STATE OF MICHIGAN

COURT OF APPEALS

EDWARD A. SCHNEIDER,

Plaintiff-Appellant,

v

EDWARD G. SPISAK and SHIRLEY SPISAK,

Defendants-Appellees.

UNPUBLISHED
October 18, 2002

No. 234214
Wayne Circuit Court
LC No. 00-023700-CK

Before: Murphy, P.J., and Markey and R.S. Gribbs*, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's orders granting summary disposition in favor of defendants and denying plaintiff's motion to amend his complaint. We affirm.

Plaintiff first argues that the trial court erred in granting summary disposition in favor of defendants after concluding that the promissory note in question was a demand note, that plaintiff had made a demand for payment, and that the six-year statute of limitations barred his claim. We disagree. We review de novo the trial court's decision regarding a summary disposition motion. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). In addition, statutory interpretation and the interpretation of contractual language are reviewed de novo on appeal. *Morley v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998) (contract interpretation); *Oakland County Bd of Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998) (statutory interpretation). The trial court must consider affidavits, depositions, admissions, and other documentary evidence when deciding a motion brought pursuant to MCR 2.116(C)(7). *Maiden, supra* at 119.

First, the trial court properly found that that note was a demand note. MCL 440.3108 provides in relevant part:

> (1) A promise or order is "payable on demand" if it:
>
> (a) States that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

(b) Does not state any time of payment.

* * *

(3) If an instrument, payable at a fixed date, is also payable upon demand made before the fixed date, the instrument is payable on demand until the fixed date, and if demand for payment is not made before that date, becomes payable at a definite time on the fixed date.

In this case, the note at issue first provides that it is payable "on demand." Then, the note states that it shall be due and payable "no later than October 28, 2000." Although plaintiff argues that the note is not a pure demand note because it states both a specific date for payment and the word "demand," any discrepancies or ambiguities are to be construed against the drafter of the agreement, i.e., plaintiff in the instant case. See *State Farm Mutual Automobile Ins Co v Enterprise Leasing Co*, 452 Mich 25, 38-39; 549 NW2d 345 (1996). Moreover, because MCL 440.3108(3) clearly provides that an instrument is a demand note if it has both a demand statement and a fixed date for payment, we conclude that the note is a demand note. The note is "payable on demand" until the fixed date, at which time it is due. Further, in his deposition, plaintiff repeatedly testified that the note was a demand note.

Plaintiff also states that no demand for payment was ever made. We disagree. Neither party disputes that in February 1994, plaintiff provided defendant Edward Spisak with his ledger indicating the amount of money that plaintiff had loaned defendant. At that time, plaintiff asked defendant Edward Spisak for payment of the total amount due. On February 7, 1994, defendants paid plaintiff $100,000. Although plaintiff acknowledges that he "asked" for payment of the amounts owed, he asserts that the request did not constitute a demand. We conclude otherwise. A demand for payment does not require any specific or particular words. And, the evidence presented in this case was sufficient to justify a finding that a demand was made. See *Porter v East Jordan Realty Co*, 210 Mich 398, 400-404; 177 NW 987 (1920). It is clear from the evidence that both parties considered and treated plaintiff's verbal request as a demand. The fact that plaintiff's request was couched in courteous language does not deprive it of its legal effect. *Id*. at 404. Indeed, in his complaint, plaintiff alleges that despite his "demand" for payment, defendants had failed to pay. The trial court did not err in finding that a demand was made.

The trial court also did not err in finding that the six-year statute of limitations period barred plaintiff's claim. The demand was made in early February 1994, and this action was filed in July 2000. MCL 440.3118(2) specifically provides that if demand for payment is made, then "an action to enforce the obligation of a party to pay the note must be commenced within 6 years after the demand." It is clear that plaintiff demanded repayment more than six years before he filed this action.

Plaintiff also argues that equitable estoppel bars defendants' assertion of the statute of limitations defense. We disagree. To justify the application of the equitable estoppel doctrine, a party

must establish that there has been a false representation or concealment of material fact, coupled with an expectation that the other party will rely upon this

> conduct, and knowledge of the actual facts on the part of the representing or concealing party. [*Lothian v Detroit*, 414 Mich 160, 177; 324 NW2d 9 (1982); see, also, *Hoye v Westfield Ins Co*, 194 Mich App 696, 705; 487 NW2d 838 (1992).]

Plaintiff asserts that he took no action against defendants because he relied upon their representations that they would pay the money owed after they reviewed plaintiff's ledger with their accountant (i.e., defendant Edward Spisak's brother). We conclude that defendants' nearly simultaneous request in February 1994 that they be allowed time to have their accountant review plaintiffs' ledger entries does not constitute "conduct clearly designed to induce 'the plaintiff to refrain from bringing action within the period fixed by statute [i.e., six years].'" *Lothian*, *supra*, quoting *Renackowsky v Bd of Water Comm'rs of Detroit*, 122 Mich 613, 616; 81 NW 581 (1900).

Plaintiff argues that the trial court should have allowed him to amend his complaint to allege additional causes of action of account stated and open account. We disagree. A trial court's decision regarding a motion to amend pleadings is within the "sound discretion of the trial court and reversal is only appropriate when the trial court abuses that discretion." *Weymers v Khera*, 454 Mich 639, 654; 563 NW2d 647 (1997).

Leave to amend a pleading "shall be freely given when justice so requires." MCR 2.118(A)(2); *Weymers*, *supra* at 658. A motion to amend should be denied only for the following reasons:

> "[1] undue delay, [2] bad faith or dilatory motive on the part of the movant, [3] repeated failure to cure deficiencies by amendment previously allowed, [4] undue prejudice to the opposing party by virtue of allowance of the amendment, [and 5] futility . . . ." [*Weymers*, *supra*, quoting *Ben P Fyke & Sons v Gunter Co*, 390 Mich 649, 656; 213 NW2d 134 (1973).]

Further, although delay alone generally does not warrant denial of a motion to amend, a court may deny the motion if the delay was in bad faith or if the delay prejudiced the opposing party. *Weymers*, *supra* at 659.

In this case, contrary to plaintiff's assertion, the trial court specifically stated on the record that it was denying plaintiff's motion because of undue delay and futility and that it was adopting defendants' brief and oral argument as the basis for its decision. Further, after reviewing the record in this matter, we conclude that the trial court did not abuse its discretion in denying plaintiff's motion to amend. *Id*. at 654. In this case, plaintiff sought to add additional causes of action that were not based on newly discovered evidence but rather on the basis of the same set of facts. *Id*. at 659. In addition, plaintiff sought to add these claims after discovery was closed, mediation proceedings were completed, trial was imminent, defendants did not have reasonable notice of the claims, and defendants' summary disposition motion was pending. *Id.* at 659-660. Further, defendants' accountant, a key witness regarding plaintiff's claims of open account and account stated, died during the trial court proceedings in this matter. *Id*. at 659.

In light of our conclusion that the statute of limitations bars recovery in this matter, we need not address plaintiff's other issues

We affirm.

/s/ William B. Murphy
/s/ Jane E. Markey
/s/ Roman S. Gribbs