STATE OF MICHIGAN

COURT OF APPEALS

SANDSTONE INVESTMENT COMPANY,

Third-Party Plaintiff-Appellant,

v

CITY OF ROMULUS,

Third-Party Defendant-Appellee.

UNPUBLISHED
August 20, 1999

No. 205476
Wayne Circuit Court
LC No. 94-431500 CK

Before: Doctoroff, P.J., and McDonald and Wilder, JJ.

PER CURIAM.

Following a bench trial, the trial court entered a judgment of no cause of action in favor of defendant, city of Romulus, in this breach of contract action. The trial court also entered an order awarding the city $17,106.25 in offer of judgment sanctions. Plaintiff Sandstone, a development company, appeals as of right. We affirm.

This case arises out of the city's termination of an option agreement between it and Sandstone. The facts of this case are relatively complicated. In this opinion, we only attempt to summarize the pertinent facts in order to frame the issues on appeal.

The option agreement concerned sixty-six vacant lots located in an area of Romulus designated as an urban renewal plat, a depressed area that the city had targeted to be rebuilt. The city agreed to offer the lots for sale to Sandstone at below market value prices as an incentive for Sandstone to develop the property. Representatives of Sandstone, who are now both deceased, had meetings with the city's property disposition committee regarding proposed development on the optioned lots. Witnesses for both parties testified that at these meetings it was understood that the proposal involved stick built homes that would be sold to single families, rather than rental homes. There was also testimony that the meetings included discussions regarding the size of the homes that Sandstone would be putting on the optioned lots, Sandstone's responsibilities to cut the weeds on all of the optioned lots, and Sandstone's responsibility to maintain control over construction.

The parties entered into a written option agreement on January 23, 1992. The option agreement does not contain an integration clause. The option agreement provides that in order for it to take effect, plaintiff must purchase three of the lots within five days of executing the agreement on January 23, 1992. It is undisputed that plaintiff complied with this requirement by purchasing three lots for $1,860 within five days of executing the agreement. The option also provides that plaintiff is required to purchase at least fifteen lots each year by the anniversary date of the execution of the option, January 23, and that the option would terminate if at least fifteen lots were not purchased. After setting forth the minimum fifteen lot purchase, the option provides:

> However, purchaser prior to the release for sale of any additional lots, shall have under construction at least one half of the lots previously purchased.

The written agreement also contains a provision stating that the agreement may not be assigned without the written approval of the city.

Problems arose shortly after the option agreement was executed. Witnesses from the city testified that the first three houses put on the lots were modular and not stick built homes, and that the weeds were not being cut on the vacant lots.[1] Sharon Walker, the city's former property clerk, also stated that the city was not satisfied with the size of the homes being placed on the lots. Walker and Linda Choate, the city clerk, explained that in order to address these problems, the parties entered into a "Letter of Understanding" on April 10, 1992 that amended the option agreement. The letter of understanding states that the next home ordered would be a 1,760 square foot colonial, that the city would be consulted if plaintiff's plan of operation changed, including changes in agents and contractors, and that plaintiff would cut the weeds on all of the lots included in the option during May, July, and September.

In July 1992, plaintiff exercised its option and purchased three more lots from the city. However, more problems arose when plaintiff requested nine lots in January 1993. At that time, the city required plaintiff to pay the bill for weed cutting charges before releasing the lots. Plaintiff paid the $4,154.40 bill and the parties closed on the lots January 25, 1993.

In December 1993, plaintiff requested fifteen more lots. Nine of the fifteen lots they already owned were under construction at that time. Plaintiff paid $10,435 for the lots and closed in January 1994. No weed cutting bills were presented at that time. There was testimony that the city had cut the weeds.

Plaintiff requested thirty-six lots in September 1994. Prior to the request, they owned thirty lots and eleven of these thirty lots were under construction. However, these lots were never released, and the city terminated the option on September 26, 1994. The letter terminating the option gave several reasons for the city's action, including the fact that Sandstone had failed to cut the weeds on the optioned lots in 1993 and 1994 and the fact that only eleven houses were built on the thirty lots Sandstone owned. The letter also states that Sandstone sold lots to builders before the homeowners took title, and that Sandstone changed its way of doing business without consulting the city, specifically that the city was led to believe that Sandstone would be doing the construction. Although the city and

Sandstone had meetings after the termination of the option to attempt to work things out, their attempts were unsuccessful.

On appeal, plaintiff argues the trial court erred when it admitted evidence on the meaning of the option agreement because the option agreement is not ambiguous. The trial court allowed witnesses to testify regarding meetings held prior to the written agreement and whether the parties agreed to additional terms not expressly stated in the option contract, such as the understanding that the homes would be stick-built, and that the homes would be sold, not rented. There was also extensive testimony, which was often circular and confusing, regarding whether the Deharder plan to build homes for a rent-to-own program violated the city's Master Plan, zoning ordinances, or the Urban Renewal Plan. We agree with plaintiff that the trial court's findings of fact and conclusions of law do not address the reasons why the trial court allowed this testimony. However, we find the testimony was properly admitted.

Whether this testimony was properly admitted depends on whether the written contract was integrated. When two parties have entered into a written contract and have expressed their intention that the writing constitutes the complete and accurate integration of that contract, evidence, whether parol or otherwise, of antecedent understandings and negotiations will not be admitted for the purpose of varying or contradicting the writing. *NAG Enterprises, Inc v All State Industries, Inc*, 407 Mich 407, 410-411; 285 NW2d 770 (1979) (citing 3 Corbin on Contracts, § 573); *Michigan Nat'l Bank v Laskowski*, 228 Mich App 710, 714-715; 580 NW2d 8 (1998). However, the parol evidence rule does not preclude admission of extrinsic evidence showing that the parties did not "integrate" their agreement, or assent to it as the final embodiment of their understanding, or that the agreement was only "partially integrated" because essential elements were not reduced to writing. *NAG Enterprises, supra* at 410-411.

The option contract does not contain an integration clause. Moreover, witnesses testified regarding terms of the agreement that were not included in the writing. Accordingly, we believe the record supports the conclusion that the written contract was not the complete agreement of the parties. Although the trial court did not set forth its reasoning on this issue, it was appropriate for the trial court to take testimony to determine the agreement of the parties.

Plaintiff also argues the city was not entitled to terminate the option contract for the grounds stated in its termination letter. Plaintiff challenges the trial court's findings that it violated several requirements of the parties' agreement, the one-half under construction requirement, the weed-cutting requirement, the requirement that the city be advised of any change in plaintiff's manner of doing business, and the non-assignability provision.

First, we address plaintiff's claim that it did not violate the one-half under construction requirement. This claim turns on interpretation of the phrase in the written agreement "purchaser prior to release for sale of any additional lots, shall have under construction at least one half of the lots previously purchased." Plaintiff acknowledges that at the time it requested additional lots from the city on September 1, 1994, it owned a total of thirty lots and that only eleven of these lots were under construction. However, plaintiff claims that the city's termination of the option on this basis was

premature because, under the contract, plaintiff had until January 23, 1995 to meet the one half under construction requirement. Plaintiff focuses on the language "prior to release for sale" and argues that at that time the lots were not being released for sale, but were merely being requested for release for sale.

The trial court found that plaintiff violated the one half under construction provision of the option, apparently rejecting plaintiff's interpretation of the language of the contract. The trial court's findings of fact and conclusions of law do not indicate whether it found this provision of the contract ambiguous. Whether a contract is ambiguous is a question of law. *Port Huron Ed Ass'n v Port Huron Area School Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996); *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998). This Court reviews questions of law de novo. *In re Austin Estate*, 218 Mich App 72, 74; 553 NW2d 632 (1996). If the contract, though inartfully worded or clumsily arranged, fairly admits of but one interpretation, it is not ambiguous. *Meagher v Wayne State University*, 222 Mich App 700, 722; 565 NW2d 401 (1997).

We find the one-half under construction provision of the contract is ambiguous because the language "prior to the release for sale of any additional lots" is susceptible to multiple meanings. This language could mean, as plaintiff suggests, that fifty percent of the lots were required to be under construction at the time the deeds for the additional lots were actually turned over to plaintiff. However, the language could also mean that plaintiff could not request additional lots if it did not have fifty percent of the lots under construction.

Because the contractual language is ambiguous, this Court reviews the trial court's finding that plaintiff did not comply with the one-half under construction requirement as a finding of fact. *Port Huron, supra* at 323; *UAW-GM, supra* at 491. This Court may not reverse a trial court's finding of fact unless it is clearly erroneous. MCR 2.613(C); *Marlo Beauty Supply, Inc v Farmers Ins Group of Cos*, 227 Mich App 309, 325; 575 NW2d 324 (1998). Reversal is permitted only if this Court is left with a definite and firm conviction that the trial court made a mistake. *Id.* The trial court's finding that plaintiff breached the one-half under construction requirement of the agreement is not clearly erroneous.

Next, we turn to plaintiff's claim that the trial court erroneously found that its failure to cut the weeds on the optioned lots was a valid basis upon which to terminate the option. We disagree.

Plaintiff's argument attempts to classify the failure to cut the weeds as a violation of city code. However, the trial court found that plaintiff was required to cut the weeds at least three times a year, as evidenced by the "Letter of Understanding" and that plaintiff failed to fulfill this requirement. We are not convinced that the trial court's findings on this issue are clearly erroneous. MCR 2.613(C); *Marlo Beauty Supply, supra* at 325.

Plaintiff next argues the trial court erroneously concluded that the city should have been but was not advised of changes in plaintiff's manner of doing business. Initially, we note that in light of the fact that the written option contract was not integrated, plaintiff is incorrect in its conclusion that it was not bound to advise the city of any changes. The trial court's finding that this requirement was part of the

parties' agreement was not clearly erroneous. MCR 2.613(C); *Marlo Beauty Supply, supra* at 325. Moreover, we disagree with plaintiff's argument that it complied with the contract by advising the city of the Deharder plan and attempting to consult with the city on this change in plan. Plaintiff's argument fails to recognize the trial court's finding that there was a significant difference between the parties' agreement, to build single-family homes for sale, and the Deharder plan, to build single-family homes for a rent-to-own program, and that this change in the plan breached the parties' agreement. This finding was not clearly erroneous, especially in light of testimony that plaintiff was obligated to turn the lots over for the Deharder plan if they acquired the optioned lots. MCR 2.613(C); *Marlo Beauty Supply, supra* at 325.

Plaintiff also claims the trial court erred in finding it assigned the contract in violation of the non-assignability provision. Plaintiff may be correct in its argument that its agreement to sell the lots to JC was not a violation of the contract's non-assignability provision, although plaintiff may have violated the provision by transferring other rights and responsibilities under its agreement with the city to JC such as the duty to control construction. However, assuming plaintiff's argument is correct, in light of the other valid reasons to terminate the contract, reversal on this basis is not required. See *Phinney v Perlmutter*, 222 Mich App 513, 532; 564 NW2d 532 (1997).

Next, plaintiff argues the trial court erred in finding the option agreement was not enforceable because there was no consideration. We agree with plaintiff's argument because under the parties' entire agreement, plaintiff promised to purchase a minimum number of lots each year until all sixty-six lots were in fact purchased, and additionally promised to maintain all sixty-six lots and develop the property with single-family homes. In exchange for these promises, the city promised to reserve for sale the sixty-six lots. These promises to perform constituted sufficient consideration. See *Greater Bloomfield Real Estate Co v Braun*, 64 Mich App 128, 133; 235 NW2d 168 (1975) (promise to purchase property, conditioned upon obtaining financing, was consideration for promise to sell property). Although we agree with plaintiff, reversal is not warranted because the trial court correctly found the option was validly terminated on other grounds. *Phinney, supra* at 532.

Plaintiff also argues the city did not properly terminate the option because it was not terminated "with the same formality that it was originated." Plaintiff apparently argues that in order to terminate the option, the city council was required to pass a resolution. The trial court did not address this issue. As the city indicates, this issue was not included as an issue to be litigated in the joint pretrial statement. In any event, plaintiff's argument is without merit in light of testimony at trial that the property disposition committee had the authority to recommend the termination of the option, that the property disposition committee did make such a recommendation to the city attorney, and that the city attorney terminated the option as an agent of the city, a municipal corporation. Plaintiff claims the city failed to introduce any documents showing that the option was properly terminated. However, it was plaintiff's burden to prove its claim that the option was not validly terminated.

Next, plaintiff contends the trial court's findings of fact are insufficient because it did not make any of its own findings of fact or conclusions of law, but instead adopted defendant's proposed findings of fact and law. Plaintiff does not cite any authority that precludes a trial court from adopting findings of fact and conclusions of law proposed by the parties. This Court will not search for authority to support

a party's position. *Schadewald v Brule*, 225 Mich App 26, 34; 570 NW2d 788 (1997). Although it may have been more helpful to the parties and to this Court if the trial court had rewritten defendant's proposed finding of fact and conclusion of law, remand is not necessary. The findings adopted by the trial court are sufficient. MCR 2.517(A)(1); *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995).

Finally, plaintiff argues the trial court's award of offer of judgment sanctions should be set aside for two reasons. We disagree.

Plaintiff first claims defendant's offer of judgment was not an offer to stipulate to the entry of a judgment in a "sum certain" as required by MCR 2.405 because it addressed plaintiff's equitable claim for specific performance in addition to the claim for money damages. Plaintiff's argument is without merit. Defendant's offer of judgment complied with MCR 2.405(A)(1) because it clearly indicated defendant's willingness to stipulate to the entry of a judgment of a sum certain, $20,000.

Plaintiff also argues the trial court should have refused to award attorney fees in this case because defendant manipulated the court rules by making an offer of judgment after it had rejected the mediation award for plaintiff for $42,000. Plaintiff is correct that under MCR 2.405(D)(3), the trial court could have decided not to award an attorney fee "in the interest of justice." However, this Court reviews a trial court's decision to award sanctions under MCR 2.405 for an abuse of discretion. *J C Building Corp II v Parkhurst Homes, Inc*, 217 Mich App 421, 426; 552 NW2d 466 (1996). Under MCR 2.405(E) at the time of trial, where there were rejections of both the mediation and offer of judgment rules, the rejection that occurred last controlled. *Zantop International Airlines, Inc v Eastern Airlines*, 200 Mich App 344, 365; 503 NW2d 915 (1993). The rule has since been amended and now precludes an award of costs under the offer of judgment rule if the case has been submitted to mediation and the mediation award is unanimous. MCR 2.405(E). However, under the prior rule the trial court was permitted to award offer of judgment sanctions in this case, and its decision to do so was not an abuse of discretion.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Gary R. McDonald
/s/ Kurtis T. Wilder

[1] We acknowledge that apparently the city eventually withdrew its objections to the modular homes.