STATE OF MICHIGAN

COURT OF APPEALS

JOHN RICHARDS WEXFORD HOMES,

Plaintiff-Appellee,

v

DONALD T. CUNNINGHAM and JANET L. CUNNINGHAM,

Defendants/Third-Party Plaintiffs-Appellants,

and

WILLIAM COLLINS and CRAIG WELCH,

Third-Party Defendants-Appellees.

UNPUBLISHED
February 4, 2000

No. 214581
Washtenaw Circuit Court
LC No. 96-007801-CK

Before: Markey, P. J., and Murphy and R. B. Burns*, JJ.

PER CURIAM.

Defendants, Donald and Janet Cunningham, appeal as of right from the trial court's order granting plaintiff's request for specific performance of a real estate agreement, and dismissing defendants' third-party complaint against William Collins and Craig Welch. We affirm.

This action arises out of a dispute over the nature and terms of a Letter of Understanding executed by defendants and plaintiff, John Richards Wexford Homes (hereinafter "Richards"), with regard to a parcel of property that defendants proposed selling to Richards for the development of a condominium project. Richards' principals are William Collins, Craig Welch and John Shekerjian.

Defendants first argue that the trial court erred in directing a verdict in favor of third-party defendants Collins and Welch on defendants' third-party complaint alleging conspiracy to defraud. Defendants assert that there was substantial evidence that Collins and Welch fraudulently induced them

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

to sign the Letter of Understanding and intentionally used a false legal description in describing the subject property. We disagree. This Court reviews a trial court's decision on a motion for directed verdict de novo. *Allen v Owens-Corning Fiberglass Corp*, 225 Mich App 397, 406; 571 NW2d 530 (1997).

We conclude that the trial court did not err in determining that there was no evidence to support the allegations of conspiracy to defraud. *Kassab v Michigan Basic Property Ins Assoc*, 441 Mich 433, 442; 491 NW2d 545 (1992); *Samuel D Begola Services, Inc v Wild Brothers*, 210 Mich App 636, 639-640; 534 NW2d 217 (1995). Cunningham testified that he signed the Letter of Understanding even though he believed it was not consistent with the agreement he had discussed with Welch and Collins. He admitted that, if he had read it more carefully, he would not have signed it. He also admitted that he was aware that the Letter of Understanding contained terms that were not consistent with his understanding of the transaction. The fact that Cunningham brought the "ten points" of discussion into the September 11 meeting with the intention of incorporating them into the letter agreement also demonstrates that Cunningham knew that the agreement did not provide for his total control of the project. Under these circumstances, we agree that defendants have failed to establish fraudulent conduct by Collins or Welch. *Kassab, supra*.

The record also demonstrates that Richards did not violate the provision in the Letter of Understanding requiring Cunningham's involvement in seeking approvals. Further, the allegation that Collins and Welch fraudulently tried to claim additional land is without factual support. Rather, the evidence demonstrated that the inaccurate legal description in the complaint was the result of misunderstandings and mistakes, attributable to the fact that neither Richards nor its principals were ever furnished with an accurate legal description for the property. Upon de novo review, and viewing the evidence and all reasonable inferences in a light most favorable to defendants, we conclude that defendants failed to demonstrate a genuine factual question with regard to their allegation of conspiracy to defraud. *Allen, supra* at 406; *Oakland Hills Development Corp v Lueders Drainage Dist*, 212 Mich App 284, 289; 537 NW2d 258 (1995). Accordingly, the trial court properly dismissed defendants' third-party complaint.

Defendants next argue that the trial court erred in determining that the Letter of Understanding allowed Richards to develop the property as it saw fit. We disagree. If contractual language is clear, its construction is a question of law for the court. This Court reviews questions of law de novo. *People v Lukity*, 460 Mich 484; 596 NW2d 607 (1999).

We agree with the trial court that the language in the Letter of Understanding is clear and unambiguous. *Meagher v Wayne State Univ*, 222 Mich App 700, 721-722; 565 NW2d 401 (1997). First, viewed in context, it is clear that the parties understood that the proposed development might not be viable, given that a due diligence paragraph was included providing that Richards, as purchaser, would have sixty days to "determine the viability of the proposed development." Further, as the trial court stated, there is no reason to conclude that the words "proposed development" meant anything other than "proposed development." This language does not support the conclusion that Richards had no choice but to use defendants' Loch Heron plan, nor does the Letter of Understanding elsewhere provide that the use of the Loch Heron plan was contemplated or required.

Second, we agree with the trial court's interpretation of the language in the due diligence paragraph providing that "[p]urchaser shall be permitted *with Seller's involvement* to pursue the approvals necessary to develop the Property" (emphasis added). This language clearly and unambiguously provides that, during the due diligence period, Cunningham would be involved in Richards' pursuit of any approvals necessary to develop the property. The language is not subject to two reasonable interpretations. *Meagher, supra*. It does not suggest that defendants were to be involved in all aspects of the development of the property, or that Richards was required to adhere to defendants' desired development of the property. Because the language is not ambiguous, parol evidence is not admissible to vary its meaning. *Meagher, supra*.

The language, "[o]nce Purchaser decides on a development plan," is similarly not ambiguous. This language supports but one interpretation, that it is the purchaser who is to decide on a development plan.[1] We are not persuaded by defendants' argument that this language should be accorded a different meaning because it is located in a section titled, "Development Financing." Additionally, defendants may not rely on the fact that Wexford's prior proposals contained provisions for following Cunningham's plan where Cunningham rejected those proposals, they were made by Wexford rather than Richards, they were not incorporated into the Letter of Understanding, and they did not address the same plan. Accordingly, the trial court did not err in finding that the Letter of Understanding allowed Richards to develop the property as it saw fit.

We also find that the trial court did not err in its determination that the Letter of Understanding was a binding contract as opposed to an option. *Bil-Gel Co v Thoma*, 345 Mich 698, 708; 77 NW2d 89 (1956); *Bd of Control of Eastern Michigan University v Burgess*, 45 Mich App 183, 185-187; 206 NW2d 256 (1973). We agree with the reasoning in *Standard Oil Co v Carey*, 246 F Supp 773 (ED Mich, 1965), upon which the trial court relied, that the due diligence provision in the Letter of Understanding constituted sufficient consideration to establish a binding contract.

We also conclude that the trial court did not err in determining that the contract contained a sufficient description of the property so as to find a meeting of the minds. Extrinsic evidence is permitted to supplement the understanding of the parties in this regard. *Stanton v Dachille*, 186 Mich App 247, 259; 463 NW2d 479 (1990); *Kahn-Reiss, Inc v Detroit & Northern Savings & Loan Assoc*, 59 Mich App 1, 8-9; 228 NW2d 816 (1975). Thus, extrinsic evidence was properly admitted to demonstrate that the property that Cunningham offered, and which was the subject matter of the Letter of Understanding, was reflected in the drawing that Cunningham brought to the July 12 meeting, entered into evidence as plaintiff's exhibit 2 and defendants' exhibit 4. Those exhibits supplemented, but did not contradict, the understanding of the parties. *Stanton, supra; Kahn-Reiss, supra.* The descriptions were sufficiently adequate to enable a surveyor or engineer to properly determine the legal description of the property.[2]

Finally, we find that the trial court did not err in granting specific performance of the contract. In a suit for specific performance, an equitable action, this Court reviews the ultimate determination de novo and the findings of fact supporting that determination for clear error. *Samuel D Begola Services, supra*.

After conducting a de novo review of the record, we find no support for defendants' contention that specific performance was not an appropriate remedy because Richards came into court with unclean hands. *Stachnik v Winkel*, 394 Mich 375, 386; 230 NW2d 529 (1975); *Charles E Austin, Inc v Secretary of State*, 321 Mich 426, 435; 32 NW2d 694 (1948); *Rust v Conrad*, 47 Mich 449, 454; 11 NW 265 (1882).

Affirmed.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Robert B. Burns

[1] Furthermore, even if we were to consider parol evidence to clarify the intended meaning of this language, such evidence does not support defendants' interpretation. The testimony demonstrated that Shekerjian had previously made it clear that he did not intend to follow Cunningham's plan because of "deficiencies," which he pointed out to Cunningham during discussions in both 1995 and 1996. The absence of any language in the Letter of Understanding suggesting that the property was to be developed in accordance with defendants' Loch Heron plan negates the contention that the property was to be developed only in that manner. Clearly, if it was Cunningham's intent to have the property developed only in accordance with his Loch Heron plan, that should have been clearly spelled out in the Letter of Understanding, or Cunningham should never have signed it.

[2] Even in *Emlong Nurseries, Inc v Warner*, 364 Mich 462, 469; 110 NW2d 713 (1961), upon which defendants rely, the Court found that a surveyor's map prepared for purposes of describing the property, which had been introduced into evidence, could be used in conjunction with the description in the agreement so as to sufficiently identify and describe the tract of land.