# STATE OF MICHIGAN

# COURT OF APPEALS

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WILLIAM BUCK and JANICE BUCK,

Plaintiffs-Appellees,

v

VINCENT P. STAFFNEY,

Defendant-Appellant.

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UNPUBLISHED
January 26, 1999

No. 205181
Muskegon Circuit Court
LC No. 96-035220 CK

Before: Hood, P.J., and Neff and Markey, JJ.

PER CURIAM.

Defendant appeals by right a judgment ordering specific performance of a purchase agreement for a parcel of land. We affirm.

Defendant, as seller, and plaintiffs, as buyers, entered into a purchase agreement for the sale of a parcel of land located on the Lake Michigan side of a sand dune in the city of Muskegon. The purchase agreement contained a height restriction that provided, in part:

> [t]he parties further acknowledge and agree that the height of the residence to be built by Buyer shall be acceptable to Seller, and that the parties believe said acceptable height to be approximately twenty-five feet. The parties agree that the height restriction as finally agreed upon by the parties shall be incorporated in the warranty deed conveying Parcel A.

According to the purchase agreement, closing was to take place no later than August 17, 1996. Closing did not take place. Plaintiffs brought suit requesting specific performance of the purchase agreement.

An action for specific performance is equitable in nature and subject to de novo review by this Court. *Smith v Neilan*, 44 Mich App 394, 397; 205 NW2d 186 (1973). This Court will not reverse unless the trial court's findings are clearly erroneous or this Court would have reached a different result had it occupied the position of the trial court. *Calvary Presbyterian Church v Presbytery of Lake*

*Huron of the United Presbyterian Church in the USA*, 148 Mich App 105, 109-110; 384 NW2d 92 (1986).

I

The first issue is whether the purchase agreement was an enforceable contract. In order for there to be a valid contract, the contracting parties must have a meeting of the minds on all material facts. *Stanton v Dachille*, 186 Mich App 247, 256; 463 NW2d 479 (1990). A height agreement is not generally a material fact. Material facts include subject matter, price, payment terms, and the parties to be bound. See, generally, *Kojaian v Ernst*, 177 Mich App 727, 731; 442 NW2d 286 (1989). Because the height restriction is not a material term, the lack of mutual assent would not defeat the purchase agreement. Even if the height restriction were a material term, we then use an objective standard in deciding whether meeting of the minds occurred, looking to the parties' express words and visible acts, not their subjective states of mind. *Stanton, supra* at 246-247. The testimony presented shows that the parties to this suit agreed to be bound by a twenty-five-feet height restriction

Additionally, defendant contends that the height restriction served as an "agreement to agree," thereby making the purchase agreement unenforceable. We disagree. A contract to make a contract is not a valid contract if the future contract is to contain a material term not already agreed upon. *Professional Facilities Corp v Marks*, 373 Mich 673, 679; 131 NW2d 60 (1964). However, as we have already discussed, the height restriction is not a material term.

Next defendant contends that the purchase agreement is not binding because the parties left the height restriction to be negotiated in the future. We disagree. The fact that certain matters are left for future negotiations is some evidence that the contract was not intended to be binding, but it is not conclusive proof. *Opdyke Investment Co v Norris Grain Co*, 413 Mich 354, 359-360; 320 NW2d 836 (1982). Indeed,

> [w]e must not jump too readily to the conclusion that a contract has not been made from the fact of apparent incompleteness. People do business in a very informal fashion, using abbreviated and elliptical language. A transaction is complete when the parties mean it to be complete. It is a mere matter of interpretation of their expressions to each other, a question of fact. [*Id.*, citing 1 Corbin, Contracts, § 29, pp 86-88.]

The contemplation of additional contracts does not invalidate any agreement actually reached. *Id*. at 360.

Last, defendant contends that the contract suggests a failure of consideration. Defendant does not cite support for this argument. A party who fails to provide authority in support of an argument on appeal has abandoned the argument because that party may not leave it to an appellate court to search for authority to sustain or reject his position. *Magee v Magee*, 218 Mich App 158, 161; 553 NW2d 363 (1996).

We hold that the trial court's findings regarding the existence of an enforceable contract were not clearly erroneous.

II

The second issue defendant raises is whether the determination of the height restriction was a condition precedent to performance of the agreement. Defendant argues that there were no negotiations nor was he given the information necessary to make a final determination as to the height of plaintiff's proposed house. Accordingly, because he did not make this determination; he was absolved from his duty to perform the contract. We disagree.

The terms "provided that" and "if" are typically used to signal a condition but are not required. *Stanton, supra* at 257. Stipulations in a contract are not usually construed as a condition precedent unless the plain language of the contract compels the court to construe them as such. *Vergote v K Mart Corp*, 158 Mich App 96, 107; 404 NW2d 711 (1987). Thus, the trial court's ruling that under the plain language of the contract the height restriction was not a condition precedent was not clearly erroneous.

III

Defendant further contends that plaintiffs are barred from specific performance by the doctrine of clean hands. We disagree. It is undisputed that he who seeks equitable remedies must come to equity with clean hands. *Isbell v Brighton Area Schools*, 199 Mich App 188, 189; 500 NW2d 748 (1993). Defendant claims that plaintiffs changed the terms regarding the height agreement and failed to tell him. Additionally, defendant claims that plaintiffs, in order to get more favorable terms in the purchase agreement, led him to believe he would be the contractor for the house that was going to be built on the property. Last, defendant claims that there was an oral agreement to close at a time different from that specified in the purchase agreement; however there was also testimony that contradicted defendant's claims. Questions involving credibility should be left for the trier of fact to resolve. *Nabozny v Burkhardt*, ___ Mich App ___; ___ NW2d ___ (Docket No. 203738, issued December 22, 1998), slip op at 2. We would not have reached a different result had we occupied the position of the trial court.

We affirm.

/s/ Harold Hood
/s/ Janet T. Neff
/s/ Jane E. Markey