STATE OF MICHIGAN

CO OF APPEALS

SADDLE CREEK ASSOCIATES,

Plaintiff-Appellant,

v

FENTON FAMILY/PARZ LIMITED PARTNERSHIP,

Defendant-Appellee.

UNPUBLISHED
May 10, 2007

No. 273797
Oakland Circuit Court
LC No. 06-073618-CK

SADDLE CREEK ASSOCIATES,

Plaintiff-Appellee,

v

FENTON FAMILY/PARZ LIMITED PARTNERSHIP,

Defendant-Appellant.

No. 274066
Oakland Circuit Court
LC No. 06-073618-CK

Before: Talbot, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

In Docket No. 273797, plaintiff appeals as of right the trial court's order granting defendant summary disposition. We affirm.

In Docket No. 274066, defendant appeals as of right the trial court's order denying its motion for sanctions. We affirm.

I. Basic Facts and Proceedings

Plaintiff is a partnership that owns an apartment building valued at $28 million and located in Novi. Plaintiff is comprised of three partners: Saddle Creek Investors, L.L.C. (SCI), Beztek of Saddle Creek (BSC), and defendant. SCI owns 50 percent of plaintiff, and BSC and defendant each own 25 percent. Defendant is a partnership that was created for the acquisition of a partnership interest in plaintiff and was comprised of three partners: Edgar M. Fenton Company (EMFCO), Robert Fenton, and Ronald Parz (Parz). Robert Fenton and Parz were general partners, and EMFCO was a limited partner. Edgar M. Fenton was a partner of EMFCO.

A. Plaintiff's Restated Partnership Agreement

The Restated Partnership Agreement (RPA) governs plaintiff's partnership and its interpretation is at issue in this appeal. Section 7.1 of the RPA governs transfers of partnership interests and provides, in pertinent part, as follows:

> (a) The Partners' interests in the Partnership shall not be transferable, and any purported transfer shall be void and of no effect and shall be a breach of this Agreement. If a transfer of any portion of a Partner's Partnership interest is effective notwithstanding the provisions of this Section 7.1, then the transferee shall have no rights under this Agreement or against the Partnership except to receive those distributions which, but for the assignment, would have been made to its assignor, and the provisions of Section 8 [Buy-out Provisions] shall become operative. . . .
>
> (b) The provisions of Section (a) above shall not be construed as prohibiting transfers of interest in a Partner; however . . . Edgar M. Fenton, so long as he is living shall continue to maintain a significant interest in FFP [Fenton Family/Parz Limited Partnership]. . . . An interest shall be deemed "significant" for purposes of the foregoing, if such interest entitles the holder to a material participation in capital and profits and in management of the Partner.

Section 12(aa) of the RPA defines the term "transfer" as used in section 7.1 as follows:

> The term **"transfer"** means any direct or indirect transfer, assignment, conveyance or alienation of, or succession to, any legal or beneficial interest or rights in the subject matter thereof, whether voluntary, involuntary or by operation of law, including a sale, exchange, gift, contribution, pledge or granting of a security interest, or the act of entering into a pooling or sharing agreement. . . . [Emphasis in original.]

Section 8 of the RPA provides, in pertinent part, as follows:

> If any part or all of a Partner's interest in the Partnership is transferred, or if a Partner withdraws or is disassociated from the Partnership, or if a Partner prevents or fails to join in the reconstitution of the Partnership as provided in Section 7.3:

(a) Such Partner shall be in default and shall be liable to the Partnership and to the other Partners for any damages resulting from the default.

* * *

(c) A majority in interest of the other Partners may expel the defaulting Partner from the Partnership at any time until the default is cured.

* * *

(f) If the defaulting Partner is expelled from the Partnership . . . the Partnership shall cause the expelled Partner's Partnership interest to be redeemed for an amount equal to the balance then standing in the expelled Partner's capital account, or if such capital account balance is less than $100.00 or is negative, then for the sum of $100.00. . . .

B. EMFCO's Partnership Interest in Defendant

In May 2005, plaintiff issued a capital call that required a $400,000 payment from defendant. Although Edgar M. Fenton was obligated to make all capital calls on defendant's behalf, Parz made the capital call and plaintiff accepted it. In March 2006, SCI and BSC executed a consent resolution that purported to terminate defendant's partnership interest in plaintiff for $100 based on a violation of section 7.1(b) of the RPA.

In LC No. 05-067555-CK, defendant[1] sued Edgar M. Fenton and EMFCO, alleging that EMFCO had forfeited its interest in defendant because it failed to timely make the capital call payment. *Fenton Family Parz Ltd Partnership v Fenton*, unpublished opinion per curiam of the Court of Appeals, issued November 16, 2006 (Docket No. 270425), slip op at 1. The trial court relied on a release and settlement agreement and determined that EMFCO had forfeited its interest in defendant to Parz and that EMFCO and Edgar M. Fenton were no longer affiliated with defendant. *Id.* The trial court granted summary disposition in favor of defendant on May 3, 2006. *Id.*

Plaintiff sued defendant in the instant case on March 31, 2006, seeking a declaration that 1) defendant was in default of the RPA, 2) the consent resolution was valid and authorized by the RPA, 3) defendant's interest in plaintiff had been extinguished by the consent resolution, and 4) $100 was the full amount required to extinguish defendant's interest in plaintiff under the RPA. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that the forfeiture of Edgar M. Fenton's interest in defendant did not trigger the $100 redemption provision of the RPA and defendant had not forfeited its interest in plaintiff. Defendant asserted that plaintiff's complaint was frivolous and requested sanctions pursuant to MCR 2.114(E) and (F).

---

[1] For the sake of consistency, we will refer to the parties by their designation in the instant case where applicable throughout this opinion.

The trial court found that there had been a change of ownership within defendant, which constituted a breach of section 7.1(b) of the RPA. However, the trial court concluded that section 8 of the RPA did not apply because EMFCO had not transferred any of its interest in plaintiff, withdrawn or disassociated from plaintiff, or prevented or failed to join a reconstituted partnership. The trial court held that the RPA did not contain any ambiguity and granted defendant summary disposition.

Regarding defendant's request for sanctions pursuant to MCR 2.114(E) and (F), the trial court did not find plaintiff's complaint to be frivolous and denied the motion.

On appeal from the trial court's grant of summary disposition in LC No. 05-067555-CK, this Court interpreted the release and settlement agreement and found that it was ambiguous because it could reasonably be understood in different ways. *Fenton Family Parz Ltd Partnership, supra* at 3-4. This Court reversed the trial court's grant of summary disposition, and remanded for further proceedings, including a determination of whether the clean hands doctrine barred the equitable relief sought by defendant. *Id.* On remand, defendant moved for summary disposition and the motion was scheduled for hearing on January 31, 2007.

II. Interpretation of the Restated Partnership Agreement

In Docket No. 273797, plaintiff argues that the trial court erred in interpreting the RPA and granting defendant summary disposition. We disagree.

A. Standard of Review

We review de novo a trial court's decision on a motion for summary disposition. *Zsigo v Hurley Medical Ctr*, 475 Mich 215, 220; 716 NW2d 220 (2006). Summary disposition is appropriately granted if, except for the amount of damages, there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Id*.

Similarly, interpretation of a contract is a question of law that is reviewed de novo, *Burkhardt v Bailey*, 260 Mich App 636, 646; 680 NW2d 453 (2004), "including whether the language of a contract is ambiguous and requires resolution by the trier of fact." *DaimlerChrysler Corp v G Tech Professional Staffing, Inc*, 260 Mich App 183, 184-185; 678 NW2d 647 (2003). We also review de novo questions of contract ambiguity. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003). If a phrase or word is unambiguous and reasonable persons could not differ regarding application of the phrase or word to undisputed material facts, summary disposition is appropriately granted. *St Clair Medical, PC v Borgiel*, 270 Mich App 260, 264; 715 NW2d 914 (2006).

B. Ambiguity and Interpretation

When the language of the contract is clear and unambiguous, interpretation is limited to the actual words used. *Burkhardt, supra* at 656. The primary goal of contract interpretation is to enforce the parties' intent. *Id.*; *Mikonczyk v Detroit Newspapers, Inc*, 238 Mich App 347, 349-350; 605 NW2d 360 (1999). Unambiguous terms must be construed according to their plain and commonly understood meaning. *Busch v Holmes*, 256 Mich App 4, 7-8; 662 NW2d 64 (2003). "A contract is ambiguous only if its language is reasonably susceptible to more than one

interpretation." *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 13; 614 NW2d 169 (2000). If a contract is subject to two interpretations, factual development is necessary to determine the intent of the parties, and summary disposition is inappropriate. *Klapp*, *supra* at 469; *Mahnick v Bell Co*, 256 Mich App 154, 159; 662 NW2d 830 (2003).

Plaintiff maintains that Section 7.1(a) unambiguously entitles it to buy out defendant for $100 pursuant to section 8. Section 7.1(a) provides that a partner's interest is not generally transferable, but if a transfer is effective, the buyout provisions of section 8 apply. Section 12(aa) defines transfer to include any direct or indirect assignment, conveyance, or alienation of or succession to any interest or rights. Because the language is clear and unambiguous, we restrict our interpretation to the actual words used and construe the terms according to their plain and commonly understood meaning. *Busch*, *supra* at 7-8. We conclude that the language used is susceptible only to one interpretation and there are no conflicting provisions, and these provisions are unambiguous. *Klapp*, *supra* at 469; *Cole*, *supra* at 13. A transfer of any part of a partner's interest in plaintiff to another partner is prohibited, subjects the partner to expulsion, and constitutes a default that entitles the other partners to buy out the defaulting partner.

Even if the trial court in LC No. 05-067555-CK concluded on remand that EMFCO forfeited its interest in defendant to Parz, this does not affect our analysis because it does not implicate section 7.1(a). Although defendant is a partner in plaintiff, any transfer of interest that occurs internally within defendant's partners does not constitute a transfer of interest among plaintiff's partners. Nothing in Section 7 prohibits a partner from reorganizing or transferring interests among the constituents of a partner, as long as no interest in plaintiff is transferred to another. Section 7.1(b) clearly requires Edgar M. Fenton to maintain a significant interest in defendant, but it provides no remedy for the failure to maintain a significant interest. Further, neither section 7.1(b) nor the definition of "transfer" in section 8 provides any indication that the failure to maintain a significant interest constitutes a transfer. We are not persuaded that the mere inclusion of section 7.1(b) under the heading of "transfers" in section 7 implicates the buyout provisions of section 8.

Plaintiff claims that Edgar M. Fenton had a "beneficial interest," as used in section 12(aa), in plaintiff and that the involuntary termination of his interest constitutes a transfer that implicates the buyout provisions of section 8. While Edgar M. Fenton's interest, beneficial or not, in defendant may have been involuntarily terminated, it does not follow that there was a transfer of defendant's interest in plaintiff. Again, plaintiff overlooks the necessary requirement that the interest of a partner in *plaintiff* must be transferred.

Plaintiff alternatively contends that the RPA is ambiguous. However, in analyzing the trial court's interpretation of the RPA, we have already determined that the RPA is not ambiguous.

III. Sanctions

In Docket No. 274066, defendant argues that the trial court erred in denying its motion for sanctions pursuant to MCR 2.114. We disagree. We review for clear error a trial court's finding regarding whether an action is frivolous. *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002). A decision is clearly erroneous when, although there is some evidence to

support it, we are left with a definite and firm conviction that a mistake has been made. *Id.* at 661-662.

MCR 2.114(E) provides, in relevant part:

> If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. . . .

Therefore, one who files a signed pleading that is not well grounded in fact and law is subject to sanctions. *Jerico Const, Inc v Quadrants, Inc*, 257 Mich App 22, 36; 666 NW2d 310 (2003). Similarly, MCR 2.114(F) provides that a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2), which authorizes a trial court to award costs pursuant to MCL 600.2591.

To determine whether a claim is frivolous under MCR 2.114(F), we must look at the facts of the case. *Kitchen, supra* at 662. We turn to MCL 600.2591(3), which defines frivolous as:

> (i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.
>
> (ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.
>
> (iii) The party's legal position was devoid of arguable legal merit. [See also *Kitchen, supra* at 662.]

Defendant implies plaintiff's complaint was frivolous or ungrounded merely because it was dismissed on summary disposition and plaintiff was not persuaded by defendant's correspondence urging plaintiff to dismiss the complaint on defendant's belief that the language of the RPA supported its position. However, not every error in legal analysis constitutes a frivolous position, and it does not follow that an unsuccessful claim is groundless or devoid of legal merit. *Kitchen, supra* at 663. Defendant fails to provide any explanation of how plaintiff's claim was frivolous or groundless, and it did not develop this argument before the trial court. "It is not sufficient for a party 'simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.'" *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182,

203; 94 NW2d 388 (1959). Failure to properly address the merits of this assertion constitutes abandonment of the issue. *Thompson v Thompson*, 261 Mich App 353, 356; 683 NW2d 250 (2004).

Affirmed.

/s/ Michael J. Talbot
/s/ Pat M. Donofrio
/s/ Deborah A. Servitto