

STATE OF MICHIGAN  
COURT OF APPEALS

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POWELL PRODUCTION, INC., and POWELL  
LEASING COMPANY,

UNPUBLISHED  
October 18, 2012

Plaintiffs/Counter-Defendants-  
Appellees,

v

No. 307103  
Hillsdale Circuit Court  
LC No. 10-000642-CZ

JACKHILL OIL COMPANY,

Defendant/Counter-Plaintiff-  
Appellant.

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Before: SAAD, P.J., and WHITBECK and M. J. KELLY, JJ.

PER CURIAM.

Defendant appeals the trial court's orders granting plaintiffs partial summary disposition and denying defendant leave to file a counterclaim. For the reasons set forth below, we affirm.

I. FACTS AND PROCEEDINGS

On January 9, 1991, following a jury verdict, the Hillsdale Circuit Court entered a judgment in favor of plaintiffs and against defendant in the amount of \$1,740,575.04, together with statutory post-judgment interest. Defendant appealed that judgment to this Court, but did not post a bond staying execution of the judgment on appeal. Instead, in June 1992, the trial court entered a stipulated order reflecting the parties' agreement that plaintiffs would not take further measures to enforce the judgment pending appeal and, in lieu of an appeal bond, defendant would pay plaintiffs from sums owed to it from the operation of certain oil fields.

On September 7, 1994, this Court affirmed the trial court's judgment in relevant part, *Powell Prod Inc v Jackhill Oil Co*, unpublished opinion per curiam of the Court of Appeals, issued September 7, 1994 (Docket No. 139215), and our Supreme Court denied defendant leave to appeal that decision, *Powell Prod, Inc v Jackhill Oil Co*, 448 Mich 854 (1995). On January 24, 1995, after the appellate proceedings concluded, plaintiffs applied the funds received from defendant under the agreement to stay enforcement of the judgment to the balance owed on the judgment. Plaintiffs also sought to enforce the judgment by obtaining writs of garnishment. Defendant objected on the ground that the amount of the judgment balance stated in the writs was incorrect, and the trial court ordered plaintiffs to provide an accounting to set forth the manner in which plaintiffs calculated that amount. Plaintiffs did so, specifically showing that the

funds received during the appellate proceedings were applied to the judgment balance in a single lump sum amount on January 24, 1995. Defendant made no further objection, and the amount stated as owed on the judgment set forth in plaintiffs' court-ordered accounting was incorporated into the March 13, 1995 Execution Against Property entered by the trial court.

Plaintiffs continued to receive, and credit against the judgment balance, funds payable to defendant from the operation of the oil fields. In May 2000, plaintiffs filed a complaint in the trial court seeking to renew the 1991 judgment under MCL 600.5809. Plaintiffs asserted that the judgment balance as of June 1, 2000, was \$1,358,927.37. Defendant did not answer plaintiffs' complaint, and, on May 1, 2001, the court entered a default judgment that renewed the 1991 judgment.

On October 4, 2010, plaintiffs filed the complaint in this case to again renew the judgment. Defendant answered the complaint, challenging the amount of the judgment balance asserted therein, arguing in large part that plaintiffs improperly credited the funds received in lieu of an appeal bond under the parties' agreement at the conclusion of the appellate proceedings in 1995, rather than as of the date each payment was received from 1992 through 1994. The trial court granted plaintiffs partial summary disposition, holding that defendant was equitably estopped from challenging plaintiffs' accounting methodology for amounts received before May 1, 2001. The trial court also denied defendant leave to file a counterclaim in which defendant asserted claims arising from plaintiffs' handling of funds received over the years, both before and after 2001. Defendant now challenges each of these rulings.

## II. DISCUSSION

### A. EQUITABLE ESTOPPEL

This Court reviews a trial court's decision on a motion for summary disposition de novo on the basis of the entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). This Court also reviews de novo a trial court's equitable decisions, including the application of equitable doctrines such as laches and equitable estoppel. *Beach v Lima Twp*, 489 Mich 99, 106; 802 NW2d 1 (2011); *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 40; 700 NW2d 364 (2005); *AFSCME Int'l Union v Bank One*, 267 Mich App 281, 293; 705 NW2d 355 (2005); *Yankee Springs Twp v Fox*, 264 Mich App 604, 611; 692 NW2d 728 (2004). A trial court's findings of fact supporting an equitable decision are reviewed for clear error. *Id.* "A decision is clearly erroneous where, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." *Kitchen v Kitchen*, 465 Mich 654, 661-662; 641 NW2d 245 (2002); see also *Wayne Co v Wayne Co Retirement Comm*, 267 Mich App 230, 252; 704 NW2d 117 (2005).

The trial court referenced both the doctrine of laches and equitable estoppel during the course of its ruling on plaintiffs' motion for summary disposition, before ultimately proclaiming that defendant was equitably estopped from challenging plaintiffs' calculation of the amount owed on the judgment for amounts received before May 1, 2001. Defendant does not address the doctrine of equitable estoppel on appeal. "When an appellant fails to dispute the basis of the trial court's ruling, '[t]his Court . . . need not even consider granting [ ] the relief [it] seek[s].'"

*Derderian v Genesys Health Care Sys*, 263 Mich App 364, 381; 689 NW2d 145 (2004), quoting *Joerger v Gordon Food Serv, Inc*, 224 Mich App 167, 175; 568 NW2d 365 (1997). Thus, defendant is not entitled to relief on this claim. However, for numerous reasons, the trial court's ruling was clearly correct.

“Equitable estoppel is not an independent cause of action, but instead a doctrine that may assist a party by precluding the opposing party from asserting or denying the existence of a particular fact.” *Conagra, Inc v Farmers State Bank*, 237 Mich App 109, 140-141; 602 NW2d 390 (1999). Equitable estoppel may apply “where (1) a party, by representations, admissions, or silence intentionally or negligently induces another party to believe facts, (2) the other party justifiably relies and acts on that belief, and (3) the other party is prejudiced if the first party is allowed to deny the existence of those facts.” *Id.* at 141. There is no dispute that defendant waited more than 15 years before it raised any formal challenge to the manner in which plaintiffs credited the funds to the judgment balance. Defendant did not dispute the timing of plaintiffs' crediting of these funds during the 1995 proceedings, despite appearing in court on the very issue of the amount owed on the judgment following the crediting of these and other funds, or during the 2001 proceedings to renew the judgment.

Defendant does not contest the fact or length of the delay in raising its objection to plaintiffs' manner of crediting the funds received during the pendency of defendant's appeal against the judgment. Rather, defendant's argument is, in essence, that plaintiffs could not justifiably rely on defendant's silence on this issue to their detriment considering that they were aware, before entry of the order renewing the judgment in 2001, of defendant's concerns about the manner in which these funds were credited against the judgment balance. However, defendant did not raise any objection to the judgment balance or to plaintiffs' accounting methods before the court during the 2001 proceedings to renew the judgment. And, defendant wholly failed to raise any challenge on this basis in the more than nine years between those proceedings and the filing of its answer to plaintiffs' complaint in this case. We find no error in the trial court's holding that plaintiffs justifiably relied on defendant's silence.

Moreover, the loss of an opportunity to conduct discovery, cross-examine witnesses, and present evidence may constitute prejudice. See *Koski v Allstate Ins*, 456 Mich 439, 443-444; 572 NW2d 636 (1998). Here, it is undisputed that the trial judge and attorneys involved in the matter in 1995 were no longer involved in the case by 2011, and consequently, that plaintiffs would be unable to present direct evidence of the court and the parties' intent regarding the proper timing for crediting funds paid over to plaintiffs in lieu of a bond pending appeal. Therefore, we hold that the trial court did not err by equitably estopping defendant from asserting that plaintiffs' improperly credited the funds received during defendant's appeal against the judgment in 1995.

Defendant asserts that, to obtain equitable relief, a party must come to the court with clean hands. See, e.g., *Attorney General v PowerPick Players' Club of Mich, LLC*, 287 Mich App 13, 52; 783 NW2d 515 (2010).

The maxim that a party who comes into equity must come with clean hands is an elementary and fundamental concept of equity jurisprudence. The clean-hands doctrine closes the doors of equity to one tainted with inequitableness or bad faith relative to the matter in which he or she seeks relief, regardless of the improper

behavior of the defendant. If there are indications of unfairness or overreaching on an equity plaintiff's part, the court will refuse to grant him or her equitable relief. [*Richards v Tibaldi*, 272 Mich App 522, 537; 726 NW2d 770 (2006) (citations omitted).]

However, defendant does not argue that plaintiffs acted in any manner to keep defendant from formally asserting its claim at any point during the proceedings; defendant has not alleged any "indications of unfairness or overreaching" by plaintiffs in this regard. To the contrary, plaintiffs disclosed the timing of their crediting of the disputed amounts from the onset of their efforts to enforce the judgment in 1995; defendant was not misled about this, nor was this fact obscured, in any way. And, nothing suggests that plaintiffs acted in any unfair manner to convince defendant not to assert its objection to the amount of the judgment balance. Rather, the record simply shows that defendant, believing that the judgment would never be satisfied, simply chose not to contest the amount plaintiffs believed to be due and owing. Thus, we find no basis to hold that plaintiffs sought equity with unclean hands.

Defendant claims the application of equitable doctrines should not apply because doing so permits plaintiffs to retain a "windfall." Defendant is correct that this Court has refused to allow an equitable defense if it would result in retention of a "windfall." *Taines v Munson*, 19 Mich App 29, 39; 172 NW2d 217 (1969); see also *In re Forfeiture of \$30,632.41*, 184 Mich App 677, 679; 459 NW2d 99 (1990). However, defendant has not established that plaintiffs' accounting methodology resulted in any improper windfall. The record shows that the timing of plaintiffs' crediting of the funds received in lieu of an appeal bond was consistent with the parties' understanding of, and intent regarding, the operation of the stipulated order of stay. Therefore, the interest accruing on the judgment resulting from that methodology cannot be considered a "windfall" to plaintiffs.

Again, defendant waited more than 15 years to assert that plaintiffs erred in the crediting of funds received from 1992 to 1994 against the judgment, despite having multiple opportunities to raise the issue in legal proceedings pertaining to enforcement and renewal of the judgment. And, again, defendant does not dispute either the length of its inaction in this regard or the basis for plaintiffs' assertion of resulting prejudice. Therefore, we hold that the trial court did not err by granting plaintiffs' motion for partial summary disposition under MCR 2.116(C)(10) on the basis of equitable estoppel. And, having properly determined that plaintiffs were entitled to judgment on this issue, the trial court did not err by denying defendant summary disposition on this same issue under MCR 2.116(I).

## B. COUNTERCLAIM

Defendant maintains that the trial court abused its discretion by denying it leave to file a counterclaim alleging accounting improprieties by plaintiffs occurring after 2001. MCR 2.203(E) provides that "[a] counterclaim . . . must be filed with the answer or filed as an amendment in the manner provided by MCR 2.118." Defendant did not file a counterclaim with its answer to plaintiffs' complaint; therefore, MCR 2.118 directed the manner by which defendant could seek to file a counterclaim. *Id.* MCR 2.118(A) provides in relevant part:

(1) A party may amend a pleading once as a matter of course within 14 days after being served with a responsive pleading by an adverse party, or within 14 days after serving the pleading if it does not require a responsive pleading.

(2) Except as provided in subrule (A)(1), a party may amend a pleading only by leave of the court or by written consent of the adverse party. Leave shall be freely given when justice so requires.

“Leave to amend may be denied for particularized reasons, such as undue delay, bad faith, or dilatory motive on the movant’s part, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, or futility of the amendment.” *Amburgey v Sauder*, 238 Mich App 228, 247; 605 NW2d 84 (1999); see also *Weymers v Khers*, 454 Mich 639, 658; 563 NW2d 647 (1997); MCR 2.118(A)(2). This Court reviews a trial court’s decision regarding a motion for leave to amend pleadings for an abuse of discretion. *Weymers*, 454 Mich at 654; *Jenks v Brown*, 219 Mich App 415, 420; 557 NW2d 114 (1996). “[A]n abuse of discretion occurs only when the trial court’s decision is outside the range of reasonable and principled outcomes.” *Saffian v Simmons*, 477 Mich 8, 12; 727 NW2d 132 (2007).

The trial court denied defendant leave to amend its pleadings to file the counterclaim on the ground that defendant corporation no longer existed to prosecute a counterclaim against plaintiffs. However, as defendant correctly observes, a dissolved corporation continues to exist for the purpose of “winding up” its affairs, including the payment of debts, such as the 1991 judgment. MCL 450.1833. And, MCL 450.1501 provides, generally, that “[t]he business and affairs of a corporation shall be managed by or under the direction of its board, except as otherwise provided in this act or in its articles of incorporation.” Thus, defendant, under the direction of its board of directors, can sue and be sued, despite its status as a dissolved corporation. MCL 450.1501; MCL 450.1834. Nevertheless, the trial court’s ruling was premised on representations made by defendant’s former president, David Dzierwa, that defendant no longer had a board of directors, officers, employees or a resident agent. Thus, considering Dzierwa’s representations to the trial court that there was no one to authorize, or prosecute, the counterclaim on defendant’s behalf, we do not find that the trial court’s decision to deny defendant leave to file its counterclaim was outside the range of principled outcomes in this case.

MCR 2.203(E) provides that “[i]f a motion to amend to state a counterclaim . . . is denied, the litigation of that claim in another action is not precluded unless the court specifies otherwise.” Here, the trial court did not “specif[y] otherwise,” and accordingly, defendant obtained a Certificate of Good Standing, dated October 11, 2011, stating that it “is validly in existence under the laws of this state,” and filed a separate action asserting its claims against plaintiffs. That action was dismissed without prejudice by stipulation of the parties pending resolution of this appeal. However, defendant remains free to pursue its claims, subject to any legal or factual defenses, with regard to plaintiffs’ calculation of the judgment balance from May 1, 2001, forward. Defendant argues that the trial court nonetheless abused its discretion in denying its motion for leave to file the counterclaim because requiring it to pursue its claims in an unconsolidated separate action results in needless expense and ultimately prejudices defendant’s opportunity to determine the true judgment balance. However, defendant does not

offer any support for its assertions. Thus, we find defendant has not established that the trial court abused its discretion on this basis.

Affirmed. Plaintiffs, being the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ Henry William Saad  
/s/ William C. Whitbeck  
/s/ Michael J. Kelly