STATE OF MICHIGAN

COURT OF APPEALS

LAWRENCE NOTARIANNI and JILL NOTATIANNI,

Cross-Plaintiffs/Appellants,

v

M&L PROPERTIES, INC,

Cross-Defendant/Appellee.

UNPUBLISHED
June 2, 1998

No. 196566
Livingston Circuit
LC No. 90-011032

Before: Markman, P.J., and McDonald and Cavanagh, JJ.

PER CURIAM.

Plaintiffs Lawrence and Jill Notarianni appeal as of right from the judgment of no cause of action entered by the trial court on their cross-claim against defendant M&L Properties, Inc. We reverse and remand for further proceedings consistent with this opinion.

This action arose from the construction of a single-family house in Brighton Township. Contractor's Trenching Services, Inc. originally brought this action to foreclose upon a construction lien it had recorded against the property due to the failure of the general contractor, M&L Properties, to pay it for materials and labor that it supplied in the construction of the house. The named defendants included M&L Properties and the couple for whom the house was built, Lawrence and Jill Notarianni. The Notariannis subsequently filed this cross-claim against M&L Properties alleging defendant breached their contract for the construction of a new home. The Notariannis alleged M&L Properties was paid the full contract price, but failed to complete all of the work that had been contracted for and caused or allowed liens to be recorded against the property in excess of $30,000. As of March 9, 1993, the only claim remaining in the case was the Notariannis' (hereafter "plaintiffs") cross-claim against M&L Properties (hereafter "defendant").

There were several issues raised at trial concerning the contract between plaintiffs and defendant including (1) whether the cost of the lot upon which the house was built was included in the contract price, (2) what was the contract price, and (3) what consideration was paid by plaintiffs for defendant's benefit. The parties agreed they entered a written building contract on January 23, 1990, which

provided defendant would "complete construction and turn over single family residence as depicted on plans and specifications" at Lot #73, Hope Lake Subdivision #2, otherwise known as 9441 Edward Drive, Brighton Township, on or before July 30, 1990, in exchange for $145,500. The contract was signed by plaintiffs and William Moustakeas for defendant. It was also undisputed that the parties executed a second contract at a later date, although the contract was also dated January 23, 1990. The two contracts were identical except that the second one did not include a completion date and listed a price of $165,500. Moustakeas drafted both contracts.

Plaintiffs maintained the correct contract price was $145,500. Plaintiffs claimed the cost of the lot, $36,500, was included in the contract price of $145,500, while defendant claimed it was not. According to plaintiffs, they only executed the second contract with the $165,500 price because they were trying to get a larger mortgage to pay off liens that had been filed against the property by various subcontractors who had not been paid. However, defendant maintained that the contract price was increased to $165,500 to account for changes requested by plaintiffs to the deck, basement, and garage. According to plaintiffs, they agreed to pay an additional $12,500 over the contract price for these changes. Plaintiffs claimed they paid Moustakeas this money, but the work was not completed.

At trial, defendant also claimed plaintiff owed it approximately $24,000 in addition to the contract price of $165,500 for numerous "extras" defendant provided including cathedral ceilings, an entertainment area in the loft, shelving in the master closet, and many other miscellaneous items plaintiff received beyond what was included in the original plans and specifications. Plaintiffs testified Moustakeas never informed them he expected them to pay for these "extras." They said they would have paid a reasonable price for these items, but stated they felt the $24,000 defendant claimed he was owed was not reasonable. Although defendant claimed plaintiffs still owed money for the project, it conceded it could not file a claim against plaintiffs because it was not a licensed builder at the time the house was constructed.

The trial court's opinion in this case focused on the issue whether the cost of the lot was included in the contract price. The trial court found the contract price only included the cost of constructing the home and did not include the cost of the lot. The trial court assumed the contract price was, as plaintiffs claimed, $145,500 and added the cost of the lot, $36,500, to reach its conclusion that plaintiffs should have paid $182,000, irrespective of any extras. The court found plaintiffs paid $147,137.69, which was the amount the parties stipulated defendant had received from plaintiffs and from their construction loan. Therefore, the court found the amount plaintiffs paid was less than what they contracted to pay. In addition, the court held that plaintiffs failed to establish that defendant wrongfully caused liens to be recorded against plaintiffs' property. Accordingly, the trial court entered a judgment of no cause of action on plaintiffs' claim.

On appeal, plaintiffs argue the trial court erroneously concluded the cost of the lot was not included in the contract price. We agree.

When confronted with a question of contract interpretation, the first question of whether the contract language is ambiguous is a question of law. *Port Huron Educ Ass'n v Port Huron Area School Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996). If the contract language is clear and

unambiguous, its meaning is a question of law. *Id.* However, if the contract language is unclear or susceptible to multiple meanings, interpretation becomes a question of fact. *Id.* This Court reviews questions of law de novo. *In re Austin Estate*, 218 Mich App 72, 74; 553 NW2d 632 (1996). This Court is required to uphold a trial court's factual finding unless clearly erroneous. MCR 2.613(C). A finding is clearly erroneous when, although there is evidence to support the finding, this Court is left with a definite and firm conviction that a mistake has been made. *Berry v State Farm Mut Ins Co*, 219 Mich App 340, 345; 556 NW2d 207 (1996).

The written building contract[1] provides that defendant would:

> complete construction and turn over single family residence as depicted on plans and specifications for the said part [sic] of the first part [plaintiffs], at 9441 Edward Dr., Brighton Township Michigan, Lot #73 Hope Lake Sub. #2 according to the plans, drawings, details, and specifications made or to be made by M & L Properties, Inc. architects, the work to be done in a good, sufficient, and workmanlike manner, to the entire satisfaction of the said part [sic] of the first part and architect for the sum of [$145,500/$165,500].[2]

We find that the building contract could reasonably be understood to mean different things. Because the contract includes the description of the lot but does not specifically state who is responsible for the cost of the lot, the contract language might be read to mean the builder would provide the lot as well as the home for the contract price. However, the contract language also might be read as one strictly for the construction of the home, because it focuses on the "construction" and "work to be done" and does not discuss the acquisition of the lot. If read in this way, the description of the property would merely indicate where the work was to be performed. Because the contract could reasonably be understood to mean different things, it is ambiguous. *Adkins v Home Life Ins Co*, 143 Mich App 824, 829; 372 NW2d 671 (1985).

Although there was evidence to support the trial court's finding that the contract price did not include the cost of the lot, we are left with a definite and firm conviction that the trial court erred in this finding. There was substantial evidence at trial to support plaintiff's contention that the parties intended the cost of the lot to be included in the contract price.

Plaintiffs testified Moustakeas helped them search for a lot, and once they selected it, defendant purchased the lot at a cost of $36,500. Plaintiffs claimed they never signed a purchase agreement for the lot or paid money to the original owners. The evidence established defendant entered into a purchase agreement with the original owners of the lot on January 17, 1990. Defendant took title to the property on March 8, 1990, and subsequently deeded the property to plaintiffs on March 13, 1990. The evidence also showed that Moustakeas endorsed two checks in payment for the property. One check for $21,719.32 was written to Moustakeas from plaintiffs' construction account with Chelsea Lumber. The second check in the amount of $14,000 was written to Moustakeas on Mrs. Notarianni's account.

Moreover, at one point early in the trial, Moustakeas appeared to admit that the cost of the lot was included in the original contract price of $145,500. Two of defendant's trial exhibits, ML-L and ML-E, indicated the contract price of $165,500 included the lot. In addition, in response to the trial judge's questioning, defense counsel stated the contract price was $165,500 and included the cost of the lot. In light of this evidence, we find the trial court clearly erred in finding the cost of the lot was not included in the contract price.[3]

However, significant issues remain that were not resolved by the trial court's disposition of the case. The trial court must determine the correct contract price, which will require a determination of whether the second contract for $165,500 is valid and whether plaintiffs were responsible for paying for any "extras" as claimed by defendant. Those issues must be resolved by the court on remand before plaintiffs' damages, if any, can be determined. Among other things, plaintiffs claim that they are entitled to reimbursement for their satisfaction of three liens on their property for a total amount of $13,100. The trial court held in its opinion that plaintiffs failed to establish that defendant wrongfully caused liens to be recorded against their property. However, if the trial court finds on remand that plaintiffs paid the full contract price, defendant should be held responsible for satisfying the liens of subcontractors.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Stephen J. Markman
/s/ Gary R. McDonald
/s/ Mark J. Cavanagh

[1] Although there are actually two written contracts, we will refer to them both as "the written contract" for ease of reference because they differed only in the amount listed as the contract price and in the fact that the second contract did not provide for a completion date.

[2] The $145,500 amount was included in the first building contract, while $165,500 was included on the second building contract.

[3] In light of this finding, we need not address plaintiff's contention that the trial court erroneously relied on the statute of frauds in concluding the contract price did not include the cost of the lot. However, we note the statutory requirements for the conveyance of the lot were arguably satisfied by the warranty deed executed by defendant as seller and plaintiffs as purchasers.