

STATE OF MICHIGAN
COURT OF APPEALS

JOHN W. GILDERSLEEVE and ESTHER
GILDERSLEEVE,

UNPUBLISHED
February 9, 2001

Plaintiffs-Appellants/Cross-
Appellees,

v

RIVER HOUSE COOPERATIVE and MICHAEL
MULLINS,

No. 213388
Wayne Circuit Court
LC No. 96-634968-CK

Defendants-Appellees/Cross-
Appellants.

Before: Smolenski, P.J., and Doctoroff and Wilder, JJ.

MEMORANDUM.

Plaintiffs appeal as of right from the circuit court's stipulated order dismissing plaintiffs' claims against defendants. Defendants cross-appeal as of right from the circuit court's earlier order granting in part and denying in part their motion for summary disposition. Although plaintiffs filed a claim of appeal, plaintiffs' brief on appeal did not specify what errors plaintiffs allege that the trial court committed. Instead, plaintiffs' brief merely responded to the issues raised in defendants/cross-appellants' brief. Thus, the only issues presented for this Court's review are those raised on cross-appeal. We believe that the parties have waived appellate review of the issues raised on cross-appeal by stipulating to the dismissal of plaintiffs' claims. Accordingly, we dismiss this appeal.

This case arises out of a dispute over plaintiffs' right to sublet their apartment in defendant River House Cooperative ("River House"), and the propriety of certain fees assessed against plaintiffs as members of River House. In 1998, plaintiffs became the owners of an apartment in River House, a residential cooperative located in Detroit. As owners of this unit, plaintiffs were bound by the terms of an "Occupancy Agreement." Plaintiffs never lived in River House, but instead chose to sublet their apartment. However, in 1990, the board of directors of River House refused to grant plaintiffs permission to continue subletting the unit.

On July 26, 1996, plaintiffs filed a complaint against defendants. The complaint alleged that defendants had breached a contractual duty under the occupancy agreement by refusing to allow plaintiffs to sublet the unit and by "assessing fees and late charges contrary to Cooperative

by-laws.” The complaint also contained claims of tortious interference with a business relationship, defamation, false arrest and a request for declaratory or injunctive relief. On March 25, 1997, the circuit court dismissed the false arrest claim, upon stipulation of the parties. Plaintiffs then filed a first amended complaint, on May 28, 1997. The first amended complaint contained the additional claim that defendants had violated the Collection Practices Act, MCL 445.251 *et seq.*; MSA 19.658(1) *et seq.*, which prohibits regulated persons from publishing lists of debtors.

Defendants moved for summary disposition on October 27, 1997. A hearing was held on defendants’ motion on February 27, 1998, and the circuit court granted the motion as to the counts of tortious interference with a business relationship, defamation and the request for declaratory or injunctive relief. At this point in the proceedings, the only claims which survived summary disposition were the claims for breach of contract and for violation of the Collection Practices Act.

With the circuit court’s permission, plaintiffs filed a second amended complaint, on March 5, 1998, which contained only two counts. Count I alleged the same breaches of contract that were alleged in the first amended complaint, along with the additional claim that defendant River House’s board of directors breached their contractual duty to:

[R]efrain from unreasonable, arbitrary and/or capricious fee assessments against Plaintiffs and other residents similarly situated including but not limited to the duty to refrain from approving assessments not specifically authorized by the by-laws and other applicable rules and regulations.

In Count II, plaintiffs again alleged that defendants violated the Collection Practices Act by posting a delinquency notice in the lobby of River House’s apartment building.

Defendants moved for summary disposition as to plaintiffs’ second amended complaint on April 10, 1998. A hearing was held on that motion before the Wayne Circuit Court on May 1, 1998. The court granted the motion as to all of Count I, except for paragraph 7(e), which is quoted above. The court denied the motion as to Count II. Thus, the only claims remaining for trial after the court’s order dated May 22, 1998, were contained in paragraph 7(e) of Count I, and Count II of plaintiffs’ second amended complaint. Instead of proceeding to trial, the parties stipulated to the dismissal of the remaining claims. By order dated July 10, 1998, the circuit court therefore dismissed plaintiffs’ claims under Count II and paragraph 7(e) of Count I in the second amended complaint. This appeal followed.

Plaintiffs filed a claim of appeal on July 28, 1998. On August 14, 1998, defendants filed a claim of cross-appeal. On March 10, 1999, defendants filed their cross-appeal brief, raising four issues. Approximately two months later, on May 17, 1999, plaintiffs filed a brief addressing only the four issues raised by defendants on cross-appeal. As previously noted, plaintiffs’ brief did not specify what errors plaintiffs allege that the trial court committed. Thus, the only issues presented for this Court’s review are those four issues raised by defendant on cross-appeal. Those issues relate only to claims that were dismissed by stipulation of the parties on July 10, 1998.

Error requiring reversal cannot be error to which the aggrieved party contributed by plan or negligence. *Farm Credit Services of Michigan's Heartland, PCA v Weldon*, 232 Mich App 662, 684; 591 NW2d 438 (1998); *Phinney v Perlmutter*, 222 Mich App 513, 537; 564 NW2d 532 (1997). In *Farm Credit Services*, the defendants stipulated to a judgment for plaintiffs in the trial court, including an award of attorney fees. When the defendants attempted to argue on appeal that the award of attorney fees was improper, this Court held that the defendants had waived review of the issue by stipulating before the trial court. 232 Mich App at 683-684. Similarly, in *Phinney*, the defendant stipulated to the use of a general verdict form. When the defendant attempted to argue on appeal that the judgment erroneously failed to distinguish between past and future damages, this Court held that the defendant had waived review of the issue by stipulating before the trial court. 222 Mich App at 537-538. Because the parties in the present case stipulated to the circuit court's dismissal of plaintiffs' remaining claims, they have waived appellate review regarding those claims. Accordingly, this appeal is dismissed.

/s/ Michael R. Smolenski

/s/ Martin M. Doctoroff

/s/ Kurtis T. Wilder