# STATE OF MICHIGAN

# COURT OF APPEALS

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DAVID KEENA, Individually and on behalf of VIPER ENTERPRISES, L.L.C.,

Plaintiffs-Appellants,

V

NICO MORIC,

Defendant,

and

ROBERT J. FATTORE, Individually and on behalf of SALIS REAL ESTATE, L.L.C.,

Defendants-Appellees.

UNPUBLISHED
May 18, 2004

No. 246313
Macomb Circuit Court
LC No. 01-005286-CH

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Before: Saad, P.J., and Sawyer and Fort Hood, JJ.

PER CURIAM.

Plaintiffs appeal an order resolving post-closing issues in this action for specific performance of the sale of land owned by defendant Moric to plaintiffs, and we affirm.

Plaintiffs argue that the trial court erred in dismissing all counts of plaintiffs' complaints when the parties agreed to dismiss only the specific performance count of the complaint. Interpretation of unambiguous and unequivocal contracts is a question of law and questions of law are reviewed de novo. *Eggleston v Bio-Medical Applications of Detroit, Inc,* 468 Mich 29, 32; 658 NW2d 139 (2003); *Gramer v Gramer,* 207 Mich App 123, 125; 523 NW2d 861 (1994). Courts speak through written orders. *Rinas v Mercer,* 259 Mich App 63, 71; 672 NW2d 542 (2003). Judgments entered by the court pursuant to an agreement of the parties are of the nature of a contract, and are to be construed and applied as such. *Gramer, supra* at 125. Absent a showing of fraud or duress, the trial court acts properly when it enforces such agreements. *Id.*

Plaintiffs argue that the parties agreed to dismiss only the specific performance count of the six-count complaint upon the successful closing on the subject property. Plaintiffs state that while the language of the November 27, 2002, consent order indicated that plaintiffs' complaint would be dismissed except for "those issues referenced below" and while the order did not

specifically articulate what the "issues referenced below" were which remained to be decided after the closing, the language of the order was broad enough so that the parties understood it to mean that the remaining five counts of plaintiffs' complaint (unjust enrichment, fraud, innocent misrepresentation, retaliatory eviction and tortious interference with contractual relations) were still extant.

However, at the hearing on August 27, 2002, defendants' attorney stated that he understood the settlement to mean that once the closing on the subject property took place "all claims in the lawsuit are resolved with the only exception being . . . certain expenses such as environmental report and other matters" relating to the contract and the tenancy. Plaintiff Keena was then sworn in and testified that he understood the settlement agreement and accepted it. Further, the order embodying the settlement agreement clearly stated that plaintiffs' complaint was to be dismissed in its entirety with prejudice upon the closing of the sale of the property save for the "issues referenced below" and there was no reference "below" to counts II through VI of plaintiffs' complaint. The only issues mentioned were expenses regarding the environmental reports and matters "relating to the litigation and tenancy." Finally, at the hearing on the entry of the order, plaintiffs objected to some provisions of the order, but never objected to or asked for clarification of the language which stated that plaintiffs' complaint was to be dismissed in its entirety upon the closing of the sale of the property.

Because a court speaks through its orders, the language of the order controls. There is no dispute that the parties closed on the sale of the property. Therefore, according to the plain language of the order, plaintiffs' complaint was dismissed with prejudice except for the issues relating to litigation and tenancy, including, but not limited to, allocating responsibility for costs relating to environmental studies, reports and assessments as well as payment of rent and taxes. And these issues, including the allocation of the costs of the baseline environmental assessment (BEA) and other environmental studies, attorney fees, back rent and taxes, etc., were decided at a later hearing. Accordingly, we hold that the trial court did not err in dismissing plaintiffs' complaint and enforcing the consent order as written.

Plaintiffs assert that they were denied due process in that they did not have notice of the hearing during which the trial court resolved the outstanding issues in the case and that they did not have an opportunity to be heard on their claims for damages. The determination whether a party has been afforded due process is a question of law subject to de novo review on appeal. *In re Carey*, 241 Mich App 222, 225-226; 615 NW2d 742 (2000). Due process generally requires notice and an opportunity to be heard. *Dusenberry v US*, 534 US 161, 167; 122 S Ct 694; 151 L Ed 2d 597 (2002); *In re Adams Est*, 257 Mich App 230, 234; 667 NW2d 904 (2003). Notice must be reasonably calculated to apprise interested parties of the pendency of the action and must afford them an opportunity to present objections. *Dusenberry, supra*, 534 US 168; *Vincencio v Jaime Ramirez, MD, PC*, 211 Mich App 501, 504; 536 NW2d 280 (1995). Generally, due process in civil cases requires notice of the nature of the proceedings, *Van Slooten v Larsen*, 410 Mich 21, 53; 299 NW2d 704 (1980); *In re Juvenile Commitment Costs*, 240 Mich App 420, 440; 613 NW2d 348 (2000), and an opportunity to be heard in a meaningful time and manner, *In re Costs*, *supra* at 440. The opportunity to be heard does not require a full trial-like proceeding, but requires a hearing to the extent that a party has a chance to know and respond to the evidence. *Westland Convalescent Center v BCBSM*, 414 Mich 247, 270-271; 324

NW2d 851 (1982) (Fitzgerald, J.); *Traxler v Ford Motor Co*, 227 Mich App 276, 288; 576 NW2d 398 (1998).

At the hearing on defendants' motion to enter an order embodying the settlement agreement between the parties, the trial court notified the attorneys for both parties on the record that there would be a court hearing on December 9, 2002, to determine the remaining issues involved in the case. And, the remaining issues in the case were defined in the consent order of November 27, 2002, as allocating responsibility for costs relating to environmental studies, reports and assessments as well as payment of rent and taxes. Plaintiffs received notice of the hearing date and were adequately apprised of the subject matter.

Plaintiffs were also given an opportunity to be heard. Plaintiffs argue that they had no opportunity to submit evidence on their damage claims. However, the order entered on December 9, 2002, clearly stated that the parties had presented all outstanding issues in the case to the court, that the court heard oral argument and reviewed documents presented by the parties. The parties submitted bills from the company that conducted the BEA, and a copy of the original asset purchase agreement. Further, plaintiffs' counsel was provided with an opportunity to speak and present his claims for damages. The nature of the argument was such that the amount of damages and evidence supporting the amount of the damages was not at issue. The issue decided by the court was whether such damages were allowable where the parties had reached a consent agreement on the claim of specific performance, dismissed the remaining claims and plaintiffs had successfully closed on the property.[1] We hold, therefore, that plaintiffs were presented with an adequate opportunity to be heard considering the nature of the issues to be decided by the court.

Plaintiffs also assert that the trial court erred in allocating the cost of the BEA done on the property equally between plaintiffs and defendants. Actions to determine interests in land are equitable in nature and are thus reviewed de novo. *Slatterly v Madiol*, 257 Mich App 242, 248; 668 NW2d 154 (2003). Plaintiffs argue that the trial court erred when it allocated the cost of the environmental assessment equally between the parties when the purchase agreement provided that the cost of any environmental audit was a shared expense up to $4,000, with anything beyond that to be paid by defendant Moric. However, in the absence of any evidence from plaintiffs establishing that a BEA is an environmental audit within the meaning of the purchase agreement, and taking into account plaintiffs' counsel's agreement on the record that a BEA was needed to resolve the dispute and was to both parties' benefit, the trial court's division of the cost of the BEA between the parties was equitable and not in error. Moreover, during the settlement hearing, both parties agreed to share the costs of the BEA equally. For these reasons, we hold that the trial court did not err in allocating the cost of the BEA equally between the parties.

Plaintiffs further maintain that the trial court erred when it denied plaintiffs' motion for reconsideration. We find that the trial court did not err because plaintiffs' motion for

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[1] The trial court was clearly familiar with the issue of damages and the parties' positions, having conducted seven settlement/status conferences and having reviewed defendants' motion for summary disposition and plaintiffs' response.

reconsideration did not demonstrate any error by which the trial court was misled, but simply questioned the trial court's reasoning and decisions regarding the issues already disposed of by the court and presented claims that were not pled by plaintiffs and so not properly before the court. Therefore, the trial court did not abuse its discretion in denying plaintiffs motion for reconsideration. MCR 2.119(F)(3); *Herald Co, Inc v Tax Tribunal*, 258 Mich App 78, 82; 669 NW2d 862 (2003).

Affirmed.

/s/ Henry William Saad
/s/ David H. Sawyer
/s/ Karen M. Fort Hood