

STATE OF MICHIGAN
COURT OF APPEALS

GERALD W. SENIOR AND JUANITA A.
SENIOR,

UNPUBLISHED
July 15, 1997

Plaintiffs-Appellees,

v

No. 195580
Wayne Circuit Court
LC No. 95-519662 CH

CAROLYN A. WORTHY,

Defendant-Appellant.

Before: Cavanagh, P.J., and Doctoroff and D.A. Teeple* JJ.

MEMORANDUM.

Defendant appeals by right an order which, in relevant part, grants summary disposition to plaintiffs on their claim to quiet title. This case is being decided without oral argument pursuant to MCR 7.214(E).

Relying on *Mehling v Evening News Association*, 374 Mich 349, 352; 132 NW2d 25 (1965), defendant contends that plaintiffs breached their contractual obligation to timely furnish defendant with an appraisal of the property for the purpose of obtaining a mortgage, which thereby prevented defendant from successfully obtaining the financing necessary to fulfill her end of the agreement, and that plaintiffs cannot rely on their interference with plaintiffs' fulfillment of such a condition precedent as a means of obviating their contractual obligation. While this legal principle is clearly valid, it is inapposite to the present case. Condition number 24 of the buy/sell agreement only provides that plaintiffs, as sellers, agree "to pay for appraisal on subject property." Nowhere in the contract is there an undertaking by plaintiffs as sellers to provide an appraisal, but only to pay for it. Defendant, therefore, had the right under the contract to arrange for an appraisal by a qualified appraiser herself, and then to demand that plaintiffs pay the cost of such appraisal. Since plaintiffs were not obligated to provide an appraisal but only to pay for one, and no breach of that obligation is established, the legal principle on which defendant relies has no application to the facts of the case. Therefore, since defendant admittedly failed to obtain the necessary financing by the termination date of the contract, plaintiffs properly exercised their option to declare the contract null and void.

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

Affirmed.

/s/ Mark J. Cavanagh
/s/ Martin M. Doctoroff
/s/ Donald A. Teeple