

STATE OF MICHIGAN
COURT OF APPEALS

DARYL HACKER, a/k/a DARYL STEVENS-
HACKER,

UNPUBLISHED
December 18, 2012

Plaintiff,

and

PENNY HACKER, a/k/a PENNY STEVENS-
HACKER,

Plaintiff-Appellee,

V

No. 304743
Berrien Circuit Court
LC No. 2008-000284-CH

LARRY J. HACKER and NANCY A. HACKER,

Defendants-Appellants.

Before: SERVITTO, P.J., and MARKEY and MURRAY, JJ.

PER CURIAM.

In this property dispute between plaintiffs, Daryl¹ and Penny Hacker, and defendants, Larry and Nancy Hacker, defendants appeal as of right from the June 1, 2011, order denying their request for attorney fees and costs. On appeal, defendants primarily raise issues related to a settlement agreement between the parties and the enforcement thereof. Those issues were not properly before this Court by way of defendants' appeal of right from the June 1, 2011, order. Nonetheless, on this Court's own motion, we treated defendants' claim of appeal as an application for leave to appeal those issues and granted leave to appeal. *Daryl Hacker v Larry Hacker*, unpublished order of the Court of Appeals, entered September 5, 2012 (Docket No. 304743). For the reasons set forth in this opinion, we affirm the trial court's June 1, 2011, order, as well as its order enforcing the settlement agreement between the parties.

¹ Daryl passed away in August 2011 and his appeal was subsequently dismissed by order of this Court.

This case involves a family conflict over the sale of farmland and the potential future tax consequences thereof. Daryl was Larry's younger brother. Plaintiffs owned and farmed two properties; one in the Township of Paw Paw (Paw Paw farm), and the other in Bainbridge Township (Napier farm). The Paw Paw farm was mortgaged through a bank while the Napier farm was purchased through a land contract. In 1998, plaintiffs encountered financial difficulties and the mortgagee on the Paw Paw farm threatened foreclosure. Defendants offered to refinance the Paw Paw farm under their own name and, after the bank required additional collateral, added the Napier property to the deal as well. In July 1998, plaintiffs executed a warranty deed and conveyed their properties to defendants for the sum of \$1; defendants were also required to pay the existing mortgage and land contract in full. Subsequently, defendants mortgaged both properties in their own names. Plaintiffs were to pay the mortgages and taxes and were to continue their farming operations on the properties. Defendants later took out additional mortgages on the properties for their own use and without plaintiffs' consent.

In July 2008, plaintiffs filed suit and sought a ruling that the transfer of the farms to defendants created a constructive trust. They also sought an order transferring the property back to them while also assuming the remaining debt on the original mortgage. Additionally, they sought injunctive relief to prevent defendants from claiming disaster relief money on the property and to compel defendants to certify that plaintiffs farmed the land in 2007.

In May 2009, plaintiffs filed an amended complaint, reiterating their earlier allegations against defendants and adding additional claims of wrongdoing by defendants. Defendants amended their pleadings to include a counterclaim against plaintiffs. In the counterclaim, defendants contended that plaintiffs owed certain monies to defendants for expenditures on the properties and that one of the additional mortgages taken out on the properties was defendants' attempt to reimburse themselves for these expenditures. The parties eventually reached a settlement agreement – the terms of which form the basis of several issues raised by defendants on appeal.

The written settlement agreement provided that the parties would execute a purchase agreement by December 31, 2010. The purchase agreement would transfer both farms back to plaintiffs and would require plaintiffs to assume responsibility for both the first and second additional mortgages that defendants took out on the properties. The purchase price under the agreement was set at the payoff amounts on the mortgages at the date of closing plus the sum of \$1. The parties agreed that the property could not be encumbered with further debt before the closing date. Additionally, they agreed that plaintiffs were to give defendants 30 days, or reasonable advanced notice of the closing date. Until the closing date, plaintiffs remained responsible for mortgage payments, insurance, taxes, and other debts on the farms. They also had the right to manage and cultivate the farms until closing and to receive the profits from any farming operations. Further, the settlement agreement ordered disaster relief funds that were in

dispute to be held in escrow. Finally, the settlement agreement provided that if closing did not occur before December 31, 2010, defendants were to retain ownership of the two farms.²

The parties continued to have disputes after the settlement agreement was entered. In April 2010, defendants asked plaintiffs to pay an additional \$62,380 at closing. Additionally, plaintiffs ran into financial difficulties and were unable to make the July 2010 mortgage payments, and ultimately filed for Chapter 12 bankruptcy that same month. Plaintiffs found a substitute purchaser for the Napier farm and proposed a sale from defendants to the proposed purchaser. The purchase price was to cover the indebtedness for both farms. Further, plaintiffs were to pay defendants \$1 and would receive title to the Paw Paw farm. Plaintiffs proposed this plan in bankruptcy court, but defendants refused to approve the plan.

Back in circuit court plaintiffs moved the trial court for an injunction, a temporary restraining order, and to enforce the settlement agreement. They again proposed a plan to have a substitute purchaser acquire the Napier farm. Later, plaintiffs indicated that they intended to purchase both properties on their own after obtaining financing from a third party. At a hearing held on November 30, 2010, defendants' counsel stated that defendants would appear at closing on December 12, 2010, to sign warranty deeds conveying both farms to plaintiffs.

Despite the assertion by defendants' counsel, the parties did not close on December 12, 2010. Initially, the parties were delayed by the filing of liens against the Napier property. These liens were released before the scheduled closing date and on December 10, 2010, plaintiffs' counsel notified defendants' counsel that closing would then take place on December 13, 2010. However, neither defendants nor their attorney appeared for closing on December 13, 2010.

In addition to those difficulties, the parties disagreed over the issuance of a 1099 tax form. Plaintiffs averred that they acquiesced to all of defendants' closing demands in December 2010 with the exception of a tax issue related to a 1099 form. The title company refused to close the sale without filing a 1099 form that included the purchase price of the sale, which according to the settlement agreement, was "\$1.00 and the payoff of the indebtedness of the property as of the date of closing." Defendants confirmed that they refused to accept a 1099 that listed the purchase price agreed to in the settlement agreement. They contended that they were not supposed to receive a 1099 form because the sale was for the de minimis amount of \$1. As a result, the parties ultimately failed to close by the December 31, 2010, deadline. Subsequently, in January 2011, plaintiffs moved the trial court to enforce the settlement agreement. Defendants responded by moving the trial court for repayment of certain funds allegedly owed by plaintiff, and for their attorney fees related to the bankruptcy proceedings and plaintiffs' numerous motions related to their proposed sale to a third party.

On May 18, 2011, the trial court issued an oral decision, finding that both parties bore some responsibility for impeding the closing. In particular, it found that plaintiffs failed to have all of the requisite documents in reasonable order to close. It also found that defendants were

² The settlement also resolved three other small claims between the parties, none of which are pertinent to our analysis.

unreasonable in refusing to accept the required 1099 document as a part of closing. In constructing a remedy, the trial court did not void the settlement agreement, but instead specified that closing was to occur at a later date at First American Title Company. Plaintiffs were ordered to be responsible for all closing costs. If plaintiffs were unable to close on the specified date, the property was to remain with defendants. Conversely, if the transaction did not close when the plaintiffs were ready, willing, and able, the property was to be transferred via an order to be issued from the court. The trial court also declined to award attorney fees to either party.

The first issue raised by defendants relates to the trial court's decision not to award attorney fees and costs to defendants. A trial court's decision to award attorney fees and costs is reviewed for an abuse of discretion. *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008). "An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes." *Id.* Turning first to this issue, we conclude that defendants have abandoned their claim. Their minimal references to attorney fees and costs lack even a single citation to legal authority in support of their claim.

It is not enough for an appellant in his brief 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. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow. [*Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).]

Having failed to provide any legal authority to support their argument, defendants have abandoned their claim for attorney fees and costs. *Yee*, 251 Mich App at 406.

Next, we turn to defendants' arguments concerning the enforcement of the settlement agreement. Settlement agreements and judgments entered pursuant to the agreements of the parties are contracts. *Gramer v Gramer*, 207 Mich App 123, 125; 523 NW2d 861 (1994). As such, they are to be construed and applied as contracts. *Id.* See also *Kloian v Domino's Pizza LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006). "The cardinal rule in the interpretation of contracts is to ascertain the intention of the parties." *Shay v Aldrich*, 487 Mich 648, 660; 790 NW2d 629 (2010) (quotation marks and citation omitted). "An unambiguous contractual provision reflects the parties' intent as a matter of law, and '[i]f the language of the contract is unambiguous, we construe and enforce the contract as written.'" *Holland v Trinity Health Care Corp*, 287 Mich App 524, 527; 791 NW2d 724 (2010), quoting *Quality Prod & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 375; 666 NW2d 251 (2003).

Defendants essentially ask this Court to enforce the terms of the settlement agreement which provide that "[i]f closing does not take place on or before December 31, 2010, then the two farms shall remain in the ownership of the Defendants." Because closing did not take place on or before December 31, 2010, defendants argue they are entitled to retain ownership of the farms. In deciding otherwise, the trial court concluded that both plaintiffs and defendants had a mutual obligation to proceed to closing and that both parties failed under the terms of the settlement agreement. The trial court's decision is supported by the plain language of the

settlement agreement which clearly provided that: “Defendants will sell the two farms, and any assets indebted by the mortgages, that are the subject of this litigation, identified as the Napier farm and the Paw Paw Township farm.” The settlement agreement provided that closing shall be held on or before December 31, 2010. However, contrary to defendants’ argument, it placed no obligation on plaintiffs to ensure the closing took place nor did it excuse defendants from cooperating to ensure the sale of the property took place. Indeed, under the plain language of the settlement agreement, defendants were clearly obligated to sell the properties to plaintiffs for a purchase price of “\$1.00 and the payoff of the indebtedness of the property as of the date of closing.” Rather than selling the property, defendants breached their obligation under the settlement agreement by attempting to change the purchase price from “\$1.00 and the payoff of the indebtedness” to simply \$1 and by expressly refusing to sell the property if a form 1099 would be issued. Having breached the contract, defendants cannot now seek to maintain an action based on plaintiffs’ failure to perform. *Able Demolition v City of Pontiac*, 275 Mich App 577, 585; 739 NW2d 696 (2007). In other words, given their breach, defendants may not now claim continued ownership of the farms as a remedy for plaintiffs’ failure to perform. *Id.*

Defendants contend that they did not breach the settlement agreement. Central to defendants’ argument is their claim that they were not required to accept a 1099 form and, as such, they did not breach their obligation to sell by refusing to close if a 1099 form would result. Contrary to defendants’ argument, under 26 USC 6045(e)(1), the “real estate reporting person shall file a return” with the IRS related to a real estate transaction. (Emphasis added.) By statute, the “real estate reporting person” is the “person” responsible for the closing, which can include a title company. 26 USC 6045(e)(2). A “real estate transaction” occurs if “the transaction consists in whole or in part of the sale or exchange of ‘reportable real estate’ . . . for money, indebtedness, property other than money, or services.” 26 CFR 1.6045-4(b)(1); see also IRS Instructions for Form 1099-S (2012), p 1. Here, there can be no dispute that the settlement agreement provided for the sale of the properties from defendants to plaintiffs. It is also undisputed that defendants owned, and were selling, a fee simple interest in the properties. In exchange, they were receiving money, namely \$1 and the payoff amount of the loans. As such, this was a real estate transaction that was required to be reported to the IRS. 26 USC 6045(e)(1). As the transferors, defendants were required to furnish their taxpayer identification number and other basic information in order to enable the real estate reporting person to make a proper report to the IRS. 26 CFR 1.6045-4(h); see also IRS Instructions for Form 1099-S (2012), p 3. There is no merit to defendants’ assertion that a 1099 form was not legally required and that plaintiffs prevented the sale by attempting to close with a reputable title company who intended to properly issue a 1099 form.

In a related argument, defendants also contest the receipt of a 1099 form on the grounds that the consideration involved in the transaction was only \$1. Although it is true that de minimis transactions need not be reported to the IRS, 26 CFR 1.6045-4(c)(iii), the current transaction did not involve a de minimis amount. In making their argument, defendants attempt to rewrite the plain language of the settlement agreement to provide that the consideration for the sale was \$1. In actuality, the plain language of the agreement clearly reads, “[t]he purchase price

for the two farms is \$1.00 and the payoff of the indebtedness of the property as of the date of closing.” There is no merit to defendants’ claim that this was a de minimus transaction.³

Additionally, insofar as defendants ask us to make a determination relating to the potential federal taxes that could result from the sale of the property, we note that, under the Anti-Injunction Act, a state court lacks jurisdiction to enjoin the assessment or collection of federal taxes. 26 USC 7421; *Dickens v United States*, 671 F2d 969, 971 (CA 6, 1982). This includes interference with “activities which are intended to or may culminate in the assessment or collection of taxes.” *Id.* (quotation marks and citations omitted). Because defendants requested relief that would interfere with the assessment of a federal tax, we decline to consider their arguments related to the potential federal taxes that could result from the sale of the property.

Next, defendants attack the trial court’s order and enforcement of the settlement order on the grounds that plaintiffs did not have “clean hands” in light of their numerous breaches of the settlement agreement. Defendants provide no legal authority to support their arguments, and so have abandoned these arguments. *Yee*, 251 Mich App at 406. Moreover, we have reviewed the arguments and determined that they lack merit because many of defendants’ arguments fail to establish a breach by plaintiffs. And, to the extent defendants establish breaches by plaintiffs, none of the breaches are substantial such that they would have excused defendants’ performance. *Able Demolition*, 275 Mich App at 585 (quotation marks and citations omitted) (the rule that “one who first breaches a contract cannot maintain an action against the other contracting party for his subsequent breach or failure to perform . . . only applies if the initial breach was substantial.”).

Affirmed.

No costs to either party. MCR 7.219(A).

/s/ Deborah A. Servitto
/s/ Jane E. Markey
/s/ Christopher M. Murray

³ To the extent defendants argue that their claim is analogous to undoing a sale completed within a year, which need not be reported, their reliance on IRS Publication 544 is misplaced. Despite defendants’ insistence to the contrary, this current transaction was not the “canceling” of the 1998 transaction. Defendants altered the arrangement by taking out an additional mortgage on the property, a mortgage that plaintiffs agreed to take on as part of the current transaction. Accordingly, this was not a simple undoing of a previous transaction; there were added elements.