

STATE OF MICHIGAN
COURT OF APPEALS

RAYMOND SUDEIKIS and PATRICIA
SUDEIKIS,

UNPUBLISHED
February 23, 2001

Plaintiffs-Appellants,

v

STANLEY BUZAS and SANDRA BUZAS,

No. 221606
Van Buren Circuit Court
LC No. 96-042149-CK

Defendants-Appellees.

Before: Talbot, P.J., and Sawyer and Markey, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting them specific performance on a contract if certain conditions were met. We affirm in part, reverse in part and remand.

Plaintiffs contracted to sell defendants a golf course in 1987. Paragraph 19 of the sales agreement provided that

[i]n consideration for the transfer of assets by Sudeikis-Seller and Operating-Seller, Purchasers herewith covenant and promise that the following listed individuals shall receive a lifetime golf membership entitling them to free greens fees at the golf course purchased pursuant to this Agreement.

The agreement then listed nine individuals, all of whom were members of plaintiffs' family including themselves, their children, and their grandchildren.

Defendants honored that agreement from 1987 until 1995 when they sold the golf course. After that sale, plaintiff Raymond Sudeikis and his son attempted to play golf at that golf course, but they were turned away after they were told they did not have a membership. Subsequently, plaintiffs brought this lawsuit for breach of contract and requested damages in the amount of \$96,108. That amount was based on the number of years remaining in the life expectancy of each of the named individuals' lives multiplied by \$300, which plaintiffs believed to be a reasonable fee for an annual membership at the golf course in question.

The trial court found the contractual provision in question to be ambiguous and the amount of damages requested to be disproportionate to the alleged breach. The trial court found that the lifetime memberships were enforceable only when the golf course was in operation and when owned by defendants. If those two conditions were met, then the court stated that specific performance was the appropriate remedy.

Plaintiffs first argue that the contractual provision was not ambiguous, and the trial court erred when it determined the contractual provision was only enforceable when the golf course was in operation and owned by defendants. We agree.

The initial question whether contractual language is ambiguous is a question of law which we review de novo. *Brucker v McKinlay Transport, Inc (On Remand)*, 225 Mich App 442, 448; 571 NW2d 548 (1997). “A contract is ambiguous if the language is susceptible to two or more reasonable interpretations.” *D’Avanzo v Wise & Marsac, PC*, 223 Mich App 314, 319; 565 NW2d 915 (1997).

“Contractual language is construed according to its plain and ordinary meaning, and technical or constrained constructions are to be avoided.” *Dillon v DeNooyer Chevrolet Geo*, 217 Mich App 163, 166; 550 NW2d 846 (1996). The “lifetime membership” clause in this case provides that the named individuals “shall receive a lifetime golf membership entitling them to free greens fees at the golf course purchased pursuant to this Agreement.” The word lifetime has an ordinary definition: “for the duration of a person’s life: *He has a lifetime membership in the organization.*” *The Random House Webster’s Unabridged Dictionary* (1998), p 1111.

We find that the language used in this contractual provision is not subject to multiple reasonable interpretations. Rather, it is clear and unambiguous and must be interpreted according to its ordinary definition. Therefore, the clause in question means that for the duration of the named individuals’ lives, they are entitled to free greens fees at the golf course sold pursuant to that sales agreement. Although this provision necessarily requires that the golf course be operating as a golf course, the trial court’s added requirement that defendants own the golf course goes beyond the ordinary meaning of the provision’s language and was erroneous.

Plaintiffs also argue that the remedy they requested, \$96,108, was appropriate. We disagree.

“The remedy for breach of contract is to place the nonbreaching party in as good a position as if the contract had been fully performed. Accordingly, the goal in contract law is not to punish the breaching party, but to make the nonbreaching party whole.” *Corl v Huron Castings, Inc*, 450 Mich 620, 625-626; 544 NW2d 278 (1996).

The trial court found that plaintiffs’ request for \$96,108 was disproportionate and inappropriate to the alleged breach. The trial court’s findings of fact are reviewed for clear error. *Samuel D Begola Services, Inc v Wild Brothers*, 210 Mich App 636, 639; 534 NW2d 217 (1995). A trial court’s finding is clearly erroneous only where this Court is left with a definite and firm conviction that a mistake has been made. *Id.*

The trial court's reasoning that supported its finding of inappropriateness included: (1) the remedy based on lifetime expectancy assumed that all membership holders would play throughout their lifetimes without injury or moving away; (2) the formula used by plaintiffs would give them the full benefit of their bargain right now as opposed to over time as the contract would; (3) the remedy assumed that the golf course will be in operation for another 57 years; and (4) the remedy assumed that all named individuals, including the young grandchildren, will in fact play golf. Testimony revealed that plaintiffs had played minimal amounts of golf in the last few years, and they did not know if their grandchildren would play golf.

We are satisfied that the trial court did not clearly err in its finding that the monetary damages requested were not appropriate for the breach in question.

We do, however, find that because the trial court erred when it granted specific performance only if the two conditions of the golf course being in operation and owned by defendants were met, plaintiffs are entitled to a remand for a determination of an appropriate remedy.

Affirmed in part, reversed in part and remanded. We do not retain jurisdiction. No costs, neither party having prevailed in full.

/s/ Michael J. Talbot

/s/ David H. Sawyer

/s/ Jane E. Markey