STATE OF MICHIGAN

COURT OF APPEALS

BERGER REALTY GROUP, INC. and PARK SHELTON ASSOCIATES LIMITED PARTNERSHIP,

Plaintiffs-Appellants,

v

ROYAL INSURANCE COMPANY OF AMERICA,

Defendant,

and

HEINEMAN & LOVETT COMPANY, INC.,

Defendant-Appellee.

UNPUBLISHED
October 22, 2002

No. 229353
Wayne Circuit Court
LC No. 98-828035-CK

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

PER CURIAM.

Plaintiffs appeal as of right a grant of summary disposition in favor of defendant-appellee, Heineman & Lovett Company, Inc (defendant). We affirm in part, reverse in part, and remand.

Defendant performed extensive masonry work on a building owned by plaintiffs and initiated a lawsuit in 1991 to secure payment. The parties entered into a stipulation for entry of a consent judgment in that case "to fully resolve all claims arising out of their contract of June 1, 1987," and a consent judgment was entered in February 1990. Plaintiffs discovered in 1996 that defendant's work was defective and filed this action in 1998. The trial court granted summary disposition in favor of defendant on the basis of the "all claims" language in the stipulation from the parties' prior case.

Plaintiffs argue on appeal that the trial court erred in granting summary disposition because the stipulation was ambiguous regarding whether it resolved future claims arising from

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

the contract between the parties. We review de novo an order granting summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

An agreement to settle a pending lawsuit is a contract governed by the legal principles applicable to the construction and interpretation of contracts. *Board of County Rd Comm'rs for Co of Eaton v Schultz*, 205 Mich App 371, 379; 521 NW2d 847 (1994). A fundamental rule in contract interpretation is to determine the parties' intent. *Klever v Klever*, 333 Mich 179, 186; 52 NW2d 653 (1952). To ascertain the intent of the parties, we examine the express contract language. *Zurich Ins Co v CCR and Co*, 226 Mich App 599, 603-604; 576 NW2d 392 (1997). The law presumes that the parties understood the import of a written contract and had the intention manifested by its terms. *Id.*

There is nothing ambiguous about the stipulated provision "in order to fully resolve all claims arising out of their contract of June 1, 1987." The two word pairs "fully resolve" and "all claims" mutually reinforce the natural interpretation that this clause was intended to put an end to any possibility of a lawsuit between these parties regarding the contract at issue. Indeed, there is no broader classification than the word "all;" the word leaves no room for any exceptions. *Skotak v Vic Tanny Intern, Inc*, 203 Mich App 616, 619; 513 NW2d 428 (1994). Although the parties' stipulation arose out of a payment dispute, the construction defects that were the subject of this lawsuit arose from the performance of the June 1987 contract. The trial court properly found that the provision in the stipulation was clear and unambiguous. Even construed in a light most favorable to plaintiffs, *Brennan v Edward D Jones & Co*, 245 Mich App 156, 157; 626 NW2d 917 (2001), there was no room for interpretation of the provision. The trial court did not err in this regard.

Plaintiffs also argue that their allegations of fraud were sufficient to require a full hearing on the merits as to the true intent of the parties when they entered into the stipulation. We agree. Once material issues of fact regarding fraud and misrepresentation with respect to the true nature of an executed instrument are raised, those facts must be resolved by a fact finder after a full hearing on the merits. *Trongo v Trongo*, 124 Mich App 432, 436; 335 NW2d 60 (1983). In the second amended complaint, plaintiffs fulfilled the formal requirements for pleading fraud, *M&D, Inc v WB McConkey*, 231 Mich App 22, 27; 585 NW2d 33 (1998), and the trial court erred in granting summary disposition of plaintiff's fraud claim.

Defendant urges us, in the alternative, to affirm the trial court's decision because plaintiffs' lawsuit is barred by the statute of limitations. We disagree. MCL 600.5839, the statute of limitation cited by defendant, applies to actions involving the improvement of real property and provides a general six-year limitation period, which can be extended under certain circumstances up to ten years. Plaintiffs, on the other hand, argue that the masonry work was a repair and not an improvement, and that therefore MCL 600.5813, the general statute of limitations for personal actions, including fraud claims, applies.

An improvement is a "permanent addition to or betterment of real property that enhances its capital value and that involves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs." *Pendzsu v Beazer East, Inc*, 219 Mich App 405, 410; 557 NW2d 127 (1996). The test for an improvement is not whether the modification can be removed without damage to the land, but whether it adds to the value of the realty for the purposes for which it was intended to be used. *Id*. at 410-411. In

addition, the nature of the improvement and the permanence of the improvement should also be considered. *Id*. at 411; *Pitsch v ESE Michigan, Inc*, 233 Mich App 578, 601; 593 NW2d 565 (1999); *Travelers Ins Co v Guardian Alarm Co of Michigan*, 231 Mich App 473, 478; 586 NW2d 760 (1998).

Defendant acknowledges that the primary objective of the contract was to replace the damaged and worn brick, stone, terra cotta and mortar on the exterior of the building. It is apparent from the contract language that the masonry work was not designed to change or improve the building, but to repair the masonry that was already in place. The property became no more useful or valuable after the masonry work, but instead simply retained the usefulness and value that it would otherwise have lost in the absence of repairs. The work did not qualify as an "improvement," so MCL 600.5839 does not apply.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

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