STATE OF MICHIGAN

COURT OF APPEALS

DEMATTIA INVESTMENTS, L.L.C.,

Plaintiff/Counterdefendant-Appellee,

v

AMERICAN COMMUNITY MUTUAL INSURANCE COMPANY,

Defendant/Counterplaintiff/Cross-plaintiff-Appellant,

and

PHILIP R. SEAVER TITLE COMPANY,

Defendant/Cross-defendant-Appellee.

UNPUBLISHED
July 18, 2000

No. 211749
Wayne Circuit Court
LC No. 98-802426-CK

Before: Meter, P.J., and Griffin and Owens, JJ.

PER CURIAM.

Defendant American Community Mutual Insurance Company ("American") appeals by right from the trial court's order granting plaintiff DeMattia Investments, L.L.C.'s ("DeMattia") motion for summary disposition under MCR 2.116(C)(10), entering judgment for DeMattia against American and defendant Phillip R. Seaver Title Company ("Seaver"), and dismissing all other claims among the parties.

This case arises out of a purchase agreement for property entered into on June 4, 1997 by buyer DeMattia and seller American. American's chief operating officer, Gerald E. Meach, and its secretary, James Ford, signed the agreement on behalf of American. DeMattia's administrative member, Robert A. DeMattia, signed the agreement on behalf of Demattia. Pursuant to the agreement, DeMattia deposited $100,000 in earnest money with Seaver.[1]

[1] Seaver was involved in this litigation solely as the escrow agent for the parties.

Paragraph 5 of the agreement stated:

> In the event Purchaser [DeMattia] terminates this Agreement pursuant to Paragraph 12, the earnest money deposit shall be promptly returned to the Purchaser . . . . In the event Purchaser defaults under this Purchase Agreement, then the earnest money deposit . . . shall be forfeited by the Purchaser and promptly delivered to the Seller [American].

Paragraph 12 of the agreement stated, in pertinent part:

> It shall be a condition precedent to Purchaser's [DeMattia] obligation to complete the transaction that Purchaser shall be satisfied with its due diligent [sic] investigation of the Property to determine in the sole and absolute opinion of Purchaser whether the Property is suitable for Purchaser's intended use.
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> If at any time prior to the expiration of the Due Diligence Period, the Purchaser shall determine, in its sole and absolute discretion, that it is not satisfied with the Property, then Purchaser shall deliver written notice of such dissatisfaction to Seller [American] thereby terminating this Purchase Agreement. Upon such termination, Purchaser shall be entitled to (1) an immediate return of its earnest money deposit . . . and (2) a full release from any liability hereunder. If written notice of termination is not timely provided, then Purchaser shall be deemed to have approved its investigation of the Property and shall proceed to Closing in accordance with the remaining terms and conditions of this Purchase Agreement.

Paragraph 28 governed the event of the purchaser's default and stated:

> In the event Purchaser [DeMattia] defaults in the performance of the terms and conditions hereof or fails to close the transaction, Seller [American], as Seller's sole and exclusive remedy, may retain the earnest money deposit. . . .

The due diligence period extended from June 4, 1997 to December 15, 1997. There was, however, a contractual provision allowing for an extension of the due diligence period. In order to obtain such an "extension period," DeMattia would have to make an additional $100,000 earnest money deposit, and both the initial and the additional earnest money deposits would become non-refundable if DeMattia then terminated the purchase agreement after December 15, 1997. Indeed, paragraph 13 of the purchase agreement stated:

> In the event the Property has not been rezoned and necessary variances obtained on or before December 15, 1997, Purchaser [DeMattia] shall have the right to extend the Due Diligence Period for an additional period not to exceed one hundred eighty (180) days ("Extension Period") by making an additional earnest money deposit pursuant to Paragraph 5 in the aggregate amount of One Hundred Thousand

($100,000) Dollars ("Extension Deposit"). . . . The Extension Deposit made for the Extension Period, if exercised, together with the original Deposit of One Hundred Thousand ($100,000) Dollars shall be non-refundable . . . and retained by Seller [American] in the event Purchaser terminates this Agreement pursuant to Paragraph 12.

On December 11, 1997, Gary D. Roberts, the president of DeMattia Development, a separate but related corporation to DeMattia Investments, sent a letter regarding the property to Gerald Meach. In the letter, Roberts stated that the relevant township scheduled a meeting regarding the zoning of the property for March 18, 1998 and that DeMattia would not know whether it would be able to close on the property until the zoning uncertainty was clarified. Roberts further expressed that DeMattia was not in a position to have the initial $100,000 become non-refundable or to provide an additional non-refundable deposit of $100,000 pursuant to paragraph 13 of the agreement. In the last portion of the letter, Roberts stated:

> Per paragraph 12 of the purchase agreement, it stated that in the event that we had not gotten the property rezoned by December 15th, we were able to extend the Due Diligence Period for an additional 180 days by making an additional non-refundable, but applicable to the purchase price, deposit of $100,000.00 dollars [sic]. Additionally, our initial $100,000.00 dollar [sic] deposit would become non-refundable. We are not in a position to have our initial deposit of $100,000.00 dollars [sic] become non-refundable or to provide an additional deposit of $100,000.00 dollars [sic]. We strongly believe that getting this property rezoned will greatly enhance the marketability of the property and therefore we still plan to move toward that goal. However, we cannot afford to have our money become non-refundable without any assurance that our property will be rezoned as we desire, and therefore, that we are able to develop the property as we plan.
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> We propose that you give us additional time without submitting additional monies or having our initial $100,000.00 dollar [sic] deposit becoming non-refundable. If the seller [American] will not allow us additional time without our deposit becoming non-refundable or requiring additional monies, we will have to terminate our agreement pursuant to Paragraph 12. Please call to discuss this issue.

DeMattia contended that this letter was a sufficient notice of termination under paragraph 12 of the purchase agreement such that it was entitled to a refund of its $100,000 earnest money deposit. The trial court agreed and granted DeMattia's motion for summary disposition, indicating that the December 11 letter, by requesting a longer "due diligence" period than that specified in the original contract, amounted to a counteroffer by DeMattia that effectively terminated the original offer to sell the property.

We review a trial court's grant of summary disposition under MCR 2.116(C)(10) de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). We review the affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties in the

light most favorable to the nonmoving party and decide if there exists a genuine issue of material fact. *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (1998).

American first contends that since the December 11, 1997 letter came from DeMattia Development, it could not have affected the contract between American and DeMattia Investments.[2] We disagree. It is undisputed that the purchaser of the property as defined in the first paragraph of the purchase agreement was "DeMattia Investments, L.L.C., a Michigan limited liability company, whose business address is 45501 Helm Street, Plymouth, Michigan 48170." It is also undisputed that the December 11 letter was authored by Gary D. Roberts, the president of DeMattia Development. However, the stationery on which Roberts wrote the December 11 letter indicated that the business address of DeMattia Development was the same as the business address of DeMattia Investments. The stationery further indicated that DeMattia Development was "an affiliate of DeMattia Group." Moreover, American did not and does not deny that it negotiated with Roberts on December 18, 1997 regarding the potential extension of the due diligence period contained in the contract between American and DeMattia Investments. Finally, American did not and does not deny DeMattia's assertions below that (1) American dealt constantly with Roberts during contract negotiations regarding the property in question, and (2) American did not voice concerns about Roberts' authority to speak for DeMattia Investments. Under these circumstances, American cannot claim that it was unaware that the notice received from Roberts on DeMattia Development letterhead was written on behalf of DeMattia Investments.

American next argues that the December 11, 1997 letter was insufficient notice of termination under paragraph 12 of the purchase agreement and that the trial court therefore erred in granting DeMattia's motion for summary disposition. Again, we disagree. As noted above, paragraph 12 of the purchase agreement stated:

> If at any time prior to the expiration of the Due Diligence Period, *the Purchaser shall determine, in its sole and absolute discretion, that it is not satisfied with the Property, then Purchaser shall deliver written notice of such dissatisfaction to Seller thereby terminating this Purchase Agreement*. Upon such termination, Purchaser shall be entitled to (1) an immediate return of its earnest money deposit . . . and (2) a full release from any liability hereunder. [Emphasis added.]

The December 11 letter clearly stated that DeMattia was not currently satisfied with the property because of zoning uncertainties. While DeMattia expressed its desire to obtain an additional due diligence period that would not involve nonrefundable funds, it nonetheless clearly indicated that the agreement would terminate if American did not provide this additional period. DeMattia requested that American "call to discuss [the] issue."

We conclude that DeMattia's statements in the December 11, 1997 letter adequately terminated the agreement under paragraph 12 – and that DeMattia was therefore entitled to a refund of its earnest money deposit – since the letter placed the condition on American to re-negotiate the

[2] The trial court did not address this issue.

purchase agreement. In other words, the December 11 letter made clear that if the purchase agreement remained in place unchanged, without an additional due diligence period involving nonrefundable funds, the agreement would terminate. Accordingly, American – being the entity who controlled the issuance or non-issuance of an additional due diligence period – was not prejudiced by the wording of the December 11 letter and had sufficient notice regarding DeMattia's termination of the purchase agreement.[3] Accordingly, the trial court did not err in granting DeMattia summary disposition.[4]

American contends that *Hubble v O'Conner*, 684 NE2d 816 (Ill App, 1997), compels a contrary result. In *Hubble*, two parties negotiated for the purchase of a condominium. *Hubble, supra* at 819. The written contract contained an attorney review provision which allowed the contract to be voided if either party gave written notice of disapproval within a certain number of days after the formation of the contract. *Id*. After the formation of the contract, the parties, through their attorneys, continued to exchange proposed modifications to the agreement, and these proposed modifications extended past the expiration of the disapproval period. *Id*. Two weeks after the expiration of the attorney disapproval period, the buyers' attorney, via written letter, invoked the attorney disapproval provision and requested the return of the buyers' earnest money. *Id*. at 819-820. The sellers argued that the buyers' attorney's disapproval was not timely. *Id*. The Illinois Court of Appeals held that the attorney disapproval notice was too late, indicating that merely proposing modifications to the existing contract did not serve as notice of disapproval. *Id*. at 821-823.

American contends that in the instant case, DeMattia's proposal to modify the terms of the existing contract on December 11, 1997 did not, under *Hubble*, serve as notice of termination. We disagree. First, we note that *Hubble* does not constitute binding precedent in this case. Second, the court in *Hubble* stated the following:

> Summarizing, we find that the writings here did not fairly inform the sellers that the contract would be voided under the attorney disapproval clause if the sellers failed to agree to the purchasers' suggested changes. We therefore find the contract became

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[3] American contends that attempts by DeMattia after December 17, 1997 to extend the due diligence period without providing a nonrefundable deposit indicate that the December 11, 1997 letter did not in fact terminate the contract. We disagree that DeMattia's attempts to obtain an additional due diligence period rendered its notice of termination deficient. Again, American had sufficient notice by December 11, 1997 that the agreement would terminate if American did not provide an additional due diligence period.

[4] American argues that the trial court employed faulty reasoning in granting DeMattia's motion for summary disposition. Specifically, American contends that the court erroneously analyzed the December 11, 1997 letter as a "counter-offer" to an existing "offer." We agree that the letter was not a "counter-offer" but was rather a proposal to modify the existing contract between the parties. Any errors in the trial court's reasoning, however, are rendered harmless, since our review of this case is de novo, *Spiek, supra* at 337, and since we will not reverse a trial court's decision if it reached the correct result, albeit for the wrong reasons. *Norris v State Farm Fire & Casualty Co*, 229 Mich App 231, 240; 581 NW2d 746 (1998).

> irrevocable when the attorney disapproval period ended on June 22, 1993. [*Hubble, supra* at 823.]

Here, DeMattia, unlike the buyers in *Hubble*, *did* indicate that the contract would be voided if American did not agree to its suggested changes. Accordingly, even *if Hubble* constituted binding precedent in this case, it would not require reversal.

American also points to *Jack Mann Chevrolet Co v Associates Investment Co*, 125 F2d 778 (CA 6, 1942), in support of its argument on appeal. In *Jack Mann*, the court, citing a contract treatise, indicated that a rescission or termination of a contract, to be effective, must be clear and unambiguous. *Id*. at 784. Again, we note that *Jack Mann* does not constitute binding precedent in this case. Second, we note that DeMattia's December 11, 1997 letter was indeed clear and unambiguous in indicating that termination would occur if American would not extend the due diligence period. Accordingly, the case law American cites in support of its argument on appeal does not persuade us to change our holding that DeMattia properly terminated the purchase agreement within the original due diligence period and was therefore entitled to a refund of its earnest money.

Affirmed.

/s/ Patrick M. Meter
/s/ Richard Allen Griffin