STATE OF MICHIGAN

COURT OF APPEALS

JOES FURNACE CLEANING, INC. and ELLIS CONNER, Plaintiffs-Appellees, v TRACY L. CIERLIK and NANCY L. GEE, Defendants-Appellants.	UNPUBLISHED February 15, 2002 No. 226151 Oakland Circuit Court LC No. 99-013133-CK

Before: Talbot, P.J., and Gage and Wilder, JJ.

PER CURIAM.

Following a hearing, the trial court issued an opinion and order granting plaintiffs' motion for summary disposition of both plaintiffs' claims for breach of contract and defendants' counterclaims, pursuant to MCR 2.116(C)(10). The court subsequently awarded plaintiffs judgment in the amount of $82,707.82 on their breach of contract claim, along with costs in the amount of $980.79, and sanctions in the amount of $100. Defendants appeal as of right. We affirm.

Defendants first claim that the trial court erred in granting plaintiffs summary disposition of plaintiffs' claim and defendants' counterclaim for breach of contract. According to defendants, the involvement of plaintiff Ellis Conner and his wife, Carol A. Conner, with Thomas VanDerske and VanDerske's business, Tom's Furnace Cleaning, constituted a breach of the parties' covenant not to compete, and therefore justified defendants in refusing to make payments on the promissory note executed in connection with the sale of plaintiffs' business to defendants. We disagree.

We review a trial court's decision with regard to a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). MCR 2.116(C)(10) provides for summary disposition where "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." When reviewing an order of summary disposition under MCR 2.116(C)(10), this Court examines all relevant documentary evidence in the light most favorable to the nonmoving party to determine whether a genuine issue of material fact exists on which reasonable minds could differ. *Ardt, supra* at 688. Where the moving party has produced evidence in support of the motion, the opposing party bears the burden of producing evidence to establish that a genuine issue of disputed fact exists. *Ardt, supra* at 688.

The relevant facts are not in dispute. In 1993, plaintiffs sold their furnace cleaning business located in Oxford, Michigan, to defendants. The Purchase Agreement contained a covenant not to compete clause, which provided as follows:

> It is agreed that the SELLERS shall not directly or indirectly carry on a business similar to that involved in this transaction within a 25 mile radius from the location of this business for a period of 10 years from the date of this Agreement, provided that the PURCHASERS are not in default of any of the terms hereof.

The parties also executed a separate Covenant Not to Compete document which essentially contained the same terms. In 1998, plaintiffs admit that they loaned VanDerske, a former employee, $10,000 to assist him in purchasing a truck for VanDerske's business, Tom's Furnace Cleaning, and also answered the telephone at Tom's Furnace Cleaning until VanDerske could hire a permanent employee. Additionally, Carol Conner, at VanDerske's request, sent VanDerske advertisements for business space in Lake Orion. Plaintiffs also allowed VanDerske to use their home telephone number as a contact number for potential employees to arrange an interview with VanDerske. VanDerske was a longtime employee of plaintiffs' former Lansing furnace cleaning business and a friend of the family.

The trial court found that plaintiffs had not "participated in the running of Mr. VanDerske's furnace cleaning business" and that plaintiffs had not "maintained a financial interest in same." Therefore, the trial court, relying on *Buckingham Tool Corp v Evans*, 35 Mich App 74; 192 NW2d 362 (1971), found that plaintiffs had not, as a matter of law, breached the agreement not to compete.

Agreements not to compete are permissible in Michigan so long as they are reasonable. *Thermatool Corp v Borzym*, 227 Mich App 366, 372; 575 NW2d 334 (1998). Here, the existence, enforceability, and reasonableness of the noncompetition agreement are not at issue. The question here is whether the undisputed actions by plaintiffs in relation to Thomas VanDerske and Tom's Furnace Cleaning constituted a breach of the covenant not to compete. Defendants claim that the trial court erred in determining that plaintiffs had not directly or indirectly participated in running Tom's Furnace Cleaning business. Plaintiffs counter that their actions did not, as a matter of law, rise to the level of directly or indirectly engaging in a competing business.

The *Buckingham* decision resolves this dispute. Plaintiffs' involvement with VanDerske and Tom's Furnace Cleaning was not nearly as extensive as the involvement of Joseph and Mary Evans with the tool and die company in *Buckingham*, which was found not to constitute a breach of their noncompetition agreement. Although plaintiffs loaned VanDerske $10,000 and helped him purchase a truck, it is not normally a violation of a noncompetition agreement to merely lend money or extend credit to a person about to engage in a competing business. *Buckingham, supra* at 78. Moreover, the isolated act of sending newspaper advertisements for business space in Lake Orion to VanDerske cannot be considered a violation of the noncompetition agreement. Nor was Carol Conner's involvement in answering VanDerske's telephone for a period of five weeks until he could locate a permanent employee a violation of the agreement not to compete. Carol Conner was simply doing VanDerske a favor; she was not directly or indirectly competing with defendants in the furnace cleaning business. Additionally, unlike in *Buckingham*, plaintiffs

did not provide a building for VanDerske's business, they did not sign as guarantors for his equipment, nor did they provide employees for his company. Furthermore, plaintiffs presented uncontradicted evidence to indicate that VanDerske was the sole owner of Tom's Furnace Cleaning, that plaintiffs had not participated in running the business, that plaintiffs had no financial interest in the business, and that plaintiffs had not counseled or advised VanDerske/Tom's Furnace Cleaning on business matters.

In light of the undisputed facts, the trial court properly granted plaintiffs' motion for summary disposition on defendants' breach of contract claim. Further, because defendants ceased making payments on the promissory note without justification and because plaintiffs did not violate the noncompetition agreement, judgment in favor of plaintiffs was proper on their breach of contract claim and on defendants' counterclaim for breach of contract.

Defendants also claim that the trial court erred in failing to address their claim that the promissory note between the parties had been assigned to Nan-Tray, Inc., and therefore no judgment could be entered against them individually and that any judgment in favor of plaintiffs could only be against defendants' corporation, Nan-Tray, Inc. Defendants provided no supporting documentation below to indicate that they had, in fact, assigned the purchase agreement and promissory note to Nan-Tray, Inc. In any event, even if defendants had assigned the purchase agreement and promissory note to their corporation, that would not have relieved them of their individual obligations under those documents. The purchase agreement and promissory note merely permitted assignment. Nothing in either document indicates that if the agreements were assigned to a corporation that defendants would be relieved of individual liability. Moreover, it is undisputed that plaintiffs did not consent to release defendants from individual liability. Therefore, defendants remained liable individually under the contract. See 3 Michigan Law & Practice, Assignments, § 75, p 45. See also *Hart v Summers*, 38 Mich 399 (1878).

Lastly, because plaintiffs' proposed judgment comported with the trial court's written opinion and order and there was no basis for defendants' objections to the proposed judgment, we find no clear error in the trial court's award of sanctions in the amount of $100. *Schadewald v Brule*, 225 Mich App 26, 41; 570 NW2d 788 (1997).

Affirmed.

/s/ Michael J. Talbot
/s/ Hilda R. Gage
/s/ Kurtis T. Wilder