties dispute exactly why, but appellant issued a check for \$23,000 to Barry and Susan Froiland (respondent's sister and her husband) and deposited the remaining \$902 into Roy Jarvi's savings account. The check to the Froilands identified Roy Jarvi as "REMITTER," and appellant later issued Roy Jarvi a 1099-INT reflecting taxable interest from the bonds.

Respondent sued on claims of negligence and breach of contract, and the district court granted him summary judgment on the contract claim. This appeal follows.

DECISION

Appellant argues that the district court misconstrued the law and thus overlooked what was a genuine issue of material fact, namely, whether respondent directed the redemption payment to others. This court reviews summary judgments de novo for errors of law and remaining issues of material fact. *STAR Ctrs., Inc. v. Faegre & Benson, LLP*, 644 N.W.2d 72, 77 (Minn. 2002).

The court concluded that appellant, acting as agent for the United States Government, was required to pay the proceeds from the redemption directly and only to respondent, as the registered owner. Because of this, and because federal regulations prohibit transfers of ownership before redemption, the court determined that it was irrelevant to consider whether respondent had directed payment to his father and sister.

Savings bonds constitute a binding contract between the registered owner(s) and the United States Government. *Connell v. Bauer*, 240 Minn. 280, 296, 61 N.W.2d 177, 186 (1953). Federal law governs “the meaning of the bonds and the rights of the parties thereto.” *Id.* at 291, 61 N.W.2d at 184. Thus, federal statutes, along with regulations and circulars duly promulgated by the Secretary of the Treasury, constitute terms of the bond contract. *Id.* at 295-96, 61 N.W.2d at 186. Appellant concedes that it must abide by the regulations governing redemption of bonds.

On appeal from summary judgment, the proper interpretation of a contract is a question of law to be reviewed de novo. *Paradigm Enters., Inc. v. Westfield Nat’l Ins. Co.*, 738 N.W.2d 416, 419 (Minn. App. 2007). We must apply federal contract law to construe the bond contract. *United States v. Basin Elec. Power Coop.*, 248 F.3d 781, 796

(8th Cir. 2001); *see also Zelman v. United States*, 893 F. Supp. 78, 83 (D. Me. 1995) (stating that federal contract law controls interpretation of a savings bond contract). The federal law of contracts incorporates the best of modern contract common law, which includes the Restatement (Second) of Contracts. *Basin Elec. Power Coop.*, 248 F.3d at 796. The purpose of contract interpretation “is to determine and enforce the intent of the parties.” *Paradigm*, 738 N.W.2d at 421. This intent is determined from the plain meaning of a written agreement, viewing the document as a whole. *Id.*; Restatement (Second) of Contracts § 202 (1981). Because the federal regulations governing bond redemption constitute terms of the contract between respondent and the redeeming agent, we examine whether the regulations’ plain meaning reveals the parties’ intent.

Title 31, Part 321 of the Code of Federal Regulations governs “the manner in which financial institutions may . . . act as paying agents” for Series EE Savings Bonds, and Part 353 governs the bonds themselves. 31 C.F.R. §§ 321.0, 353.0 (2007).¹ Series EE bonds are not transferable and are payable “only” to the registered owner. 31 C.F.R. § 353.15 (2007). When a co-owner dies, the surviving co-owner becomes the sole owner of a Series EE Bond. 31 C.F.R. § 315.70(b)(1) (2007). The regulations state that payment of a savings bond will be made to “the person or persons entitled” to receive payment. 31 C.F.R. § 353.35(a) (2007). Upon identifying the person presenting the bond as entitled to receive payment, “the paying agent will make immediate payment . . . to the

¹ The parties do not specify whether we should look to the regulations at the time the government issued the bonds, when appellant paid on the bond redemption, or at another relevant time. Because the relevant regulations have not been materially altered since the bonds were issued, we refer to the most recent edition of the Code of Federal Regulations.

presenter.” 31 C.F.R. § 353.39(a) (2007). A redeeming agent must certify that the proceeds of redeemed bonds “were paid to the presenter” after determining that the presenter was entitled to request payment. 31 C.F.R. § 321.13 (2007).

Because the bonds are nontransferable, redemption payments may not be made to third parties “except as specifically provided . . . and then only and in the manner and to the extent so provided.” 31 C.F.R. § 353.15. The regulations specifically provide for payment to (1) the representative of an estate, (2) the parent or another person on behalf of a minor, or (3) the voluntary guardian of an incapacitated person. 31 C.F.R. §§ 353.60–.64 (2007). Appellant does not assert that any of these exceptions apply.

The record evidence indicates that appellant did not pay respondent the proceeds of the redemption. Most of the proceeds were paid to Barry and Susan Froiland. But even more striking is the evidence that appellant identified Roy Jarvi, respondent’s father, as the remitter of the cashier’s check to Barry and Susan Froiland. It is equally significant that Roy Jarvi’s name and social security number appeared on the document memorializing the redemption; consistently, appellant issued the 1099-INT attributable to the bonds’ interest to Roy Jarvi.

The district court concluded that “[respondent] did not receive, either directly or indirectly, any proceeds from the savings bonds,” making it irrelevant whether appellant acted on directions stated by respondent. Appellant contends that respondent could be paid by giving him the right to instruct appellant to make payment of proceeds directly to someone else, but the district court determined that appellant could not follow instructions like these without violating the applicable federal regulations. This

interpretation conforms to the directions repeatedly stated in the regulations: Payment must be made to the redeeming bond owner. Respondent, not Roy Jarvi, was the owner of the bonds.

Restating its assertion that the district court overlooked a genuine issue of material fact, appellant points to this observation of the court: “Viking[] Savings Association alleges that Plaintiff Jarvi ‘directed’ that the funds from his Series EE bonds be paid to a party other than himself. Plaintiff Jarvi disputes this fact.” But the district court properly concluded that this disputed fact was not relevant to the breach-of-contract claim. The need for a determination of fact is governed by whether it affects the case’s outcome given the applicable substantive law. *Chin v. Zoet*, 418 N.W.2d 191, 194 (Minn. App. 1988). Even if respondent chose that the redemption funds be directly paid to a third party, that choice, before appellant paid respondent, would be immaterial because it would be no different than a decision to transfer the bond, which treasury regulations prohibit. 31 C.F.R. § 353.15.

Appellant argues that to construe the contract in this fashion creates a requirement that redeeming agents issue a check to redeeming bondholders. The regulations plainly allow redemption proceeds to be paid “in currency, by check or by credit to a checking, savings or share account.” 31 C.F.R. § 321.1(c) (2007). Appellant contends evidence that respondent exercised control over the proceeds, by giving directions for or acquiescing in the disposition, would constitute a factual basis for concluding it had paid him the proceeds, just as if appellant had handed “a stack of 23 thousand dollar bills . . . to [respondent] and he immediately handed them back to purchase the \$23,000 cashier’s

check.” But there is no claim that appellant made such a direct, tangible payment to respondent, in cash or otherwise. Appellant issued a cashier’s check, not to respondent, but to respondent’s sister and brother-in-law.

Payment normally connotes delivery of money, or handing over a thing of value. *See* Black’s Law Dictionary 1165 (8th ed. 2004) (defining payment as “[p]erformance of an obligation by the delivery of money or some other valuable thing accepted in partial or full discharge of the obligation”). When a bond is redeemed, federal regulations plainly require the redemption proceeds be paid to the redeeming owner. The federal regulations governing bond redemption require actual delivery of cash or its equivalent to the redeeming bond owner in a fashion identified in 31 C.F.R. § 321.1(c), and this does not include merely following instructions of the bond owner that call for delivery of the proceeds to other persons.

This view of what constitutes payment is also ratified by a broader look at the regulations. When a co-owned bond is redeemed by both owners, the regulations require that payment be made by a check made out to both owners. 31 C.F.R. § 353.37 (2007). And when a bond is presented by someone entitled to payment other than an owner or co-owner (such as an individual entitled in accordance with the exceptions described in 31 C.F.R. §§ 353.60–.64), the bond must be forwarded to a federal agency office, which will issue a check in the name of the person entitled to receive payment. 31 C.F.R. § 353.39(b) (2007). In neither circumstance do the regulations afford any liberty to substitute directed payment for actual payment. To the contrary, formulating a concept of control in lieu of actual payment opens a door for uncertainties respecting what

constitutes payment to a bond holder, with ensuing disputes that are eliminated by the plain language in federal regulations. Appellant has not identified, nor have we found, any authority in the regulation language or in administrative or judicial precedent that permits redemption as something other than direct delivery of payment to the owner.

Appellant's failure to pay respondent constituted a breach of contract as a matter of law and no material issue of fact remains. Although this outcome means that appellant will be required to pay the redemption value a second time, this time to the correct party, this result is not unprecedented. *Wolak v. United States*, 366 F. Supp. 1106 (D. Conn. 1973). As the district court pointed out, "[w]hether [appellant] now has a claim for unjust enrichment or some other cause of action against other third parties who were given the proceeds is a question for another day."

Appellant also argues that summary judgment was inappropriate because the district court did not consider appellant's affirmative defense of waiver. Appellant did not assert this defense in its answer, but it later moved to amend its answer to include affirmative defenses, including waiver. The district court determined that its order granting summary judgment to respondent rendered appellant's motion to amend moot. The district court did not consider the defense of waiver, so it is not properly before this court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). We are also persuaded that the bond contract's terms could not have been waived by respondent, as the power to do so is reserved to the Commissioner of the Public Debt. *See* 31 C.F.R. § 353.90 (2007); *United States v. Chandler*, 410 U.S. 257, 261, 93 S. Ct. 880, 882 (1973).

Affirmed.