IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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No. 93-9142

Summary Calendar

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EDDIE R. BELL,

Plaintiff-Appellant,

v.

PRUDENTIAL INSURANCE CO.
OF AMERICA, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Texas
(3:92 CV 1940 H)

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(June 9, 1994)

Before KING, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

PER CURIAM:[*]

Eddie R. Bell appeals the district court's grant of summary judgment in favor of Prudential Insurance Co. of America on Bell's claim for breach of contract. Finding no error, we affirm.

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[*]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

## I.

### A. Factual Background

Eddie R. Bell operated an insurance agency in Greenville, Texas, with Employers Insurance of Texas (Employers) from December 1987 until August 1990. During the fall of 1990, Employers went into receivership, and Bell was recruited by Prudential Insurance Co. of America (Prudential) to become a Region U agent with Prudential. On March 11, 1991, Bell signed a "district agent agreement" with Prudential. That agreement set forth the rights and obligations of Bell and Prudential relating to Bell's operation of his insurance agency. The agreement was also terminable at will by either party.

As a Region U Prudential agent, Bell was authorized to sell several types of insurance, including property insurance and casualty, life and health insurance, out of his Greenville office. Bell also signed appointment applications with six subsidiaries of PrudentialSQConsumer County Mutual Insurance Co., Pruco Life Insurance Co., Pruco Life Insurance Co. of Texas, Pruco Securities Corp., Prudential Lloyds, and Prudential Property & Casualty Insurance Co.SQwhich enabled him to take applications for insurance and submit them to those companies.

In August 1991, Prudential sent a letter to all of its Region U agents in which it informed them that it was instituting a quota policy whereby they would be responsible for selling a minimum number of life insurance policies each year. According to Prudential, life insurance contracts, which provided the bulk

of its revenue, had been declining. The quota policy thus provided that agents who failed to sell a minimum number of life insurance policies in a given quarter would have their automobile binding privileges suspended for the next quarter and until the minimum quarterly requirement was met.[1] The policy was applicable to all agents who had been employed by Prudential for one year.

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[1] A letter concerning the implementation of this quota policy that was sent to all Region U agents from Richard Bonner, Prudential's vice-president for regional marketing, states:

> Life insurance is Prudential's major business. It provides the bulk of our revenue, our assets, our surpluses, and our profits. This revenue pays the extremely high costs of operating an agency system like ours. These expenses include your offices, work stations, service staff support, salaries and benefits including pensions.
>
> While our [property and casualty] sales results for 1991 are more than double 1990, our life sales results are down nearly 20%. While agents [sic] earnings are benefitting from the increase in [property and casualty] activity as we want, a lack of life results does not support Prudential's and Region "U"'s objectives.
>
> I cannot allow representatives to continue to market non-life without the supporting life production.
>
> A rather stiff penalty is going to be imposed for those representatives in Texas (with a continuous service date prior to January 7, 1991) who produce below a minimum expected level of life.
>
> . . . . . .
>
> If you fail to produce at that level, your [property and casualty] for auto will be suspended.
>
> A review at the end of each quarter of 1992 will give you the opportunity to have that binding privilege restored. A new minimum requirement level will be established prior to the beginning of 1992 and will not exceed our 1991 regional average.
>
> I do not want anyone to lose their binding privileges. I want all of you to sell large amounts of quality [property and casualty] business. I do expect, however, this to be part of an effective multilines marketing and service operation.

A similar letter was sent to all Region U agents in early January 1992, detailing the minimum quota of life insurance sales required for each quarter of the year.

During the first quarter of 1992, Bell failed to meet the established minimum quota of life insurance sales. In a letter dated April 6, 1992, James N. Grimm, a Prudential employee, officially suspended Bell's automobile binding privileges. However, upon learning that Bell had been employed with Prudential for less than a year, Grimm wrote a letter to Bell dated May 18, 1992, and reinstated those privileges. On July 1, 1992, Bell's automobile binding privileges were again suspended, this time because he had passed the anniversary of his employment with Prudential by the start of the new quarter on April 1, 1992, and had failed to meet the quarterly target of life insurance sales. Bell resigned his position as a Prudential agent by letter, effective September 14, 1992.

B. PROCEDURAL HISTORY

On August 13, 1992, Bell filed suit in state court in Hunt County, Texas, against Prudential and six of its subsidiaries, see supra Part I.A. Bell alleged claims for (1) breach of contract, (2) breach of the duty of good faith and fair dealing, (3) tortious interference with contractual relationships, (4) tortious interference with prospective economic opportunity, (5) misrepresentation, and (6) negligent hiring, training, and supervision. Prudential and the other defendants then removed the suit to the United States District Court for the Northern District of Texas, alleging that three of the subsidiary companies were Texas residents who had been fraudulently joined in order to defeat diversity jurisdiction. Bell moved to remand,

and Prudential and the other defendants moved for summary judgment.

The district court denied Bell's motion for remand on June 15, 1993, finding no cause of action against the three Texas subsidiaries. The court also determined that Prudential and the remaining defendant subsidiariesSQPruco Securities Corp., Prudential Property & Casualty Insurance Co., and Pruco Life Insurance Co.SQwere diverse. On September 13, 1993, the district court determined that Bell had stated no cause of action against the remaining subsidiaries, and the court granted Prudential's motion for summary judgment on all six causes of action. The district court also denied Bell's motion for reconsideration and supplementation of the record, or, in the alternative, for new trial. This appeal ensued.

II.

We review the granting of summary judgment de novo, applying the same criteria used by the district court in the first instance. That is, we review the evidence and inferences to be drawn therefrom in the light most favorable to the non-moving party. Lemelle v. Universal Mfg. Corp., 18 F.3d 1268, 1272 (5th Cir. 1994); Federal Deposit Ins. Corp. v. Dawson, 4 F.3d 1303, 1306 (5th Cir. 1993), petition for cert. filed, 62 U.S.L.W. 3659 (U.S. March 21, 1994) (No. 93-1486). Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show

that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c).

Under Federal Rule of Civil Procedure 56(c), the party moving for summary judgment bears the initial burden of "informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact." Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once this burden is met, the burden shifts to the non-moving party to establish the existence of a genuine issue for trial. Matsushita Elec. Indus. Co. v. Zenith Radio, 475 U.S. 574, 585-87 (1986); Leonard v. Dixie Well Serv. & Supply Inc., 828 F.2d 291, 294 (5th Cir. 1987). The burden on the non-moving party is to "do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita, 475 U.S. at 586.

III.

Bell argues that the district court improperly granted Prudential summary judgment on his breach of contract claim. First, Bell contends that the district court erroneously concluded that Prudential had the authority under the terms of the agent agreement to impose the 1992 quota policy on Bell and thus, as a matter of law, did not breach the terms of that agreement. Bell argues that because the summary judgment evidence established that there were no production quotas in

effect at the time he entered into the agent agreement and because the agreement itself does not mention production quotas, a fact issue exists as to whether Prudential breached the agreement by imposing such quotas. Second, Bell contends that the district court erred in granting Prudential summary judgment because Prudential failed to meet its summary judgment burden by not addressing Bell's claim that its wrongful suspension of Bell's automobile binding authority was a basis for the alleged breach of the agent agreement. Bell also contends that the district court abused its discretion in denying his motion for reconsideration or, in the alternative, for a new trial. We address each of Bell's contentions in turn.

A. IMPOSITION OF QUOTAS

Bell first contends that under the terms of the agent agreement, Prudential did not have the authority to impose production quotas on him. We disagree.

Contract interpretation and the issue of contract ambiguity are matters subject to de novo review in this court. Haber Oil Co. v. Swinehart (In re Haber Oil Co.), 12 F.3d 426, 443 (5th Cir. 1994). Under Texas law, "[i]f a written instrument is so worded that it can be given a certain or definite legal meaning or interpretation, then it is not ambiguous . . . ." Coker v. Coker, 650 S.W.2d 391, 393 (Tex. 1983); see Maxwell v. Lake, 674 S.W.2d 795, 801 (Tex. App.SQDallas 1984, no writ). Mere disagreement over the interpretation of a contract provision does not make the provision ambiguous. Sun Oil Co. (Delaware) v.

Madeley, 626 S.W.2d 726, 731 (Tex. 1981); Maxwell, 674 S.W.2d at 801. Unambiguous language in a contract should be enforced as written, and objective intent rather than subjective intent controls. Sun Oil, 626 S.W.2d at 731; see Shelton v. Exxon Corp., 921 F.2d 595, 603 (5th Cir. 1991).

Bell concedes that we must look at the plain language of the agent agreement in question to determine whether Prudential had the right to the quota policy at issue in this case. The agreement does not purport to describe fully every detail of an agent's employment; it does not specify the nature of the instructions, rules, and regulations that Prudential had adopted or might adopt in the future. It does, however, expressly and unambiguously provide that the agent agrees to "[p]romote the success and welfare of the Company and comply with its instructions, rules and regulations." By its own express terms, then, this agreement provides that an agent, as a party to the agreement, agrees to comply with all generally applicable instructions, rules, and regulations that Prudential may promulgate from time to time. Prudential's quota policy at issue in this case was uniformly applicable to all Region U agents in Texas. We thus agree with the district court that the imposition of such a quota policy constituted the type of "instructions, rules and regulations" by which Bell agreed to be bound under the express terms of the agent agreement.

Bell nonetheless argues that Prudential was required to modify the agent agreement in writing if it wanted to impose this

quota policy. He further argues that Prudential was aware of this requirement because Bell produced affidavit summary judgment evidence to support the fact that in 1990, when Prudential imposed production quotas on only selected agents, Prudential had attached individual addenda to these agents' agreements which specified these production quotas.

We find Bell's argument unavailing. Prudential's quota policy at issue in this case affected all Region U agents in Texas. Further, it did not materially alter the express terms of the agent agreement that Bell signed, which unambiguously provided that an agent would "comply with [Prudential's] instructions, rules and regulations." The quota policy merely dictated a specific set of rules with which agents such as Bell had broadly agreed to comply under the express terms of the agent agreements they had signed. Prudential was thus not obligated to obtain every agent's consent to the policy.

Bell also contends that his own affidavit should have precluded the district court's grant of summary judgment for Prudential. In this affidavit, Bell attested that Bill Gosse, a Prudential employee, had told him prior to his employment by Prudential that Prudential would not impose specific quotas on him with respect to the amount or type of insurance to be sold.[2] However, as the district court correctly noted, even if Gosse had made such an oral representation, the agent agreement expressly

[2] We note that in his deposition, when asked if Gosse had ever told him that Prudential would never institute quotas, Bell responded, "No, he never told me that."

states that it "supersedes any previous agreement between the [a]gent and the [c]ompany." The express and clear language of this merger clause in the agreement prohibits the enforcement of any alleged prior oral agreement between Bell and Prudential or its employees under the parol evidence rule. See Boy Scouts v. Responsive Terminal Sys., Inc., 790 S.W.2d 738, 744-45 (Tex. App.SQDallas 1990, writ denied); Austin Shoe Stores v. The Elizabeth Co., 538 S.W.2d 677, 680 (Tex. Civ. App.SQWaco 1976, writ ref'd n.r.e.). The agreement thus presumes that all prior agreements between Bell and Prudential or its employees relating to Bell's employment as a Prudential agent were merged into the agent agreement which Bell signed. See Boy Scouts, 790 S.W.2d at 745.

We therefore agree with the district court that as a matter of law, the express terms of the agent agreement did not prohibit Prudential from imposing generally applicable rules and regulations concerning production quotas on its Region U agents. Hence, summary judgment for Prudential was proper with respect to Bell's claim that Prudential's imposition of a quota policy for its Region U agents was a breach of the agent agreement.

B. MISTAKEN SUSPENSION OF BINDING AUTHORITY

After acknowledging that Prudential mistakenly suspended Bell's automobile binding authority, the district court stated that Bell "failed to provide the Court with any evidence of damage specific to the incorrect, temporary suspension of [his] automobile binding authority." Bell contends, however, that he

was not obligated to come forward with any evidence of damages because Prudential did not meet its initial summary judgment burden by addressing Bell's contention that the wrongful suspension of his automobile binding authority was a basis for breach of the agent agreement or by raising the issue of damages Bell may have sustained as a result of this wrongful suspension. Thus, Bell asserts that the district court erred in granting Prudential summary judgment on his breach of contract claim premised on Prudential's wrongful suspension of his automobile binding authority. He also asserts that the district court's statement concerning his evidence of damages indicates that the court improperly shifted the summary judgment burden on this issue to him.

As the movant for summary judgment, Prudential had the burden of informing the district court of the basis for its motion and identifying portions of the record which highlight the absence of material fact issues. See Celotex, 477 U.S. at 323. In its motion for summary judgment, Prudential asserted that as a matter of law, no evidence existed to show that "Prudential breached the terms of the District Agent's Agreement by instituting life insurance sales quotas and suspending [Bell's] automobile binding privileges for failing to meet these quotas." In its brief in support of its motion, Prudential explained that Bell's breach of contract claim was founded on the allegation that "Prudential instituted sales quotas for life insurance and suspended automobile binding privileges on two occasions for

failing to meet this quota" (emphasis added). Prudential plainly pointed out to the district court that the imposition of the quota policy and the suspension of automobile binding privileges on either occasionsQincluding the wrongful temporary suspension of Bell's automobile binding privileges in May 1992SQdid not constitute a breach of the agent agreement in question. Despite Bell's contention otherwise, Prudential sufficiently met its summary judgment burden in addressing Bell's claim that the wrongful temporary suspension of his automobile binding authority was a basis for breach of the agent agreement.

Moreover, "Celotex made clear that Rule 56 does not require the moving party to negate the elements of the nonmoving party's case; to the contrary, 'regardless of whether the moving party accompanies its summary judgment motion with affidavits, the motion may, and should, be granted so long as whatever is before the District Court demonstrates that the standard for the entry of summary judgment, as set forth in Rule 56(c), is satisfied.'" Lujan v. National Wildlife Fed'n, 110 S. Ct. 3177, 3187 (1990) (quoting Celotex, 477 U.S. at 323). Hence, a defendant moving for summary judgment need show only that there is no issue of material fact with respect to one essential element of the plaintiff's cause of action for summary judgment to be granted in his favor. See id.

Under Texas law, the essential elements of a breach of contract claim are (1) that a contract existed between the parties, (2) that the contract created duties, (3) that the

defendant breached a duty under the contract, and (4) that the plaintiff sustained damages as a result. Snyder v. Eanes Indep. Sch. Dist., 860 S.W.2d 692, 695 (Tex. App.SQAustin 1993, writ denied). In the instant case, Prudential specifically challenged only the third essential element of Bell's claim with respect to both Prudential's imposition of the quota policy and the revocation of Bell's automobile binding privileges on two occasions. However, Prudential was not required, under Celotex and its progeny, to negate all four elements of Bell's breach of contract claim, e.g., damages, in order to have summary judgment granted in its favor.

The district court determined, and we agree, that under the express terms of the agent agreement Prudential breached no duty of the agent agreement itself by promulgating various generally applicable "instructions, rules and regulations," e.g., the life insurance sales quota policy. Further, under Texas law, in an employment-at-will relationship, such as that between Bell and Prudential, employee handbooks, manuals or other documents reflecting company policy generally do not create contractual rights unless the parties expressly agree that the procedures contained in such materials are binding. Pruitt v. Levi Strauss & Co., 932 F.2d 458, 463 (5th Cir. 1991); Hicks v. Baylor Univ. Medical Ctr., 789 S.W.2d 299, 302 (Tex. App--Dallas 1990, writ denied); Salazar v. Amigos Del Valle, Inc., 754 S.W.2d 410, 413 (Tex. App.--Corpus Christi 1988, no writ). Nothing in the letters from Prudential to its agents concerning the quota policy

indicates that Prudential intended to create contractual rights regarding this policy, and Bell has provided no summary judgment evidence of such. Hence, the policy created no duty on the part of Prudential with respect to Bell, and Prudential's error in temporarily suspending Bell's automobile binding authority for the failure to meet the minimum quota set under this policy could not be a breach of contract. Prudential thus showed as a matter of law that no evidence existed to establish that Prudential had breached a duty under the agent agreement, one of the essential elements of Bell's breach of contract claim. Accordingly, the district court properly entered summary judgment for Prudential on Bell's breach of contract claim, whether premised on Prudential's imposition of its quota policy or on Prudential's wrongful temporary suspension of Bell's automobile binding authority. As such, we need not address Bell's arguments concerning the issue of damages allegedly arising from Prudential's wrongful revocation of his automobile binding authority.

### C. Denial of Motion for Reconsideration

Finally, Bell argues that the district court erroneously denied his motion for reconsideration or, in the alternative, for new trial. We disagree.

Bell filed his motion for reconsideration within ten days of the district court's rendition of judgment. Hence, his motion falls under Federal Rule of Civil Procedure 59(e). See Lavespere v. Niagara Machine & Tool Works, Inc., 910 F.2d 167, 173 (5th

Cir. 1990), cert. denied, 114 S. Ct. 171 (1993). This court reviews such a motion for reconsideration for an abuse of discretion. See id. at 174; Harcon Barge Co. v. D&G Boat Rentals, 784 F.2d 665, 667 (5th Cir.) (en banc), cert. denied, 479 U.S. 930 (1986).

Bell's motion was premised on his desire to supplement the record with evidence of damages allegedly resulting from Prudential's wrongful temporary suspension of his automobile binding authority. However, we have already determined that the district court properly concluded that Prudential was entitled to summary judgment on Bell's breach of contract claim in that no evidence existed to establish that Prudential had breached a duty under the agent agreement, one of the essential elements of Bell's claim. The district court's reopening of the case to allow Bell to supplement the record after the entry of judgment with additional evidence of a different element of Bell's breach of contract claimSQi.e., damages resulting from Prudential's wrongful suspension of Bell's automobile binding authoritySQwould thus have served no purpose. Accordingly, the district court did not abuse its discretion in denying Bell's motion.

IV.

For the foregoing reasons, we AFFIRM the judgment of the district court.