

STATE OF MICHIGAN
COURT OF APPEALS

STANAJ INVESTMENT GROUP,

Plaintiff-Appellant,

UNPUBLISHED
February 28, 2012

v

SALISBURY INVESTMENT GROUP, LLC, and
SALISBURY LAWN SERVICE, LLC,

No. 301345
Wayne Circuit Court
LC No. 09-006162-CK

Defendants-Appellees.

Before: SAAD, P.J., and K. F. KELLY and M. J. KELLY, JJ.

PER CURIAM.

In this breach of contract case, plaintiff Stanaj Investment Group (the Stanaj Group) appeals by right the trial court's order entering judgment of no cause for action in favor of defendants Salisbury Investment Group, LLC and Salisbury Lawn Services, LLC (collectively Salisbury). The Stanaj Group also appeals the trial court's decision to enter a judgment awarding \$15,834 to Salisbury as case evaluation sanctions against Peter Stanaj, individually. Because we conclude that there were no errors warranting relief, we affirm.

The Stanaj group, which was purportedly a co-partnership, entered into a contract with Salisbury to provide landscaping services at a construction site. Stanaj signed the contract. The Investment Group later sued Salisbury for breach of contract and sought approximately \$85,000 in damages. Salisbury claimed that the Investment Group substantially breached the contract by failing to complete the necessary site preparations making it impossible for it to perform under the contract. The case proceeded to case evaluation and the panel unanimously agreed to award the Stanaj Group \$1,000. Salisbury accepted the case evaluation award, but the Stanaj Group rejected it and the matter proceeded to trial and the jury returned a verdict of no cause of action.

Following the verdict, Salisbury moved for case evaluation sanctions under MCR 2.403(O) and requested that the sanctions be imposed against Stanaj individually, because the Stanaj Group did not legally exist. The Stanaj Group claimed that case evaluation sanctions could only be imposed against it because Stanaj was not a named plaintiff. The trial court found that the Stanaj Group did not really exist and determined that Stanaj was the real plaintiff. Accordingly, the trial court awarded Salisbury the requested case evaluation sanctions and entered a judgment imposing the sanctions against Stanaj individually. The Stanaj Group now appeals.

The Stanaj Group first argues that the trial court could not properly impose case evaluation sanctions against Stanaj in his individual capacity because he was not a party to the lawsuit. We review “de novo a trial court’s decision regarding a motion for case evaluation sanctions under MCR 2.403(O).” *Ivezaj v Auto Club Ins Assn*, 275 Mich App 349, 356; 737 NW2d 807 (2007). We review the findings of fact underlying an award of attorney fees for clear error. *Stallworth v Stallworth*, 275 Mich App 282, 288; 738 NW2d 264 (2007).

We initially question whether the Stanaj Group has standing to assert that the trial court’s judgment imposing case evaluation sanctions against Stanaj violated his right to due process. “To have standing, a party must have a legally protected interest that is in jeopardy of being adversely affected.” *Dep’t of Treasury v Comerica Bank*, 201 Mich App 318, 329-330; 506 NW2d 283 (1993). If, as it claimed below, the Stanaj Group is a co-partnership, it would be distinct from Stanaj and, therefore, unable to assert his constitutional rights.

Regardless, under the facts of this case, the trial court properly entered case evaluation sanctions against Stanaj. Although Stanaj was not named in the lawsuit, the trial court correctly determined that he was the real plaintiff and awarded case evaluation sanctions against him under MCR 2.403(O). The evidence showed that the Stanaj Group did not make payments on the contract. Instead, Stanaj made the payments with checks he wrote from the account of another entity. The Stanaj Group also was not the owner of the property involved and Stanaj clearly controlled and managed the development project. Further, Stanaj executed the contract and demanded that Salisbury make payment for the breach of the contract to him personally. This evidence tends to show that the Stanaj Group was a name that Stanaj used to conduct business, but that Stanaj himself was the real plaintiff. Indeed, the Stanaj Group’s lawyer’s inability to submit any evidence whatsoever to show that the Stanaj Group had a separate legal existence is itself a strong indication that it did not have a separate existence.¹ See *Lobato v Paulino*, 304 Mich 668, 670-671; 8 NW2d 873 (1943) (stating that the burden to establish a partnership rests with the party seeking to prove that it exists). It is notable that the only evidence that the Stanaj Group was separate and distinct from Stanaj is that the agreements with Salisbury were executed in its name. However, the agreements were signed by Stanaj. Because Stanaj appears to be the real plaintiff, the trial court did not err in finding that Stanaj should have been named as the plaintiff and in imposing case evaluation sanctions against Stanaj. “An action must be prosecuted in the name of the real party in interest.” MCR 2.201(B). “A real party in interest is one who is vested with the right of action on a given claim, although the beneficial interest may be in another.” *Blue Cross & Blue Shield of Michigan v Eaton Rapids Comm Hosp*, 221 Mich App 301, 311; 561 NW2d 488 (1997).

¹ We find it troublesome that the Stanaj Group’s lawyer had no evidence to show that the Stanaj Group existed. By signing the complaint, the Stanaj Group’s lawyer asserted that it was “well grounded in fact” that the partnership actually existed. See MCR 2.114(D)(2). Yet, when the trial court inquired about the partners, the Stanaj Group’s lawyer could not even name them: “I can’t tell you the answer because I don’t know. Maybe I should have found that out in more detail.”

We believe the result comports with the purpose of case evaluation sanctions “to expedite and simplify settlement of cases” by placing the burden of litigation costs on the party who rejects the case evaluation award. *Neal v Neal*, 219 Mich App 490, 493; 557 NW2d 133 (1996). The purpose of the rule would be thwarted if Stanaj, who, given his apparent control, decision-making, and beneficial interest in the underlying development, likely controlled the litigation, could avoid paying case evaluation sanctions by hiding behind the name of non-existent partnership. See *id.* at 493-495. Therefore, it was equitable for the court to hold Stanaj responsible for the decision to reject the case evaluation award. See also *Chisholm v Chisholm Const Co*, 298 Mich 25, 30; 298 NW 290 (1941) (noting that, in order to prevent injustice and fraud, courts will disregard a fictional entity and treat the members as individuals).

We agree that Salisbury should have raised this issue earlier in the proceedings, instead of asserting it for the first time in a post-verdict motion. Under MCR 2.112(A)(2), a party wishing to raise an issue about the legal existence of a party must do so by specific allegation in its pleadings. However, under the circumstances of this case, we conclude that the failure to challenge the Stanaj Group’s existence earlier did not preclude Salisbury from recovering against Stanaj, the real party in interest. It is evident that Stanaj did not suffer any undue prejudice due to Salisbury’s untimely challenge. To the contrary, Stanaj was clearly aware of the litigation, admittedly participated in the proceedings, had a beneficial interest in the outcome of the litigation as evidenced by his demand that Salisbury pay him personally for the breach of contract, and had an opportunity to present his position before the trial court. Moreover, it is evident that Stanaj’s interests were adequately protected because the lawyer representing his alleged partnership vigorously argued that Stanaj should not be held liable for the case evaluation sanctions. Salisbury’s failure to raise this issue in a timely manner, therefore, did not affect Stanaj’s substantial rights. “The court at every stage of the proceedings shall disregard any error or defect in the proceedings which do not affect the substantial rights of the parties.” MCL 600.2301. Moreover, the trial court had the authority to amend the pleadings to reflect that the Stanaj Group was not a legal entity and that it was, in fact, Stanaj who was the real plaintiff. See MCR 2.118(C). The trial court did not err when it entered judgment against Stanaj, individually.

The Stanaj Group’s claim that the trial court improperly entered a “judgment” upon Salisbury’s motion for case evaluation sanctions because a case evaluation award is not a court’s final determination of the rights and obligations of the parties lacks merit. In *Gherardini v Ford Motor Co*, 394 Mich 430, 431; 231 NW2d 643 (1975), the Supreme Court held that a postjudgment order awarding attorney fees and costs was a final judgment appealable as of right because the order “affected with finality rights of the parties.” In addition, MCR 7.202(6)(a)(iv) specifically defines a final judgment as “a postjudgment order awarding or denying attorney fees and costs under MCR 2.403” Therefore, the court’s award of case evaluation sanctions constitutes a final judgment or order, and the court could enter a “judgment” on defendants’ request for case evaluation sanctions.

There were no errors warranting relief.

Affirmed.

/s/ Henry William Saad
/s/ Kirsten Frank Kelly
/s/ Michael J. Kelly