STATE OF MICHIGAN

COURT OF APPEALS

BUHL REALTY COMPANY, INC. and GRISWOLD LARNED PARKING COMPANY,

Plaintiffs-Appellants,

v

EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, MERRILL LYNCH LIFE INSURANCE COMPANY, and DEFNB CORPORATION,

Defendants-Appellees,

and

BUHL BUILDING, LLC and CREDIT SUISSE FIRST BOSTON MORTGAGE CAPITAL, LLC,

Defendants.

UNPUBLISHED
September 18, 2001

No. 221562
Wayne Circuit Court
LC No. 98-833175-CZ

Before: Jansen, P.J., and Collins and Cooper, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a trial court order granting defendants' motion for summary disposition and their request for sanctions. We affirm.

Defendants Equitable Life Assurance Society and Merrill Lynch Life Insurance Company loaned money to plaintiffs, which was secured with a mortgage on certain property. Plaintiffs defaulted on the loan, and defendants brought a foreclosure action. Subsequently, a consent judgment was entered, which, among other things, provided plaintiffs with a right of first offer on the property:

> 6.8. Right of First Offer. Provided that Plaintiffs, or their Affiliates, are the Sale Purchaser, Buhl and Parking Company shall have a right of first offer to purchase the Property, subject to the following terms and conditions:

> A. At any time after the first business day in January 1996, Equitable, *at its exclusive option, may offer* in writing to sell the Property to Borrowers at an all cash price ("Offering Price") to be determined by Equitable. Equitable *is not obligated* to make any such offer to Borrowers and the period of this right of first offer shall terminate on the first business day of January 1997. [Emphasis added.]

In 1998, defendants sold the property to a third party. Plaintiffs brought suit against defendants, alleging, among other things, that defendants breached the consent judgment by failing to market the property sooner as promised during negotiations. Defendants, relying on the clear and unambiguous terms of ¶ 6.8.A, moved for summary disposition under MCR 2.116(C)(10), which the trial court granted.

On appeal, plaintiffs first argue that they set forth cognizable claims for breach of contract and fraud in the inducement. The standard of review was succinctly set forth in *Harts v Farmers Ins Exchange*, 461 Mich 1, 5; 597 NW2d 47 (1999):

> A motion pursuant to MCR 2.116(C)(10) tests the factual support of a plaintiff's claim and is subject to de novo review. *Smith v Globe Life Ins Co*, 460 Mich 446; 597 NW2d 28 (1999). In reviewing a motion for summary disposition pursuant to MCR 2.116(C)(10), the court considers the pleadings, affidavits and other documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the nonmoving party. *Id.* The motion is properly granted if the documentary evidence presented shows that there is no genuine issue with respect to any material fact and the moving party is therefore entitled to judgment as a matter of law. *Id.*

Although a judgment entered by consent is not a mere contract, *Trendell v Solomon*, 178 Mich App 365, 369; 443 NW2d 509 (1989), judgments entered pursuant to the agreement of parties are "of the nature of a contract, rather than a judicial order entered against one party." *Massachusetts Indemnity & Life Ins Co v Thomas*, 206 Mich App 265, 268; 520 NW2d 708 (1994). Thus, the terms of the agreement, for purposes of interpretation, may be governed by legal principles generally applicable to the interpretation of contracts. See *Gojcaj v Moser*, 140 Mich App 828, 834; 366 NW2d 54 (1985).

The initial question whether a contract is ambiguous is a question of law, which is reviewed de novo. *Port Huron Ed Ass'n v Port Huron Area School Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996). If the contractual language is clear and unambiguous, its meaning is a question of law. *Id.* If the contractual language is unclear or susceptible to multiple meanings, interpretation is a question of fact. *Id.*

Here, it is undisputed that the consent judgment was the result of extensive negotiations between the parties and their respective counsel. Paragraph 6.8.A of the consent judgment clearly and plainly provides that Equitable Life Assurance had an *exclusive option* to market the property during 1996, but was *not obligated* to do so. Nowhere does the consent judgment provide that Equitable Life Assurance was required to immediately market the property, market the property during 1996, or sell the property only to plaintiffs. As such, under the exclusive option provided to Equitable Life Assurance in ¶ 6.8.A, its decision to refrain from marketing the

property until 1998 was entirely proper. Moreover, under the plain language of ¶ 6.8.A, the right of first offer expired on January 2, 1997 and, thus, Equitable Life Assurance was undisputedly free market the property in 1998 at its discretion.

In arguing that defendants breached the consent judgment, plaintiffs rely on two affidavits in which the affiants aver that defendants' representative stated that defendants intended to market the property "at the earliest opportunity," and that plaintiffs were misled and defrauded into signing the consent judgment, given defendants' misrepresentations. However, the proffered affidavits are contradictory to the plain and unambiguous language of ¶ 6.8.A. It is well established that parol evidence of prior or contemporaneous agreements or negotiations that contradict or vary the clear and unambiguous terms of a written agreement is not admissible. *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486, 494; 597 NW2d 411 (1998).

Plaintiffs claim that the proffered parol evidence should be allowed because the consent judgment does not express the parties' complete agreement, *In re Skotzke Estate*, 216 Mich App 247, 251-252; 548 NW2d 695 (1996), and because the consent judgment lacks a merger clause. Although plaintiffs point to other parts of the consent judgment in an attempt to demonstrate the ambiguity and incompleteness of ¶ 6.8.A, it is clear that the provision completely embodies defendants' obligation to plaintiffs with regard to providing them a right of first offer. The remaining provisions of ¶ 6.8 address procedural aspects concerning if and when the right of first offer is exercised. Further, plaintiffs have failed to provide any support for their position that every agreement must have a merger clause to be considered a complete embodiment of the parties' intention. A party may not merely announce a position and then leave it to this Court to discover and rationalize the basis for the claim. *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Accordingly, the parol evidence rule does not allow the proffered affidavits, and plaintiffs have failed to set forth a claim of breach of contract.

Plaintiffs also claim that they are entitled to relief because they were fraudulently induced into signing the consent judgment. Fraud in the inducement, which is intrinsic fraud, occurs where a party materially misrepresents future conduct under circumstances in which the assertions may reasonably be expected to be relied upon and are relied upon. *Sprague v Buhagiar*, 213 Mich App 310; 539 NW2d 587 (1995), *Samuel D Begola Services, Inc v Wild Brothers*, 210 Mich App 636, 640; 534 NW2d 217 (1995). Our Supreme Court has declined to recognize an independent action at law to recover damages for intrinsic fraud. See *Triplett v St Amour*, 444 Mich 170, 175-176; 507 NW2d 194 (1993). Therefore, plaintiffs' remedy, if any, is to file a motion for relief from judgment pursuant to MCR 2.612(C). See *Sprague, supra*; *Nederlander v Nederlander*, 205 Mich App 123, 126; 517 NW2d 768 (1994). Accordingly, plaintiffs' claim for fraudulent inducement is barred and defendants are entitled to summary disposition on this claim under MCR 2.116(C)(7).[1]

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[1] We will affirm a trial court's decision if it reached the right result, even for the wrong reason. *Glazer v Lamkin*, 201 Mich App 432, 437; 506 NW2d 570 (1993).

Next, plaintiffs argue that, contrary to defendants' claim, the trial court did not grant defendants' request for sanctions and, if it did, it did so erroneously because their complaint was not frivolous. First, contrary to plaintiffs' contention, the trial court's order clearly states that it granted defendants' request for sanctions. Even though a verbal express determination regarding sanctions was not made on the record at the hearing, the specific determination was made in the signed order. It is axiomatic that a court speaks through its orders and judgments, not its oral opinions. *Dep't of Conservation v Connor*, 321 Mich 648; 32 NW2d 907 (1948); *Joslin v 14th District Judge*, 76 Mich App 90, 96; 255 NW2d 782 (1977). Consequently, the trial court clearly granted defendants' request for sanctions.

Further, we find that the trial court did not clearly err, *Szymanski v Brown*, 221 Mich App 423, 436; 562 NW2d 212 (1991), in determining that plaintiffs' action was frivolous. The imposition of sanctions under MCR 2.114 is mandatory upon a finding that a pleading was signed in violation of the court rule or a frivolous action or defense has been pleaded. *Schadewald v Brulé*, 225 Mich App 26, 41; 570 NW2d 788 (1997). Likewise, under MCR 2.625(A)(2), a trial court shall award costs pursuant to MCL 600.2591 if it finds that an action was frivolous. An action or defense is frivolous when (i) the party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party; (ii) the party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true; or, (iii) the party's legal position was devoid of arguable legal merit. MCL 600.2591(3)(a). Here, given the plain and unambiguous language of the challenged provision in the consent judgment, we are not left with a definite and firm conviction that the trial court clearly erred in granting defendants' request for sanctions.

Affirmed. Defendants-appellees, having prevailed in full, may tax costs pursuant to MCR 7.219.

/s/ Kathleen Jansen
/s/ Jeffrey G. Collins
/s/ Jessica R. Cooper