STATE OF MICHIGAN

COURT OF APPEALS

ESTATE OF JENNIFER IRWIN, by its Conservator, CASSANDRA IRWIN, and CASSANDRA IRWIN, Individually,

Plaintiffs-Appellants,

v

DAVID SYROCKI, d/b/a CROSSCUT CONSTRUCTION

Defendant-Appellee.

UNPUBLISHED
October 16, 2008

No. 279682
St. Clair Circuit Court
LC No. 07-000972-CZ

Before: Servitto, P.J. and Donofrio and Fort Hood, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court order granting defendant's motion for summary disposition. Because the operative contract between the parties clearly contains an arbitration provision, the issues between the parties are properly subject to arbitration, and we affirm.

Plaintiffs are co-owners of a house located at 7527 Metcalf in Avoca. On May 23, 2006, there was a fire at that house. On July 7, 2006, plaintiff[1] and defendant signed a contract for restoration work at the house. On July 13, 2006, plaintiff and defendant signed a second contract for improvement that referred to a 14-page quote by the insurance company. The referenced 14-page insurance quote had a cover page also dated July 13, 2006 prepared by defendant stating that the insurance company's estimate was attached and both parties agreed that defendant would do the work as outlined in the insurance estimate.[2] The cover page was printed on defendant's letterhead and states that "[t]his will become your contract. The previous contract for the fire restoration job with Crosscut Construction will become null and void." The second contract that was signed on July 13, 2006, contains the following arbitration clause:

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[1] As used throughout this opinion, the term "plaintiff" in the singular will refer to Cassandra Irwin individually unless specifically noted otherwise.

[2] The cover and estimate document contained the printed date of July 13, 2006, but defendant signed it with a date of "7-15-06" and plaintiff signed it with a date of "6-15-06." Plaintiff's date of "6-15-06" is presumed to be an error of the month because the estimate was not prepared until July 10, 2006.

> Any claim or controversy arising out of or relating to this Agreement or breach thereof shall be submitted to final and binding arbitration in the city and state where the property is located and under the Arbitration Rules of the American Arbitration Association. To be arbitrable, all demands for arbitration must be made within 180 days of when such claim or controversy arose and was either known or should have been known. A judgment upon the arbitration award may be entered in any court having jurisdiction thereof.

Plaintiff terminated defendant's services on July 27, 2006. Plaintiff's ten-count complaint was filed on April 20, 2007, and alleged that defendant improperly collected the entire first payment of $24,243.31 from the insurance company when defendant had only completed work valued at $10,752.29. Defendant filed a motion for summary disposition based on the arbitration clause in the second contract. The trial court found that plaintiff signed the July 13, 2006 residential contract for improvement, which included the arbitration provision, and that all of plaintiff's claims arose out of the construction transaction. The trial court then granted defendant's motion for summary disposition finding that all of plaintiffs' claims were subject to arbitration. It is from this order that plaintiff now appeals.

Plaintiffs argue on appeal that the cover sheet and insurance estimate supersedes and nullifies any other agreement between the parties. Defendant argues that plaintiffs are simply trying to ignore the arbitration provision of the second contract. A trial court's decision on a motion for summary disposition is reviewed de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Summary disposition is permitted under MCR 2.116(C)(7) where "[t]he claim is barred because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action." A trial court's determination that an issue is subject to arbitration is likewise reviewed de novo. *Rooyakker & Sitz, PLLC v Plante & Moran, PLLC*, 276 Mich App 146, 152; 742 NW2d 409 (2007).

A court must consider three questions to determine if an issue is subject to arbitration: "whether there is an arbitration provision in the parties' contract, whether the disputed issue is arguably within the arbitration clause, and whether the dispute is expressly exempt from arbitration by the terms of the contract." *Fromm v MEEMIC Ins Co*, 264 Mich App 302, 305-306; 690 NW2d 528 (2004). All conflicts should be resolved in favor of arbitration. *Id*. at 306. Further, when interpreting a contract, a court must determine the parties' intent. *In re Egbert R Smith Trust*, 480 Mich 19, 24; 745 NW2d 754 (2008). When the contractual language is clear intent is established as a matter of law and the contract must be enforced as written. *Id*.

In this case, the parties signed the first contract on July 7, 2006. The fourth paragraph of the contract is entitled "Payment" and calls for payment to defendant contractor in the amount of $125,954.26. Subsequently, after the preparation of the 14-page insurance estimate on July 10, 2006, the parties signed the second contract on July 13, 2006. The second contract is substantially similar in form as the first contract, but the second paragraph of the second contract labeled "Improvement" references the newly prepared 14-page insurance estimate. The fourth paragraph of the second contract entitled "Payment" calls for payment to defendant contractor in the amount of $98,942.85 that is the total amount estimated on the last page of the July 10, 2006

14-page insurance estimate. The July 13, 2006 cover letter and July 10, 2006 14-page insurance estimate both independently reference the amount of $98,942.85.

The crux of plaintiffs' argument is that the July 13, 2006 cover letter together with the July 10, 2006 insurance estimate constitute a "third contract" that operates to supersede and nullify any other agreement between the parties, namely the first and second contracts. However, a review of the documentation provided reveals that plaintiffs' argument is wholly without merit. The July 13, 2006 cover letter and July 10, 2006 14-page insurance estimate are just that, an insurance estimate topped with a cover letter prepared by defendant. The cover letter and insurance quote do not contain the essential elements of a contract. Again, when interpreting a contract, a court must determine the parties' intent. *In re Egbert R Smith Trust, supra* at 24. Here, when reading the documents, it is clear that the cover letter and insurance estimate were supporting documentation intended to be read in conjunction with the second contract. They were not intended to be read as a "third contract" superseding the second contract. It is also clear that the second contract read in combination with the cover letter and insurance estimate of the same date were intended to supersede and nullify the first contract that contained a different payment amount. As such, the second contract is the only contract that exists between the parties. As indicated, the first question to be asked in determining whether an issue is subject to arbitration is whether the parties' contract contains an arbitration provision. *Fromm, supra,* 305-306. Because the second contract plainly contains an arbitration provision, the issues between the parties are properly subject to arbitration. See *Id*.

Affirmed.

/s/ Deborah A. Servitto
/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood