STATE OF MICHIGAN

COURT OF APPEALS

ANN ARBOR ACQUISITION CORPORATION, d/b/a ANN ARBOR RAILROAD, and AAR PROPERTIES, INC.,

Plaintiffs-Appellants,

v

GENERAL MOTORS CORPORATION,

Defendant-Appellee.

UNPUBLISHED
March 22, 2005

No. 251154
Wayne Circuit Court
LC No. 02-214908-CK

Before: Owens, P.J., and Sawyer and White, JJ.

PER CURIAM.

Plaintiffs Ann Arbor Acquisition Corporation (AAAC), d/b/a Ann Arbor Railroad, and AAR Properties, Inc. (AAR), appeal as of right the order granting defendant General Motors Corporation (GM) summary disposition under MCR 2.116(C)(8) and (C)(10). This case arises out of a contract dispute regarding whether GM was entitled to terminate a contract entered into between the parties. We affirm.

In August 1998, AAR and GM entered into an agreement (the Agreement) for the development of a storage and transfer facility for GM vehicles in Milan Township. The proposed site of the facility, however, had to be rezoned for industrial use. Under the terms of the Agreement, AAR was required "to obtain governmental approvals for the Project from all local, state and federal governmental agencies." And GM agreed to provide "ongoing support of AAR Properties' efforts." AAR submitted a rezoning application in March 1999.

The Agreement included a termination option that allowed either party to terminate the Agreement if, by July 15, 1999, the parties had "not executed and delivered definitive documents, in form and substance satisfactory to each of them, with respect to the ownership, development and operation of the Project and the shipment of vehicles from the Project over rails owned by AARR." The parties agreed to extend the termination deadline several times in light of a pending referendum on the rezoning of the site. In February 2000, the residents of Milan Township voted to deny the rezoning.

The parties continued to pursue their rezoning efforts, and, accordingly, continued to extend the termination deadline. The final extension set the termination deadline for October 31, 2000. During these extension periods, the parties made plans to bring suit against the township

to challenge the rezoning. Despite the litigation plans, on October 2, 2000, GM allegedly informed AAR that it "refused to allow . . . [plaintiffs] to go forward with the lawsuit." GM sent written notice of its decision to terminate the agreement on November 1, 2000, explaining that it had come to the conclusion that zoning approval was too uncertain and that it had decided not to pursue the project any further. The Agreement provided that in the event of termination, GM would reimburse AAR for certain costs and expenses in connection with the Project. Accordingly, following GM's notice of termination, AAR submitted its request for reimbursement to GM for $5,917,588.48, and GM paid the amount in full.

In May 2002, plaintiffs filed a complaint, alleging that GM breached the Agreement by failing to support plaintiffs' efforts to have the property comprising the site rezoned. Plaintiffs also alleged breach of implied covenant of good faith and fair dealing, claiming that GM failed to negotiate in good faith when it continually represented that it would go forward with the project and then refused to allow plaintiffs to commence the litigation against Milan Township. GM moved for summary disposition under MCR 2.116(C)(8) and (C)(10), arguing that plaintiffs' breach of contract claim should be dismissed because the Agreement was properly terminated and any claims to the contrary were barred by GM's reimbursement payment. GM also argued under MCR 2.116(C)(8) that plaintiffs' breach of implied covenant of good faith and fair dealing claim should be dismissed because no such cause of action existed under Michigan law and because it was barred by the express provisions of the Agreement. The court granted GM's motion for summary disposition and dismissed plaintiffs' cause of action.

Plaintiffs moved for but were denied reconsideration. The court found that the term "termination" as used in the Agreement included "other types of breaches, such as breaches by GM." The court reasoned that the termination provision was in essence a liquidated damages clause. The court concluded that "the project was 'earlier terminated,' by GM's October 2, 2000, statement that it was not willing to go through with the project."

Plaintiffs first argue that the trial court erred by improperly interpreting ambiguous terms in the Agreement, including what constituted a termination, whether the reimbursement clause was intended to be a liquidated damages clause, and what was meant by "ongoing support." According to plaintiffs, the trial court improperly rewrote the contract when it concluded that "termination" included breaches of the contract. Plaintiffs explain that GM "breached" its duty to provide ongoing support, rather than "terminated" the contract, when, on October 2, 2000, GM told AAR that it refused to allow AAR to proceed with the lawsuit. Plaintiffs contend that GM could not escape liability for its breach by formally terminating the Agreement one month later because GM's right to terminate was extinguished by the breach. We disagree.

We review de novo a trial court's ruling on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). And we review a trial court's decision to grant or deny a motion for reconsideration for an abuse of discretion. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000). If a contract's language is clear, its construction is a question of law for the court that is subject to de novo review. *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002); *Hafner v Detroit Automobile Inter-Ins Exch*, 176 Mich App 151, 156; 438 NW2d 891 (1989). Whether contract language is ambiguous is also a question of law subject to de novo review. *Farm Bureau Mut Ins Co v Nikkel*, 460 Mich 558, 563; 596 NW2d 915 (1999). But interpretation of

an ambiguous contract is a question of fact to be decided by a jury. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 469; 663 NW2d 447 (2003).

Where, as here, the trial court grants a motion for summary disposition pursuant to both MCR 2.116(C)(8) and (C)(10), and it is clear that the court looked beyond the pleadings, this Court "will treat the motions as having been granted pursuant to MCR 2.116(C)(10)," which "tests whether there is factual support for a claim." *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Under MCR 2.116(C)(10), a party may move for dismissal of a claim on the ground that there is no genuine issue with respect to any material fact, and the party is entitled to judgment as a matter of law. Despite plaintiffs' statement to the contrary, it is no longer sufficient for plaintiffs to promise to offer factual support for their claims at trial. *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999); *Smith v Globe Life Ins, Co*, 460 Mich 446, 455 n 2; 597 NW2d 28 (1999).

When presented with a contractual dispute, a court must read the contract as a whole to ascertain the intention of the parties, determine the parties' agreement, and enforce it. *Detroit Trust Co v Howenstein*, 273 Mich 309, 131; 262 NW 920 (1935); *Whitaker v Citizens Ins Co*, 190 Mich App 436, 439; 476 NW2d 161 (1991). Absent ambiguity, contractual language must be construed according to its plain meaning. *St Paul Fire & Marine Ins Co v Ingall*, 228 Mich App 101, 107; 577 NW2d 188 (1998). Technical and constrained constructions are to be avoided. *Id*.

With respect to termination, the Agreement provides as follows:

> In the event that on or before July 15, 1999, GM and AAR Properties and/or GM and AARR have not executed and delivered definitive documents, in form and substance satisfactory to each of them, with respect to the ownership, development and operation of the Project and the shipment of vehicles from the Project over rails owned by AARR (the "Definitive Documents"), then this agreement may be terminated by either party by written notice sent to the other party. Upon such termination, or in the event the Project is earlier terminated with or without reason other than due to failure of AAR Properties to pursue the Project with reasonable diligence, GM shall promptly reimburse AAR Properties for those costs and expenses of the nature identified on Exhibit B incurred by AAR Properties in connection with the foregoing activities and deemed by AAR properties, in good faith, to be reasonably necessary to accomplish the foregoing activities . . . . Thereafter, neither party shall have any further rights or obligations hereunder or thereunder.

The core of the dispute comes down to the contract language. There is no dispute that GM sent its formal, written termination in November 2000, and at the time, plaintiffs acknowledged it as such, which is evidenced by the fact that they submitted invoices for their costs and expenses and accepted GM's reimbursement payment. In doing so, both parties were exercising their rights and responsibilities as provided under the express terms of the contract. Thus, under the express terms of the contract, the parties agreed that, thereafter, neither party would have any further rights or responsibilities under the contract. We will not reverse the lower court when the court reaches the right result albeit for the wrong reason. *Zimmerman v*

Owens, 221 Mich App 259, 264; 561 NW2d 475 (1997). Therefore, plaintiffs were barred from any further claims under the contract when they accepted the reimbursement payment.

Plaintiffs also argue that the trial court erred in dismissing without discussion their claim for breach of implied covenant of good faith and fair dealing.[1] We disagree.

"In contract termination cases, good faith is required only where the terminating party has unbridled discretion with respect to the other party's performance under the contract." *Eastway & Blevins Agency v Citizens Ins Co of America*, 206 Mich App 299, 302; 520 NW2d 640 (1994). "A lack of good faith cannot override an express provision in a contract." *Id*. at 303. Here, under the express terms of the contract, either party could exercise its discretion to terminate the Agreement if the parties had not executed and delivered the definitive documents by the termination deadline. GM exercised this right as provided; thus, any allegation of lack of good faith is irrelevant because an express provision of the contract allowed the termination.

Affirmed.

/s/ Donald S. Owens
/s/ David H. Sawyer
/s/ Helene N. White

[1] In *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 476; 666 NW2d 271 (2003), this Court stated in response to the plaintiff's argument – that every contract contains an implied covenant of good faith and fair dealing – that Michigan did not recognize this type of claim. However, this Court cited *Ulrich v Fed Land Bank of St. Paul*, 192 Mich App 194, 197; 480 NW2d 910 (1991), which held that Michigan did not recognize a separate *tort* action for breach of an implied contract of good faith.