STATE OF MICHIGAN

COURT OF APPEALS

AMEENA HAMOOD f/k/a AMEENA BEYDOUN and JOHN A. HAMOOD and RAMONA HAMOOD,

Plaintiffs/Counter-Defendants-Appellees,

and

JAMAL JOHN HAMOOD and CHARLENE HAMOOD,

Plaintiffs/Counter-Defendants

v

AL STANOWSKI and JENNY STANOWSKI,

Defendants/Counter-Plaintiffs-Appellants.

UNPUBLISHED
March 15, 2016

No. 326089
Wayne Circuit Court
LC No. 99-911949-CH

Before: M. J. KELLY, P.J., and CAVANAGH and SHAPIRO, JJ.

PER CURIAM.

Defendants Al and Jenny Stanowski appeal as of right the trial court's order dismissing their counterclaim against plaintiffs Ameena, John, and Ramona Hamood (the Hamoods). We reverse and remand for the expeditious adjudication of the Stanowskis' counterclaim.

This matter has a long, complicated history and is before this Court for a second time. See *Hamood v Stanowski*, unpublished opinion of the Court of Appeals, issued September 20, 2012 (Docket No. 304559). In brief, the Stanowskis sold commercial property to John and Ramona Hamood in 1993 by land contract for $195,000. In 1995, John and Ramona Hamood requested a warranty deed from the Stanowskis so that they could sell the property. In exchange, John and Ramona Hamood, as well as Ameena, Jamal, and Charlene Hamood, tendered a promissory note to the Stanowskis which was secured by three mortgages on their three properties. In 1999, all of the Hamoods filed a complaint against the Stanowskis, primarily arguing that the promissory note terms violated the usury laws. Subsequently, a default and

default judgment were entered against the Stanowskis. In June 2002, the Stanowskis initiated foreclosure proceedings on one of the mortgages securing the promissory note. In July 2002, the Hamoods filed an emergency motion to halt the foreclosure proceedings. In August 2002, the Stanowskis moved to set aside the default and default judgment, arguing that a fraud had been committed on the court by the Hamoods because they were not served the complaint and did not have any notice of the default proceedings.

An attempt to settle this matter was made on October 17, 2002. The proposed terms of settlement were placed on the record and included that Jamal Hamood would obtain a new promissory note, mortgage, and a $200,000 bond from a bonding company which would pay the outstanding debt owed to the Stanowskis if he failed to pay as agreed. Jamal Hamood never obtained a new promissory note, mortgage, or bond; thus, this attempt to settle this matter failed.

On February 4, 2004, the parties entered into a written settlement agreement which began: "This Mutual General Release and Settlement Agreement is made this 4th day of February, 2004, Nun Pro Tunc, October 1, 2003, by and between the Plaintiffs, AMEENA HAMOOD, f/k/a AMEENA BEYDOON, JOHN A. HAMOOD, RAMONA HAMOOD, JAMAL JOHN HAMOOD, AND SHARLENE [sic] HAMOOD and the Defendnants [sic], AL STANOWSKI AND JENNY STANOWSKI." The terms included that the default and default judgment against the Stanowskis would be set aside, and a consent judgment would be held in escrow, to be filed with the trial court only if the terms of the agreement were breached. A counterclaim could also be filed in the event of default. This settlement agreement included the following paragraphs:

> 2. **RELEASE OF CLAIMS BY PLAINTIFFS;** plaintiffs hereby release the Defendants as well as their officers and agents, beneficiaries, assigns, successors, and attorneys of and from each and every action, cause of action, suit, counterclaim, debt, due account, bond, covenant, contract, agreement, judgment, claim, obligation, charge and any other claim or demand of any nature, including but not limited to those claims related to or otherwise arising out of any dealings with the DEFENDANTS which PLAINTIFFS ever had, now have, shall or may have, against the DEFENDANTS by reason of any matter, act or transaction related to any and all obligations with respect to the above referenced Circuit Court Matter.
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> 3. **RELEASE OF CLAIMS BY DEFENDANTS;** Defendants hereby release the Plaintiffs as well as their beneficiaries, assigns, successors, and attorneys of and from each and every action, cause of action, suit, counterclaim, debt, due account, bond, covenant, contract, agreement, judgment, claim, obligation, charge and any other claim or demand of any nature, including but not limited to those claims related to or otherwise arising out of any transaction or interaction between any of the PLAINTIFFS and the DEFENDANTS ever had, now have, shall or may have, against any of the PLAINTIFFS by reason of any matter, act or transaction related to any and all actions undertaken by or on behalf of PLAINTIFF [sic] with respect to the above referenced Circuit Court Matter, **provided the Judgment is fully paid and satisfied.** [Emphasis supplied.]

At the end of the document, the following was stated:

> **PLAINTIFFS:**
> AMEENA HAMOOD, f/k/a AMEENA BEYDOUN, HOHN [sic] A. HAMOOD[,] RAMONA HAMOOD, HAMAL [sic] JOHN HAMOOD and CHARLENE HAMOOD, by and through their Attorney[.]

A signature line followed—that was signed—and under the signature line was "JAMAL JOHN HAMOOD."

After the terms of the February 4, 2004 settlement agreement were breached, and pursuant to its terms, the default and default judgments were set aside; the consent judgment that had been held in escrow was entered by the trial court; and the Stanowskis filed a counterclaim against the Hamoods seeking to enforce the terms of their promissory note. But, by the terms of the consent judgment, as long as the Hamoods were not in default of the terms of the consent judgment, no further action would be taken regarding the counterclaim. Jamal and Charlene Hamood, only, were to make payments to the Stanowskis as set forth in the consent judgment. However, the trial court was to retain jurisdiction and if Jamal and Charlene Hamood defaulted, the Stanowskis could petition the court to pursue their counterclaim against Ameena, John, and Ramona Hamood (the Hamoods).

In December 2010, the Stanowskis petitioned the trial court to reopen the case and amend their counterclaim so that they could foreclose on the mortgages given as security for the promissory note. The Stanowskis alleged that Jamal and Charlene Hamood defaulted on the consent judgment; thus, they were entitled to pursue their counterclaim against the Hamoods. The trial court denied the petition. This Court reversed the order denying the Stanowskis' petition to reopen the counterclaim and remanded for further proceedings. *Hamood*, unpub op at 3.

Following remand, the parties filed cross-motions for summary disposition of the Stanowskis' counterclaim. The Stanowskis argued that they were clearly entitled to execute on the promissory note against the Hamoods. The Hamoods argued that the Stanowskis had no claim against them because only Jamal and Charlene Hamood agreed to set aside the default judgment and entered into the February 4, 2004 settlement agreement, as well as consent judgment. The Hamoods claimed that Jamal Hamood was not their attorney at the time of these events. The trial court eventually denied the cross-motions for summary disposition and held that only Jamal and Charlene Hamood "agreed to the consent judgment and, accordingly, the money judgment does not apply to any other [Hamood]."

Shortly thereafter the parties again filed cross-motions for summary disposition. The Hamoods argued that a "newly discovered" transcript of a settlement hearing held on October 17, 2002 proved that they "were not parties to the [February 4, 2004] settlement agreement and have no liability to [the Stanowskis] whatsoever." They argued that the parties entered into a binding settlement agreement on the record on October 17, 2002, and the Hamoods were released from any and all obligations to the Stanowskis. Only Jamal and Charlene Hamood remained obligated to the Stanowskis. Thus, there were no issues to be litigated between the Stanowskis and the Hamoods, and the Hamoods were entitled to summary disposition. The

Stanowskis opposed that motion, arguing that the referenced proposed settlement never became binding on the parties because Jamal Hamood failed to obtain a $200,000 bond, which was an essential term of the proposed settlement. Further, the Hamoods were never released from their obligations to pay the promissory note. And, although John and Ramona Hamood were given a warranty deed to—and sold—the commercial property that they had agreed to purchase from the Stanowskis, the Hamoods never paid the Stanowskis for the property, i.e., the promissory note remained outstanding.

The Stanowskis argued in their motion for summary disposition that, as stipulated in the consent judgment, the Hamoods owed them $260,807 which they never paid. Although Jamal and Charlene Hamood were given the initial opportunity to pay the debt, as the Court of Appeals held, the consent judgment did not result in the dismissal of the Stanowskis' counterclaim against the Hamoods. That is, the consent judgment did not release the Hamoods from their legal obligations on the unpaid promissory note.

On January 30, 2015, very brief oral arguments were heard on the parties' cross-motions for summary disposition. The Hamoods' new attorney, Johnny Hamood, argued that the transcript of the October 17, 2002 settlement hearing proved that his clients, John, Ramona, and Ameena Hamood were released from any and all liability in this matter. The Hamoods also argued that the February 4, 2004 settlement agreement which followed this October 2002 hearing was signed by Jamal Hamood, but Jamal did not represent John, Ramona, and Ameena Hamood at that time; rather, attorney Michael Fergestrom represented the Hamoods as shown in the October 2002 transcript. The trial court agreed that Jamal Hamood was not the Hamoods' attorney at the time of the settlement agreement. And because the Hamoods' attorney did not sign the February 4, 2004 settlement agreement that the Stanowskis were relying on, the trial court concluded that the Hamoods were entitled to summary disposition. When the Stanowskis' counsel attempted to interject, the court stated: "You can go back to the court of appeals." This appeal followed.

The Stanowskis argue that Jamal Hamood was the Hamoods' attorney when the February 4, 2004 settlement agreement was executed; thus, the trial court erroneously granted the Hamoods' motion for summary disposition after concluding that they were not parties to that agreement because "their attorney" did not sign it. After de novo review of the trial court's decision, we agree with the Stanowskis. See *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

In support of their claim that Jamal Hamood was not their attorney when the February 4, 2004 settlement agreement was executed, the Hamoods relied on a transcript of an October 17, 2002 settlement hearing at which time another attorney was present, Michael Fergestrom, and claimed to represent their interests. The trial court was persuaded by this misleading argument. But in 2002, Fergestrom and Jamal Hamood were attorneys in the same law firm as evidenced by another document filed in this case which stated: "Now come the Plaintiffs herein, by and through their attorneys, HAMOOD & FERGESTROM . . . ." And at the end of that document, above the signature line—which Jamal Hamood signed—were the words: "HAMOOD & FERGESTROM." Thus, as set forth in MCR 2.117(B)(3), Fergestrom merely appeared at the 2002 hearing on behalf of the Hamood & Fergestrom law firm which represented all of the

Hamoods; he was not a newly and separately retained attorney who replaced Jamal Hamood as counsel for John, Ramona, and Ameena Hamood.

Further, the proposed settlement discussed at the October 17, 2002 hearing was to be reduced to writing, according to the transcript, but it never was because of a failure of terms. In fact, according to the record evidence, Fergestrom never appeared at another proceeding and never signed a document under his name despite the fact that the settlement discussed on October 17, 2002 never became a binding agreement. Therefore, the Hamoods failed to establish that no genuine issue of material fact existed on the issue whether Fergestrom was their attorney at the time the February 4, 2004 settlement agreement was reached and, thus, was required to sign that agreement to bind the Hamoods as parties to it. See MCR 2.116(C)(10).

Moreover, the February 4, 2004 settlement agreement states: "This Mutual General Release and Settlement Agreement is made this 4th day of February, 2004, Nun Pro Tunc, October 1, 2003, by and between the Plaintiffs, AMEENA HAMOOD, f/k/a AMEENA BEYDOON, JOHN A. HAMOOD, RAMONA HAMOOD, JAMAL JOHN HAMOOD, AND SHARLENE [sic] HAMOOD and the Defendnants [sic], AL STANOWSKI AND JENNY STANOWSKI." And at the end of the document, all of the Hamoods were again listed as the plaintiffs who agreed to the settlement terms. This 2004 settlement agreement was signed by the Hamoods' attorney of record, Jamal Hamood, who was their only attorney listed on the trial court's register of actions and was the only attorney involved in every single proceeding regarding this matter from its beginning in 1999 until after this Court's remand. The Hamoods have not argued, much less established, that Jamal Hamood—John and Ameena's brother and Ramona's brother-in-law—committed fraud or otherwise violated the law or their rights. Thus, we conclude that, as set forth in MCR 2.507(G), on February 4, 2004, a binding, written settlement agreement was reached between the parties and it was signed by the parties' respective attorneys; thus, it was valid and enforceable against the Hamoods. Accordingly, the trial court's order granting the Hamoods' motion for summary disposition is reversed.

We note and reject the Hamoods' persistent and frivolous claim that the proposed settlement agreement of October 17, 2002 "unequivocally released" them from their obligations under the 1995 promissory note. Clearly that proposed settlement agreement never culminated in a binding agreement between the parties because of a failure of terms. A new promissory note, mortgage, and a $200,000 bond were part of the proposed settlement terms. As the trial court repeatedly stated during that 2002 proceeding, if Jamal Hamood did not secure the requisite bond there would be no settlement. It is undisputed that Jamal Hamood did not secure the requisite bond; thus, there was no settlement. Further, because the February 4, 2004 settlement agreement and subsequent consent judgment are binding on John, Ramona, and Ameena Hamood, their persistent claim that they did not agree to set aside the default and default judgment against the Stanowskis is wholly without merit.

The Stanowskis also argue that the trial court failed to comply with this Court's remand directive to reinstate and adjudicate their counterclaim against the Hamoods, but instead dismissed it without stating a proper basis. We agree. "Whether a trial court followed an appellate court's ruling on remand is a question of law that this Court reviews de novo." *Schumacher v Dep't of Nat'l Resources*, 275 Mich App 121, 127; 737 NW2d 782 (2007).

"It is the duty of the lower court or tribunal, on remand, to comply strictly with the mandate of the appellate court." *Rodriguez v Gen Motors Corp (On Remand)*, 204 Mich App 509, 514; 516 NW2d 105 (1994). This Court remanded this matter after reversing the trial court's order denying the Stanowskis' petition to reopen their counterclaim. We held that the terms of the consent judgment were enforceable against the Hamoods and, thus, the Stanowskis could pursue their counterclaim against the Hamoods. This holding became the law of the case. See *Schumacher*, 275 Mich App at 127-128 (citation omitted).

Nevertheless, after this matter was remanded, the Hamoods again challenged the Stanowskis' right to pursue their counterclaim, arguing that the underlying February 4, 2004 settlement agreement was not binding on them. Because this Court already held that the consent judgment was binding on the Hamoods, the underlying settlement agreement that expressly gave rise to the consent judgment was necessarily binding on the Hamoods. That is, this issue was "implicitly or explicitly decided in the previous appeal." *Id*. at 128. Thus, notwithstanding our conclusion that the February 4, 2004 settlement agreement was binding on the Hamoods because it was signed by their attorney, we would also conclude that the trial court failed to follow our remand directive and failed to follow the law of the case when it held that the terms of that underlying February 4, 2004 agreement were not applicable to the Hamoods and dismissed the Stanowskis' counterclaim.

Accordingly, the trial court's order granting the Hamoods' motion for summary disposition is reversed and this matter is remanded for the expeditious adjudication of the Stanowskis' counterclaim.

Reversed and remanded for the expeditious adjudication of the Stanowskis' counterclaim. We do not retain jurisdiction. The Stanowskis are entitled to costs under MCR 7.219(A).

/s/ Michael J. Kelly
/s/ Mark J. Cavanagh
/s/ Douglas B. Shapiro