

STATE OF MICHIGAN
COURT OF APPEALS

EDWARD J. DEGROAT and NANCY J.
DEGROAT,

UNPUBLISHED
March 3, 1998

Plaintiffs-Appellants,

v

No. 196463
Isabella Circuit Court
LC No. 95-008979-CZ

ISABELLA COUNTY ABSTRACT COMPANY
and SAGINAW CHIPPEWA INDIAN TRIBE OF
MICHIGAN,

Defendants-Appellees.

Before: Hoekstra, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting defendant tribe's motion to dismiss this contract dispute. We affirm.

This case arises from the June 1995 agreement between plaintiffs and defendant tribe in which defendant tribe agreed to purchase real property owned by plaintiffs and plaintiffs agreed to deliver marketable title to the property at closing. The agreement included a choice-of-law provision stating that tribal law would govern resolution of any disputes arising under the agreement. Defendant tribe determined that plaintiffs' title, which included restrictions on the use and occupancy of the property, prevented delivery of marketable title as defined in the agreement. Accordingly, defendant tribe sought the return of its deposit as liquidated damages for plaintiffs' failure to perform. On November 6, 1995, defendant tribe filed a breach of contract action in tribal court against plaintiffs and defendant abstract company, which holds the deposit in escrow.

Plaintiffs did not file an appearance in tribal court; instead, on November 22, 1995, plaintiffs filed this action against defendants in the circuit court. On February 20, 1996, defendant tribe, which filed a limited appearance for the purpose of contesting the circuit court's jurisdiction, filed a motion to dismiss. On May 21, 1996, the tribal court entered summary judgment in favor of defendant tribe and ordered defendant abstract company to return the deposit to defendant tribe. On June 17, 1996, the

circuit court granted defendant's motion, holding that justice required it to apply the doctrine of comity and allow the tribal court to proceed on the merits of the case.

On appeal, plaintiffs argue that they should have their "day in court" in the jurisdiction where they own property and pay taxes and that the circuit court erred in failing to decide this contract dispute. We disagree. Comity is generally understood to be the recognition of a judicial or legislative act of another nation that permits foreign judgments to be recognized in this country. *Dart v Dart*, 224 Mich App 146, 154; 568 NW2d 353 (1997) (citing *Bang v Park*, 116 Mich App 34, 39; 321 NW2d 831 (1982)). There are three factors a court should consider in determining whether a foreign judgment should be accorded comity: (1) whether the basic rudiments of due process were followed, (2) whether the parties were present in court, and (3) whether a hearing on the merits was held. *Id.* at 155 (citing *Grove v Grove*, 2 Mich App 25, 33; 138 NW2d 537 (1965)).

Here, the circuit court found that plaintiffs had an effective remedy available to them in the tribal court. Indeed, pursuant to the choice of law provision in their agreement, plaintiffs had elected to exercise their rights in accordance with tribal law. Although plaintiffs neither participated in the proceeding in the tribal court on the merits nor challenged the jurisdiction of the tribal court, plaintiffs had notice and an opportunity to be heard. There is also no evidence that the tribal court's judgment is contrary to the public policy of this state. See *Bessmertnaja v Schwager*, 191 Mich App 151, 156-157; 477 NW2d 126 (1991). Because the tribal court's earlier decision is entitled to enforcement under the principle of comity, the circuit court properly dismissed this case.

Affirmed.

/s/ Joel P. Hoekstra

/s/ David H. Sawyer

/s/ E. Thomas Fitzgerald