

*This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1447**

Olubunmi Oturu, et al.,  
Respondents,

vs.

Nwaneri & Associates, PLLC,  
Appellant.

**Filed May 29, 2012  
Affirmed  
Worke, Judge**

Ramsey County District Court  
File Nos. 62-CV-10-5418, 62-CO-09-2247

Olubunmi Oturu, Woodbury, Minnesota (pro se respondent)

Francis Oturu, Woodbury, Minnesota (pro se respondent)

Patrick Chinedu Nwaneri, Nwaneri & Associates, PLLC, Eagan, Minnesota (attorney pro se)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and Chutich, Judge.

**UNPUBLISHED OPINION**

**WORKE**, Judge

Appellant law firm challenges the district court's decision that it is entitled to receive one-third of respondent clients' recovery as compensation, arguing that (1) it is entitled to 40% of the recovery pursuant to the unambiguous language in the parties'

agreement, and (2) if the district court determined that the language were ambiguous, the district court should have considered parole evidence to ascertain intent, rather than resolving the language against the drafter. We affirm.

## DECISION

Following a conciliation-court decision in favor of respondents Olubunmi Debra Oturu and Francis Oturu, appellant Nwaneri & Associates, PLLC removed the matter to district court, claiming that it is entitled to 40% of the settlement recovery in respondents' personal-injury matter. Appellant challenges the district court's determination that, because the parties' agreement was ambiguous as to the circumstances under which appellant could receive 40% in compensation rather than one-third, the ambiguity should be resolved against appellant as the drafter. On appeal from a judgment when there has been no motion for a new trial, this court determines "whether the evidence sustains the findings of fact and whether such findings sustain the conclusions of law and the judgment." *Gruenhagen v. Larson*, 310 Minn. 454, 458, 246 N.W.2d 565, 569 (1976). This court gives de novo review to the issue of contract ambiguity. *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010).

"Unambiguous contract language must be given its plain and ordinary meaning." *Metro. Airports Comm'n v. Noble*, 763 N.W.2d 639, 645 (Minn. 2009). A contract term is ambiguous "if it is susceptible to two or more reasonable interpretations." *Dykes*, 781 N.W.2d at 582. Ambiguous contract terms are construed against the drafter. *Hilligoss v. Cargill, Inc.*, 649 N.W.2d 142, 148 (Minn. 2002).

Appellant was the third law firm respondents retained. The second law firm that respondents retained sued out the case, conducted discovery, and initiated settlement negotiations. After respondents terminated this relationship, they entered into the agreement with appellant, which provides that respondents will pay appellant one-third of any amount recovered. The agreement further states that: “If at any stage of the matter, LITIGATION becomes necessary, [respondents] agree to pay [appellant] 40% of any amount of money recovered.” Appellant resolved the matter through settlement, but insisted that it should receive 40% of the recovery.

The parties dispute the meaning of the word “litigation” as it is used to determine the fee recovery. Respondents testified that they understood “litigation” to mean taking the case to trial. Appellant argues that “litigation” should be broadly defined as “the process of carrying on a lawsuit.” *See* Black’s Law Dictionary 934 (6th ed. 1990) (defining “litigation” as “[a] lawsuit. Legal action, including all proceedings therein. Contest in a court of law for the purpose of enforcing a right or seeking a remedy. A judicial contest, a judicial controversy, a suit at law.”). Under appellant’s urged definition, nearly all of its actions would constitute “litigation”; it is unclear when appellant would ever be entitled to collect only one-third when it is doubtful that it could recover money unless engaged in some aspect of “litigation.”

“Litigation” is ambiguous as used in the agreement because it is reasonably susceptible to either of the meanings urged by the parties. As such, this ambiguity should be resolved against appellant as the drafter. *See Hilligoss*, 649 N.W.2d at 148. If “litigation” were to include “all proceedings,” the language that provides for appellant to

receive “one-third [] of any money recovered” would be meaningless. Permitting appellant to collect one-third recovery if the case settled and 40% if the case went to trial would give meaning to both provisions. *See Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998) (stating that “we are to interpret a contract . . . to give meaning to all of its provisions”).

The reasonableness of this interpretation is evident by the context under which the agreement was entered into by the parties—appellant conceded that it engaged in representation after the second law firm sued out the case and during settlement negotiations. Given this, appellant’s entitlement to one-third or 40% of the recovery depended on whether the case went to trial; any other interpretation would be absurd.<sup>1</sup> *See id.* (requiring courts to interpret contract language to avoid harsh or absurd result).

Appellant showed that it put forth effort into this matter and was successful in settlement negotiations, obtaining a positive result for respondents. But the term “litigation” is not clearly defined in the agreement, and as the drafter of that agreement, we conclude that we must resolve any ambiguity against appellant. Thus, “litigation” as used in the parties’ agreement entitles appellant to 40% of the recovery only if the case proceeded to trial.

**Affirmed.**

---

<sup>1</sup> We note that appellant modified the agreement by emphasizing the 40% recovery provision in bold typeface. As the drafter of the agreement, appellant could have further modified the agreement and clarified the recovery provisions by crossing out the one-third-recovery provision prior to the parties signing the agreement.