STATE OF MICHIGAN

COURT OF APPEALS

MICKEY SHAPIRO and JEAN NAGEL,

Plaintiffs-Counter-Defendants-Appellants,

v

MARY GREEN and
PAMELA GREEN PECHARICH,

Defendants-Counter-Plaintiffs-Appellees.

UNPUBLISHED
May 23, 1997

Nos. 182030; 182418
Oakland Circuit Court
LC No. 91-423272-CK

Before: MacKenzie, P.J., and Holbrook, Jr., and T. P. Pickard*, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a judgment awarding defendants $20,700 in damages and granting plaintiffs a permanent injunction, as well as an order awarding defendants mediation sanctions. We reverse.

Plaintiffs are the owners of Impressively Royal, a two-year-old champion stallion registered with the American Quarter Horse Association (AQHA). Defendants, California horse breeders, decided to purchase the horse for breeding purposes. Pursuant to the parties' January 16, 1991 Installment Sales Agreement, defendants were to pay $125,000 for plaintiffs' "right, title and interest" in the horse. Plaintiffs were responsible for having the horse re-registered with AQHA in defendants' names; defendants were responsible for drafting an assignment of the horse's registration back to plaintiffs in the event of a default.

Defendants took possession of the horse and bred him during the 1991 breeding season, producing seven mares in foal. Although defendants made two initial installment payments totaling $30,000, they failed to make their July 1991 payment and plaintiffs refused to re-register the horse in defendants' names until the July payment was received. Eventually, defendants' attorney sent a letter

* Circuit judge, sitting on the Court of Appeals by assignment.

stating that they "elected to rescind the agreement to purchase" Impressively Royal. The parties then entered into a Termination of Installment Sales Agreement and General Release in which defendants agreed to return the horse to plaintiffs and plaintiffs agreed to return $5,000 of the $30,000 that defendants had paid toward the purchase price.

Because Impressively Royal was never registered in defendants' names, they were unable, as owners of the horse, to register the foals he sired. Defendants therefore attempted to register the foals with the AQHA by using a document purporting to lease Impressively Royal to defendants for the 1991 breeding season. Plaintiffs alleged that the document contained the forged signature of plaintiff Nagel and brought this suit against defendants to enjoin them from signing plaintiffs' names on any documents in an attempt to register the foals. Defendants counter-claimed, alleging breach of contract and intentional interference with contractual relations.

At trial, the parties stipulated that Nagel's signature on the lease was forged and defendants agreed to the entry of the injunction. With regard to the counter-claim, the court determined that the sales and termination agreements were invalid due to a mutual mistake of fact concerning the registration of any foals sired by Impressively Royal. The court therefore reformed the contract for sale into a lease of the horse during the 1991 breeding season, allowing defendants to register the foals that they had bred. Because defendants no longer had control over the foals, as compensation the court ordered plaintiffs to return the remaining $25,000 defendants paid before they defaulted on the sale, less $4,300 that defendants had made from their use of the horse. This order effectively gave defendants the value of registered foals and did not compensate plaintiffs for their lost use of the horse during 1991.

Plaintiffs argue that the trial court erroneously reformed the contract for the sale of Impressively Royal into a lease because there was no mutual mistake of fact. We agree.

This Court reviews de novo the trial court's decision to grant or deny equitable relief. *Olsen v Porter*, 213 Mich App 25, 28; 539 NW2d 523 (1995). In considering whether the trial court properly ordered reformation under the circumstances, this Court must be mindful that courts are required to proceed with the utmost caution in exercising jurisdiction to reform written instruments. *Id*. Courts will reform an instrument to reflect the parties' actual intent where there is clear evidence that both parties reached an agreement, but as the result of mutual mistake, or mistake on one side and fraud on the other, the instrument does not express the true intent of the parties. *Id.* at 29. This Court will not reform a contract if the instrument is drawn as intended. *Id*. Moreover, reformation will generally not be granted for a mistake of law. *Id*. A contractual mistake must be a belief that is not in accord with the facts and it must relate to a fact in existence at the time the contract is executed. *Britton v Parkin*, 176 Mich App 395, 398; 438 NW2d 919 (1989). The mistake must relate to a basic assumption of the parties upon which the contract is made, and which materially affects the agreed performances of the parties. *Id*.

In this case, the installment sales agreement explicitly provided that upon execution of the agreement and payment of the first installment by defendants, plaintiffs were required to re-register Impressively Royal, naming defendants as owners, and place the registration in escrow. Defendants

were required to place an assignment in escrow to transfer the registration back to plaintiffs in the event of a default by defendants. Both the assignment and registration were to be held in escrow until defendants either defaulted or paid the final installment of the purchase price in full. If defendants defaulted, plaintiffs would receive both the assignment and transfer, but if defendants completed payment, they would receive the assignment and transfer. Thus, assuming that defendants paid the final installment when it was due under the agreement, they would have received the transfer in January 1992, before any of the foals were born.

There is no indication that the parties intended that defendants should receive the new registration before they completed payment on the horse. It is uncontested that both parties understood that the purpose of the sale of Impressively Royal was so that defendants could breed him. In addition, both parties acknowledged that the value of unregistered horses is less than the value of registered horses. Although the trial court stated that "there was no way in which" the foals could ever be registered under the agreement as written, the agreement clearly stated that the certificate of registration would be delivered to defendants once the horse was paid for; with the registration, defendants could register the foals as the sire's owner. Under these circumstances, there was no mistake concerning defendant's right to register the foals. The explicit terms of the contract allowed defendant to register them after the contract was paid in full.

The trial court also determined that there was a mutual mistake in the termination agreement because the parties did not address registration of the foals that were sired by Impressively Royal while in defendants' possession. The termination agreement provided that defendants were in default of the installment sales agreement due to their failure to make the July 1, 1991 installment payment. It further provided that the parties "wish[ed] to terminate the Sales Agreement and cause the Horse to be returned to [plaintiffs.]" Thus, the parties agreed that defendants would return the horse to plaintiffs and that plaintiffs would return $5,000 to defendants.

The trial court apparently believed that the only reasonable justification for defendants' agreement to forfeit $25,000 of the $30,000 that they paid to plaintiffs was in consideration for the right to register the foals that they had bred. However, Nagel and plaintiffs' attorney, David Levine, both testified that plaintiffs retained the $25,000 as consideration for Nagel not having the horse to breed during the 1991 breeding season. Nagel further testified that defendants' forfeiture of the $25,000 was consideration for their having Impressively Royal for one year.

Because defendants had defaulted on the sales agreement, they were not entitled to Impressively Royal's certificate of registration. The only manner in which defendants could have registered the foals of Impressively Royal was if they had a lease. While defendants submitted a lease to the AQHA, it was stipulated at trial that Nagel's signature on the lease was forged. Further, it was undisputed that plaintiffs never signed a lease; thus there could have been no mistake on their part. Although the trial court was correct that the termination agreement did not explicitly state that defendants were precluded from registering the foals that they had bred with Impressively Royal, the parties clearly knew that defendants could not register the foals because they did not have a certificate

of registration or a valid lease of Impressively Royal. Therefore, the trial court improperly determined that there was a mutual mistake in the parties' contract which required reformation.

Under the terms of the sales agreement and the termination agreement, plaintiffs were entitled to retain $25,000 of the $30,000 defendants had paid toward the purchase of the horse. Defendants were not entitled to register the foals sired by the horse, and hence they were not entitled to compensation for selling them unregistered. Because the trial court erred in reforming the parties' contract of sale as a lease, the court's award of damages based on the "lease" and the imposition of mediation sanctions were improper. Accordingly, we reverse.

Reversed.

/s/ Barbara B. MacKenzie
/s/ Donald E. Holbrook, Jr.
/s/ Timothy P. Pickard