

STATE OF MICHIGAN
COURT OF APPEALS

JOSEPH A. MABILIA and BARBARA J.
MABILIA,

UNPUBLISHED
August 15, 2000

Plaintiffs-Appellants,

v

No. 214006
Oakland Circuit Court
LC No. 96-521882-CK

ROCHESTER HILLS REAL ESTATE
DEVELOPMENT CORPORATION,

Defendant-Appellee.

Before: Murphy, P.J., and Kelly and Talbot, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the order granting defendant's motion for summary disposition under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant is the developer of the Walnut Brook Estate subdivision in Rochester Hills. Plaintiffs purchased a lot from defendant, and entered in to a construction contract with Mark Matta, the principal of Pinnacle Residential Homes, Inc. Defendant included Pinnacle Residential Homes in its builder participation program. Plaintiffs were unsatisfied with the work performed by Matta, who declared bankruptcy. Plaintiffs sought to recover from defendant as third-party beneficiaries of the builder participation program contract between defendant and Pinnacle Residential Homes, Inc. The trial court granted summary disposition to defendant, finding that Matta was not a party to the contract.

To determine whether a party is a third-party beneficiary as defined in MCL 600.1405; MSA 27A.1405, the Court must objectively review the form and meaning of the contract itself. *Kammer Asphalt Paving Co, Inc v East China Twp Schools*, 443 Mich 176, 189; 504 NW2d 635 (1993). An incidental beneficiary has no rights under the contract. A third person cannot maintain an action upon a contract merely because he would receive a benefit from its performance or because he is injured by the breach. *Id.* at 190. An objective standard is to be used which discerns the parties' intentions from the contract itself. The parties' motives and subjective intentions are not relevant in

determining whether plaintiffs are third-party beneficiaries. *Rieth-Riley Constr Co, Inc v Dep't of Transportation*, 136 Mich App 425, 430; 357 NW2d 62 (1984).

The trial court properly granted summary disposition to defendant on the third-party beneficiary claim. Looking at the contract itself, there is no indication that it was intended to apply to Mark Matta individually. Using the required objective standard, there is no intention to extend a benefit to plaintiffs in their dealings with Matta.

Affirmed.

/s/ William B. Murphy

/s/ Michael J. Kelly

/s/ Michael J. Talbot