STATE OF MICHIGAN

COURT OF APPEALS

BILL KNAPP PROPERTIES, INC., Plaintiff-Appellant,	UNPUBLISHED December 18, 2001
v	No. 225445 Oakland Circuit Court
TOWNSHIP OF BLOOMFIELD, Defendant-Appellee.	LC No. 99-012187-CZ

Before: Cooper, P.J., and Cavanagh and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's denial of its motion for summary disposition and grant of summary disposition in favor of defendant, pursuant to MCR 2.116(C)(8) and (C)(10), in this action to enforce a consent judgment entered in 1975. We affirm.

In 1974, the Telegraph-Long Lake Company (Company) owned two parcels of land located in Bloomfield Township, described as Outlot A and Outlot B of Devon Gables Subdivision. At that time, Outlot A was zoned B-2 (community business district) and Outlot B was zoned R-3 (one family residential district). Apparently, in an effort to use Outlot B as a parking lot in support of a building to be constructed on Outlot A, the Company filed an action in the circuit court requesting, in pertinent part, that defendant be enjoined from interfering with the use of Outlot B as a parking lot.

Subsequently, in February 1975, the circuit court granted the Company partial summary judgment holding, in pertinent part, that the R-3 zoning classification for Outlot B was unreasonable and "that Plaintiff shall be and is hereby authorized to utilize said Outlot B for uses permitted within the P-1 Zone District of the Zoning Ordinance for Bloomfield Township . . . ." The order further enjoined defendant "from interfering with the use of said Outlot B for those uses permitted in a P-1 Zone District as set forth in the Bloomfield Township Zoning Ordinance."

Thereafter, the circuit court rendered a pretrial summary outlining a proposed resolution of the remaining matters in controversy and reiterated its holding that Outlot B could be used for purposes permitted by the P-1 (parking district) zoning classification. Further, the circuit court proposed that the Company submit site plans meeting the requirements of the B-2 zoning

classification regarding Outlot A and of the P-1 zoning classification as to Outlot B. In April 1975, a consent judgment was entered that referenced the court's pretrial summary and ordered, in pertinent part, that the Company be issued the permits necessary for the construction and improvement of its property in accordance with approved site plans. In March 1978, the consent judgment was amended by stipulation to reflect that (1) the Company partitioned Outlots A and B into Parcels A and B, (2) Parcel A was purchased by National Bank of Detroit (NBD) and Parcel B was purchased by plaintiff, Bill Knapp Properties, Inc. (BKPI), and (3) NBD and BKPI were successors in interest of the Company and subject to the provisions of the consent judgment.

At some later time, defendant drafted a new Master Plan and, in 1998, rezoned Parcels A and B to an O-1 (office building) zoning classification. In January 1999, plaintiff filed the instant action alleging that the stipulated consent judgment constituted a covenant "wherein the township changed the classification of this property to commercial . . . ." Plaintiff averred that the reclassification of the property to O-1 constituted a breach of the convenant because defendant "could not unilaterally change the property classification." Consequently, plaintiff requested that defendant be enjoined from reclassifying the property, that money damages be awarded to plaintiff, and that the trial court issue an order to show cause why defendant should not be held in contempt.

Subsequently, both parties filed motions for summary disposition. Defendant argued that the consent judgment did not require it to rezone Parcel B to B-2 (commercial), but only to permit Parcel B to be used for parking as permitted in a P-1 zoning district. In contrast, plaintiff argued that the consent judgment required defendant to rezone Parcel B to a B-2 classification and that unilateral rezoning of the property to O-1 was a violation of the consent judgment. Following oral arguments, the trial court granted defendant's motion for summary disposition holding that the consent judgment did not require defendant to rezone the property.

On appeal, plaintiff argues that the trial court erred in granting defendant's motion for summary disposition and by failing to grant its motion for summary disposition because when the circuit court granted the Company partial summary judgment, it vacated the R-3 zoning classification and restored an original zoning classification of B-2 to Parcel B. Further, plaintiff argues, defendant agreed that the property would be zoned B-2 by entering into the consent judgment. We disagree.

The trial court's ruling on a motion for summary disposition is reviewed de novo on appeal. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Although the trial court indicated that it granted defendant's motion pursuant to MCR 2.116(C)(8) and (C)(10), it relied on facts outside the pleadings; therefore, this Court will consider the motion as granted pursuant to MCR 2.116(C)(10). See *Driver v Hanley (After Remand)*, 226 Mich App 558, 562; 575 NW2d 31 (1997). When reviewing a motion under MCR 2.116(C)(10), this Court reviews the documentary evidence to determine whether a party is entitled to judgment as a matter of law or whether a genuine issue of material fact exists. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

Although a consent judgment is not a mere contract for purposes of enforcement but possesses the same force and character as other judgments, *Trendell v Solomon*, 178 Mich App

365, 368-369; 443 NW2d 509 (1989), it is a settlement agreement and its terms, for interpretation purposes, are governed by contract principles. See *Mikonczyk v Detroit Newspapers, Inc*, 238 Mich App 347, 349; 605 NW2d 360 (1999); *Plamondon v Plamondon*, 230 Mich App 54, 56; 583 NW2d 245 (1998). If contractual language is clear and unambiguous, its meaning is a question of law. *Port Huron Ed Ass'n v Port Huron Area School Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996).

In this case, the language in the consent judgment, as well as the partial summary judgment and pretrial summary, is unambiguous and does not support plaintiff's proposed interpretation. The circuit court merely authorized Outlot B, now known as Parcel B, to be used consistent with a P-1 zoning classification and enjoined defendant from interfering with such use. All references to Outlot B by the circuit court pertained to its use for parking. The court did not address rezoning Outlot B to a B-2 classification. We further note that there is no support in the record for plaintiff's assertion, apparently argued for the first time on appeal, that the circuit court vacated the R-3 zoning classification and restored an alleged preexisting B-2 classification. Similarly, plaintiff's argument that defendant agreed that the property would be zoned B-2 by entering into the consent judgment is also unsupported and without merit. Accordingly, the trial court properly granted summary disposition in favor of defendant.

Affirmed.

/s/ Jessica R. Cooper
/s/ Mark J. Cavanagh
/s/ Jane E. Markey