STATE OF MICHIGAN

COURT OF APPEALS

ROBERT J. BURBA and ELEANOR M. BURBA,

Plaintiffs/Counterdefendants-Appellees,

v

GERALD L. MILLS and RACHEL MILLS,

Defendants/Counterplaintiffs-Appellants.

UNPUBLISHED
September 4, 1998

No. 201787
Midland Circuit Court
LC No. 91-009574 CK

Before: Murphy, P.J., and Gribbs and Gage, JJ.

PER CURIAM.

Defendants appeal as of right from a judgment that ordered defendants to pay the remaining balance on a land contract entered into by the parties. The judgment also denied defendants' request for actual attorney fees pursuant to the Michigan Consumer Protection Act (MCPA), MCL 445.901 *et seq*.; MSA 19.418(1) *et seq*., and the Michigan Environmental Response Act (MERA), MCL 299.601 *et seq*.; MSA 13.32(1) *et seq*. (currently MCL 324.20101 *et seq*.; MSA 13A.20101 *et seq*.). This action stems from environmental damage caused by underground fuel storage tanks. We affirm.

First, defendants argue that the trial court abused its discretion in denying defendants' request for attorney fees with regard to its counterclaims pursuant to the MCPA and the MERA, both of which allow for the recovery of attorney fees. We find no abuse of discretion. Further, the MCPA does not apply in this case because defendants did not enter into this transaction for personal or household purposes, as is necessary under the MCPA. Rather, their purposes were purely commercial, which renders the MCPA inapplicable. *Robertson v State Farm Fire & Casualty Co*, 890 F Supp 671, 680 (ED Mich, 1995). Attorney fees under the repealed MERA were discretionary and, as amended, the MERA contains a statutory notice requirement that defendants failed to comply with. MCL 324.20135(3); MSA 13A20135(3). We find no abuse of discretion here.

Defendants also argue that the trial court's findings of fact with regard to the outstanding land contract balance were clearly erroneous. They assert that the trial court improperly relied upon

defendants' exhibit K, a land contract amortization schedule. This schedule adjusted the balance of the land contract by including the costs of environmental remediation and roof repair, and defendants argue that the figures used were in excess of the actual costs. Defendants argue that the difference between the actual costs and the inflated costs reflected in exhibit K should be subtracted from the trial court's final judgment. Exhibit K, however, was offered into evidence by defendants and even created by defendants' certified public accountant. It is well established that error requiring reversal cannot be error to which the aggrieved party contributed by plan or negligence. *Phinney v Perlmutter*, 222 Mich App 513, 537-538; 564 NW2d 532 (1997); *Byrne v Schneider's Iron & Metal Inc*, 190 Mich App 176, 184; 475 NW2d 854 (1991). Because the aggrieved party contributed to the claim of error here, we consider this issue waived and will not review it.

Affirmed.

/s/ William B. Murphy
/s/ Roman S. Gribbs
/s/ Hilda R. Gage