

STATE OF MICHIGAN
COURT OF APPEALS

NORBERT A. BOES and CLAUDIA BOES,

Plaintiffs/Counter-Defendants/Appellees,

v

TECHNOLOGY PARK, TECHNOLOGY PARK
DEVELOPMENT ASSOCIATES, and
TECHNOLOGY DEVELOPMENT AND
INVESTMENT CORPORATION,

Defendants/Counter-Plaintiffs/Appellants.

UNPUBLISHED

April 29, 1997

No. 194374

Oakland Circuit Court

LC No. 94-482430-CK

Before: Sawyer, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Defendants appeal as of right from the circuit court order granting plaintiffs' motion for summary disposition of plaintiffs' breach of contract claim. We affirm.

On or about November 19, 1993, plaintiffs and defendants executed a document purporting to evidence the parties' agreement for the transfer of plaintiffs' partnership interest in a real estate development known as Technology Park to defendants in return for defendants' payment to plaintiffs of \$200,000. The document reads, in pertinent part, as follows:

This letter is written to confirm our understanding with respect to your purchase of your entire interest in the project commonly known as Technology Park.

We have agreed, subject to mutually satisfactory documentation, to acquire your interest for Two Hundred Thousand (\$200,000.00) Dollars. Your interest will be conveyed to us free and clear of any liens or other encumbrances. We will pay you \$25,000.00 at the time of closing, and an additional \$25,000.00 every 120 days until the entire \$200,000.00 purchase price has been paid to you.

* * *

Please acknowledge [sic] your concurrence with the foregoing. Upon receipt of an executed copy of this letter we will cause the necessary transfer documentation to be prepared for all of our execution.

Thereafter, plaintiffs executed assignments of their interest in Technology Park and defendants issued plaintiffs a check for \$25,000 bearing the notation “partial purchase partnership interest Technology Park 1st payment.” Defendants made no further payments to plaintiffs in connection with the transfer of the partnership interest.

Plaintiffs brought a breach of contract claim against defendants seeking to collect the balance of the \$200,000 referenced in the agreement. Defendants denied liability, claiming that certain conditions to performance had not been met. Pursuant to plaintiffs’ motion for summary disposition brought under MCR 2.116(C)(10), the court entered judgment for plaintiffs’ upon finding no genuine issue of fact that the agreement was unambiguous with respect to defendants’ obligation to pay plaintiffs the purchase price. Defendants appeal that decision as of right.

Defendants argue that the trial court erred in finding that the contract was unambiguous and basing its decision to grant summary disposition on that finding. We disagree. Summary disposition is appropriate under MCR 2.116(C)(10) where there is no genuine issue of material fact with respect to a particular claim, except on the issue of damages. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). A court reviewing such a motion must consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the party opposing the motion, and grant the benefit of any reasonable doubt to the opposing party. *Id.* This Court reviews a trial court’s grant of summary disposition de novo. *Bommarito v Detroit Golf Club*, 210 Mich App 287, 291; 532 NW2d 923 (1995). It is well settled that in response to a motion for summary disposition in a breach of contract action, the trial court may only determine the meaning of the contract when the terms are not ambiguous. *SSC Associates Ltd Partnership v General Retirement System of the City of Detroit*, 192 Mich App 360, 363; 480 NW2d 275 (1991). Where the terms are capable of more than one interpretation, factual development is needed to determine the intent of the parties and, therefore, summary disposition is inappropriate. *Id.*

Here, defendants argue that the agreement was ambiguous with respect to the conditions for performance. According to defendants, the preparation of “mutually satisfactory documentation” was a precondition to performance under the agreement. A condition precedent is an event or fact which the parties to the contract intend must occur before there is a right to performance. *Yeo v State Farm Ins Co*, 219 Mich App 254, 257; ___ NW2d ___ (1996).

The conditional portion of the agreement states: “We have agreed, subject to mutually satisfactory documentation, to acquire your interest for Two Hundred Thousand (\$200,000.00) Dollars.” Thus, we find that the agreed performance for which the acceptance of mutually satisfactory documentation is a condition is the acquisition of plaintiffs’ partnership interest. The evidence clearly shows, and defendants do not seriously dispute, that they acquired the partnership interest. Therefore, since the performance occurred we find that the condition to acquisition was either satisfied or waived.

Hence, any ambiguity with respect to this condition is not relevant to the breach of contract claim. Thus, we conclude that the trial court did not err in granting plaintiffs' motion for summary disposition of its breach of contract claim on this finding.

Affirmed.

/s/ David H. Sawyer
/s/ William B. Murphy
/s/ Mark J. Cavanagh