

STATE OF MICHIGAN
COURT OF APPEALS

JOHN J. BORZYM and MAXZYM, INC.,

Plaintiffs-Appellants,

v

THERMATOOL CORPORATION and ALPHA
INDUSTRIES, INC.,

Defendants-Appellees.

UNPUBLISHED

March 21, 1997

No. 177043

Oakland Circuit Court

LC No. 91-423969-CK

Before: Hoekstra, P.J., and Sawyer and T.P. Pickard*, JJ.

MEMORANDUM.

Plaintiffs appeal from an order of the circuit court denying their request for a declaratory judgment. We dismiss the appeal.

At issue is whether a non-compete and non-disclosure clause in an agreement between the parties concerning the sale of a business is enforceable. Plaintiffs sought a declaration that the clause was either unenforceable as unreasonable or that plaintiffs are relieved of their obligations under the clause because of a breach of the agreement by defendants. The trial court ruled against plaintiffs. On appeal, plaintiffs again argue that the clause is unenforceable.

However, by its terms, the clause expired on October 31, 1996, before the submission of this case on case call. Because the parties do not seek monetary damages, but only a declaration that the clause is now unenforceable, there is no remedy which can be fashioned at this time even if the trial court did err. In other words, this appeal is now moot.¹

Appeal dismissed as moot. No taxable costs pursuant to MCR 7.219, neither party having prevailed on the merits.

* Circuit judge, sitting on the Court of Appeals by assignment.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Timothy P. Pickard

¹ If the resolution of this issue is relevant to some other dispute between the parties not raised in this matter, the parties are, of course, free to raise this issue in that other dispute if it results in litigation. However, because the issue is no longer relevant to the relief requested in this case, we decline to consider it.