


IN THE SUPREME COURT OF THE STATE OF NEVADA

CLIFTON CARTER VIAL,
Appellant,
vs.
GREAT BASIN FEDERAL CREDIT
UNION,
Respondent.

No. 88195

FILED

APR 17 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting a motion to dismiss in a breach-of-contract putative class action. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

Appellant Clifton Vial opened a checking account with respondent Great Basin Federal Credit Union (GBFCU). At that time, Vial signed GBFCU's Membership and Account Agreement (MAA), which permitted GBFCU to assess overdraft fees. GBFCU assessed Vial multiple overdraft fees on debit card transactions that, Vial claimed, were authorized on sufficient funds. Vial filed the underlying putative class action lawsuit against GBFCU for breach of contract.¹ GBFCU moved to dismiss Vial's complaint for failure to state a claim, arguing that the MAA clearly states that overdraft fees are based on the available balance at the time of

¹Vial asserted two contractual claims, but only one of them—the assessment of overdraft fees on debit card transactions authorized on sufficient funds (Authorize Positive, Settle Negative (APSN) theory)—is at issue in this appeal.

presentment. The district court agreed with GBFCU's interpretation and dismissed Vial's complaint.² This appeal follows.

Vial argues that the district court misread the MAA and that it is ambiguous as to when overdraft fees apply. Reviewing the district court's decision de novo, *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008), we agree and reverse. Although whether ambiguity exists is a legal question, the presence of ambiguity can preclude dismissal. *Brass v. Am. Film Techs., Inc.*, 987 F.2d 142, 149-50 (2d Cir. 1993); see *Margrave v. Dermody Props., Inc.*, 110 Nev. 824, 827, 878 P.2d 291, 293 (1994) (recognizing that ambiguity necessitating extrinsic evidence to ascertain the meaning of a contract precluded summary judgment). A contract "is ambiguous if its terms may be reasonably interpreted in more than one way, but ambiguity does not arise simply because the parties disagree on how to interpret their contract." *Galardi v. Naples Polaris, LLC*, 129 Nev. 306, 309, 301 P.3d 364, 366 (2013) (internal citation omitted). "Rather, an ambiguous contract is an agreement obscure in meaning, through indefiniteness of expression, or having a double meaning." *Id.* (internal quotation marks omitted).

The MAA's "Overdrafts" section states that GBFCU pays items in the order "presented" with the available balance determining the sufficiency of funds. The MAA's member privilege overdraft protection provision states that fees "will be charged for each overdraft item presented and paid." The MAA does not define "presented" or "presented and paid." Further, the member privilege overdraft protection provision states,

²Vial asserted several other claims that the district court dismissed, concluding that they were all grounded on the APSN breach of contract theory.


If we honor multiple overdrafts, we *may* honor them in *any* order or return any such items *in our sole discretion*. . . . The Credit Union *may, in its sole discretion*, honor [transactions] . . . and assess any applicable fees . . . The Credit Union *pays items at its discretion*. It is not obligated to pay any individual overdraft and does not guarantee that it will always *authorize and pay* any type of transaction. . . . If the Credit Union does not *authorize and pay* an overdraft, your transaction will be declined and you may be subject to a fee for non-sufficient funds. . . .

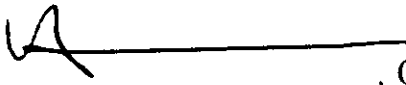
Vial's complaint alleged that GBFCU abused the discretion it granted itself when it charged fees on debit card transactions authorized on sufficient funds, which were automatically held by GBFCU when the transactions took place. Vial further alleged GBFCU abused the discretion it granted itself by defining key terms in a manner that is contrary to reasonable accountholder's expectations. If Vial's interpretation of the MAA applies, Vial stated a claim for relief sufficient to survive an NRCP 12(b)(5) motion to dismiss.

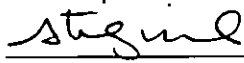
Because the MAA contains discretionary provisions coupled with coterminous uses of "authorize and pay," the MAA and its overdraft assessment policies may reasonably be interpreted in more than one way and is therefore ambiguous. *See Roberts v. Cap. One, N.A.*, 719 F. App'x 33, 36–37 (2d Cir. 2017) (vacating judgment dismissing breach-of-contract claim because discretionary phrases in overdraft policies render a bank account agreement ambiguous as it leads "a reasonable consumer [to consider] something to have been paid for when they swipe their debit card, not when their bank's back-office operations are complete"); *see also Lamoureux v. Trustco Bank*, 592 F. Supp. 3d 14, 31 (N.D.N.Y. 2022) (applying *Roberts* in denying a motion to dismiss a breach-of-contract claim

because coterminous uses of "authorize and pay" in overdraft policies rendered bank agreement ambiguous). Because we conclude that the parties reasonably disputed the meaning of the MAA's overdraft provisions, the court erred in making the leap that Vial failed to state a claim where the four corners of the MAA failed to unambiguously support either side. *Margrave*, 110 Nev. at 827, 878 P.2d at 293 (recognizing that ambiguity precludes a summary adjudication). Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

 _____, J.
Bell

 _____, C.J.
Herndon

 _____, J.
Stiglich

cc: Hon. Barry L. Breslow, District Judge
Jonathan L. Andrews, Settlement Judge
Cohen & Malad, LLP
Stranch, Jennings, & Garvey, PLLC \ Nashville
Reese Ring Velto, PLLC
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Washoe District Court Clerk