

STATE OF MICHIGAN
COURT OF APPEALS

DIVERSIFIED MEAL SERVICES, INC.,

Plaintiff/Counter-Defendant-
Appellant,

v

DEBORAH CROWNOVER, d/b/a RE/MAX
MID-MICHIGAN,

Defendant-Appellee,

and

FILLMORE'S, INC.,

Defendant-Counter-Plaintiff.

UNPUBLISHED

June 2, 2009

No. 284633

Jackson Circuit Court

LC No. 07-001666-CZ

Before: Fitzgerald, P.J., and Talbot and Shapiro, JJ.

PER CURIAM.

Plaintiff appeals as of right, challenging the circuit court order's awarding defendant Crownover ("RE/Max") costs of \$2,550 on the basis that plaintiff's action against it was frivolous. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

We review a trial court's finding that an action was devoid of arguable legal merit and, therefore, frivolous under MCL 600.2591(3)(iii), for clear error. *Schroeder v Terra Energy, Ltd*, 223 Mich App 176, 195; 565 NW2d 887 (1997).

Plaintiff asserts that its complaint "intended a civil action in which the account holder must be a party to secure jurisdiction over the deposit within the court's power to dispose of the fund." Plaintiff contends that Re/Max held the deposit money in trust and was a necessary party so that the trial court could order disposition of the fund. But regardless of whether a meritorious action *could have been* filed by plaintiff against Re/Max, the trial court did not clearly err in finding that the action that *was* filed was devoid of arguable legal merit. Plaintiff's complaint did not allege that Re/Max held the earnest money deposit in trust. Rather, the complaint alleged that plaintiff had demanded return of the deposit and Re/Max had refused its request. The complaint did not specify the basis for the cause of action against Re/Max, but in the absence of

any other allegations, the only basis was Re/Max's refusal to return the deposit upon plaintiff's demand. However, the purchase agreement stated, "If a dispute then exists between the Seller and Buyer, Seller and Buyer agree that the Seller Broker/Escrow Agent shall not release the Earnest Money Deposit without the written consent of both parties." In light of this provision, the trial court did not clearly err in finding that plaintiff's action against Re/Max for failure to return the deposit was devoid of arguable legal merit.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Michael J. Talbot