STATE OF MICHIGAN

COURT OF APPEALS

JO ANN DOTY, JOHN R. HILL, BRAD N. MATTISON, B & B DIVERSIFIED, SAMUEL D. WHITFIELD, STEFAN PELAK, S.C.P. CLEANING SERVICES, INC.,

Plaintiffs-Appellees,

and

HAROLD L. BRADLEY, JOSEPH CAPALDI, JOHN ESTELL, ROMAINE ESTELL, DALLAS GOODIN, DIVA GOODIN, AZELL HARRIS, FREDERICK HEARD, JUDY HEARD, NADER HERMIZ, SYED HUSAIN, CHARLES M. JEMISON, SHAWN D. KENDRICK, CATHERINE A. LASHLEY, GEORGIA MURRAY, HAROLD OSBORNE, ALVIN D. PETERS, DANIEL RENUSCH, SHAWN D. SILER, MARK E. ABBOT, FRANK W. ETTER, RICHARD O. GREEN, SYSTEMIC SERVICES CO, LLC, FAROOK POULES, ARNESS R. ROGERS, PHILLIP L. SMOOT, MICHAEL R. WONCH, DOUGLAS C. CARPENTER, LARRY D. FIELDS, PATRICIA RENUSH KOZIARA, MARTIN I. SEGAL, JOHN A. SZATKOWSKI, NADIA S. YOUSIF, ROBERT D. ERICKSON, GYNETH HARRIS,

Plaintiffs,

v

CLEANNET OF GREATER MICHIGAN, INC., CLEAN NET U.S.A., and CARL L. KRAWCZYK, JR.,

Defendants-Appellants.

UNPUBLISHED
December 16, 2003

No. 238717
Wayne Circuit Court
LC No. 99-902105-CB

Before: Markey, P.J., and Cavanagh and Saad, JJ.

PER CURIAM.

Defendants appeal as of right from a jury verdict in favor of plaintiffs, Jo Ann Doty, John R. Hill, Brad N. Mattison, d/b/a B & B Diversified, Samuel D. Whitfield, and Stefan Pelak, d/b/a S.C.P. Cleaning Services, Inc. We reverse in part, vacate in part, and remand for further proceedings.

I. Facts and Procedural History

This case arises out of plaintiffs' purchase of CleanNet commercial janitorial franchises. Through the Regional Director of CleanNet of Greater Michigan, Carl Krawczyk, CleanNet sold franchise packages of varying costs to plaintiffs that would provide them a certain amount of "guaranteed" gross billings per month.[1] CleanNet procured the customer accounts for the plaintiff-franchisees, the franchisees performed the cleaning services, CleanNet billed the customers, handled customer complaints, and paid the franchisees, less royalties, management fees, insurance and any deductions customers made for poor or incomplete service. Some plaintiffs also financed part of their franchise purchase by signing promissory notes and CleanNet deducted those payments from the franchisees' monthly checks.

The plaintiff-franchisees contend that they bought the franchises based on promises by Krawczyk and CleanNet that plaintiffs would make thousands of dollars per month from guaranteed contracts, that CleanNet would train plaintiffs and would provide insurance coverage and that the contracts were guaranteed to last from ten to twenty years. Plaintiffs further maintain that, after they signed the franchise agreements, CleanNet unilaterally took away customer accounts, severely underbid the accounts, and allowed customers to deduct payments without plaintiffs' consent. Moreover, plaintiffs assert that CleanNet failed to provide plaintiffs with the gross billings required by their franchise agreements and, though they charged the franchisees every month, CleanNet failed to obtain liability insurance and fidelity bond coverage as promised. Accordingly, plaintiffs sued defendants for fraud, breach of contract, violation of the Michigan Franchise Investment Act, and tortious interference with business relationships.[2] Following an eleven-day trial, the jury returned a verdict in favor of plaintiffs against CleanNet, U.S.A. and CleanNet of Greater Michigan but imposed no liability on Krawczyk.[3]

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[1] Plaintiff JoAnn Doty bought her CleanNet franchise before Carl Krawczyk took over as the Michigan director.

[2] Plaintiffs also asserted claims for intentional infliction of emotional distress and failure to pay minimum wage. The trial court dismissed both of these claims prior to trial and that decision is not contested on appeal.

[3] The verdict form does not specify on which counts the jury found CleanNet liable. However, the jury made the following awards to the individual plaintiffs: Mattison, d/b/a B&B Diversified: $2,790 past damages, $0 future damages, $40,000 exemplary damages; Whitfield: $10,356 past damages, $0 future damages, $50,000 exemplary damages; Pelak, d/b/a S.C.P.
(continued…)

II. Analysis

Defendants say that the trial court erred by denying its motion for summary disposition on plaintiffs' fraud claims.[4] In their motion for summary disposition, defendants argued that all of the alleged misrepresentations relate to future promises and are, therefore, not actionable as fraud. Defendants also argued that any promises were negated by the merger and integration clauses in the franchise agreements.[5]

In response to defendants' motion, plaintiffs cited the following alleged misrepresentations by Krawczyk from their complaint: (1) that plaintiffs will own their own business and be their "own boss," (2) that plaintiffs may examine and turn down accounts, (3) that plaintiffs will receive more than is required by the contract, (4) that franchisees will receive assignments close to home, (5) that if an account is lost, it will be replaced, and (6) if plaintiffs decide to sell a franchise, Krawczyk will help them. On their face, all of these representations relate to future events or promises. As this Court explained in *Eerdmans v Maki*, 226 Mich App 360, 366; 573 NW2d 329 (1997):

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Cleaning Services, Inc.: $10,691 past damages, $0 future damages, $40,000 exemplary, $0 future; Hill: $7,772 past damages, $0 future damages, $30,000 exemplary damages; Doty: $7,845 past damages, $0 future damages, $60,000 exemplary damages.

[4] Defendants also assert that the trial court erred by denying their motion to dismiss the claims of Doty, Mattison/B&B Diversified, and Pelak/S.C.P. Cleaning Services, for failing to comply with a discovery order to produce certain tax returns. We review a trial court's decision whether to impose discovery sanctions for an abuse of discretion. *Bass v Combs*, 238 Mich App 16, 26; 614 NW2d 727 (1999). Regarding defendants' motion to dismiss, under MCR 2.313(B)(2)(c), if a party fails to obey an order to provide discovery, the trial court may dismiss all or part of the action as a sanction. Here, we reject defendants' claim because the record shows that the trial court could have reasonably concluded either that the plaintiffs either produced the tax returns they had, or, that they never filed any tax returns during the relevant periods.

[5] This Court "review[s] the grant or denial of a motion for summary disposition de novo." *Ormsby v Capital Welding, Inc*, 255 Mich App 165, 172; 660 NW2d 730 (2003). Our Supreme Court explained in *Spiek v Michigan Dept of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998):

> MCR 2.116(C)(8) tests the legal sufficiency of the claim on the pleadings alone to determine whether the plaintiff has stated a claim on which relief may be granted. The motion must be granted if no factual development could justify the plaintiffs' claim for relief.

As this Court also explained in *Ormsby*:

> In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), the court must consider the affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the party opposing the motion. Summary disposition may be granted if the evidence demonstrates that there is no genuine issue with respect to any material fact, and the moving party is entitled to judgment as a matter of law. [*Ormsby*, *supra* at 172 (citations omitted).]

> An action for fraudulent misrepresentation must be predicated on a statement relating to a past or an existing fact. Future promises are contractual and cannot constitute actionable fraud. [Citation omitted.]

In their response brief below, it is clear that plaintiffs attempted to frame Krawczyk's statements as existing facts. The complaint states that "Krawczyk told [plaintiffs] that they *would have* their 'own business' and be their 'own boss,' " and "Krawczyk told [plaintiffs] that they *probably would receive* more work from CleanNet than the volume specified in the Franchise Agreement." (Emphasis added.) However, in their response brief, plaintiffs state that Krawczyk represented "[t]hat franchisees *own* their own business" and that "franchisees *receive* more than the minimum work required by their franchise agreement." (Emphasis added.) Evidently, plaintiffs were attempting to avoid summary disposition by suggesting that Krawczyk was merely explaining to potential franchisees how *existing* franchisees are treated. However, the allegations in the complaint are clear: Krawczyk allegedly made statements about how plaintiffs would be treated in the *future*.

For the first time, plaintiffs now expand their arguments and contend that this Court should apply the "bad faith" exception to the general rule that a claim of fraud may not be based on future promises. Under the exception, "a fraudulent misrepresentation may be based upon a promise made in bad faith without intention of performance." *Hi-Way Motor Co v International Harvester Co*, 398 Mich 330, 337-338; 247 NW2d 813 (1976). Our Supreme Court made clear in *Hi-Way Motor* that evidence of fraudulent intent, "to come within the exception, must relate to conduct of the actor 'at the very time of making the representations, or almost immediately thereafter.' " *Id*. at 338-339, quoting *Danto v Charles C Robbins, Inc*, 250 Mich 419, 425; 230 NW 188, 190 (1930). Plaintiffs also argue that the "false token" exception applies. This "exception pertains where, although no proof of the promisor's intent exists, the facts of the case compel the inference that the promise was but a devise to perpetrate a fraud." *Hi-Way Motor, supra* at 339, citing *Rutan v Straehly*, 289 Mich 341, 349; 286 NW 639 (1939).

In support of their arguments, plaintiffs assert that, when he made the promises, Krawczyk never intended to fulfill them. However, there is no factual statement in the complaint or documentary evidence provided to suggest that Krawczyk never intended to keep the promise as evidenced by his contemporaneous conduct. Rather, according to plaintiffs, they learned that the alleged promises turned out to be untrue through the course of working with CleanNet. Further, no assertion in the complaint falls under the false token exception because there are no allegations of facts that "compel the inference that the promise was but a devise to perpetrate a fraud." *Hi-Way Motor, supra* at 339.

Though not cited by plaintiff as an exception to the bar on future promises, we note that Michigan courts have also recognized an exception for fraud in the inducement. As this Court explained in *Samuel D Begola Services, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995):

> Fraud in the inducement occurs where a party materially misrepresents future conduct under circumstances in which the assertions may reasonably be expected to be relied upon and are relied upon. Fraud in the inducement to enter a contract renders the contract voidable at the option of the defrauded party. [Citations omitted.]

At first blush, this exception would appear to apply to plaintiffs' allegations that Krawczyk made various promises relating to CleanNet's future conduct. However, defendants also argued below that plaintiffs could not establish that they *reasonably* relied on these alleged future promises. For this argument, defendants submitted documentary evidence showing that the franchise agreements contain merger and integration clauses. The trial court erroneously disagreed and ruled, without explanation, that plaintiffs' reliance on the alleged promises was reasonable.

Our Courts have held that, if statements are made to induce a plaintiff to enter a written contract, an integration clause or merger clause may render unreasonable the plaintiff's reliance on oral representations. See *Novak v Nationwide Mutual Insurance Co*, 235 Mich App 675, 689-691; 599 NW2d 546 (1999); *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486, 504; 579 NW2d 411 (1998). Again, the alleged misrepresentations in the complaint were (1) that plaintiffs will own their own business, (2) that plaintiffs will receive more than is required by the contract, (3) that franchisees will receive assignments close to home, (4) that if an account is lost, it will be replaced, and (5) if plaintiffs decide to sell a franchise, Krawczyk will help them. In their reply brief, plaintiffs added that defendants made promises in newspaper ads and stated that franchisees will own their own business, will receive guaranteed contracts, and will receive training and support. Plaintiffs further asserted that defendants promised to provide insurance, but that the insurance purchased by CleanNet never covered franchisees.

Here, the alleged misrepresentations were explained, contradicted or superseded by the written terms of the franchise agreements and the merger and integration clauses nullified any promises or representations made outside the agreements themselves. The franchise agreements all contain specific clauses relating to the value and size of cleaning accounts, insurance, ownership of the business, designated territories, the term of the agreement, the termination, transfer and replacement of accounts, training, and selling the business. All of the agreements contain clauses stating that the agreement is complete, it supersedes any other agreements, any modifications must be in writing, and that no other representations or promises apply that are contrary to the terms of the written agreements.

Because the franchise agreements contain clauses that address the particular statements allegedly made to induce plaintiffs to sign the agreements and because the agreements contain clear merger and integrations clauses, defendants are correct - under Michigan law, it was unreasonable for plaintiffs to rely on alleged outside representations. *Novak, supra*; *UAW, supra*. As this Court explained in *UAW*:

> [A] contract with a merger clause nullifies all antecedent claims. See 3 Corbin, Contracts, § 578. In our view, this includes any collateral agreements that were allegedly an inducement for entering into the contract. In the context of a contract that included a merger clause, parol evidence regarding false representations in a collateral agreement that induced the plaintiff to enter into the contract would vary the terms of the contract. [*UAW, supra* at 502.]

Accordingly, in order to maintain a fraud in the inducement claim if an agreement contains a merger clause, the plaintiff must establish that there was fraud with regard to the merger clause itself. *UAW, supra* at 503. Plaintiffs do not allege that they were defrauded regarding the

merger or integration clauses or that defendants induced them to believe the written agreement contained terms that it did not. *Id*. at 504-505.[6]

In sum, the record reflects that plaintiffs' allegations of fraud in their complaint (regarding alleged misrepresentations made by Krawczyk) clearly relate to future promises or expectancies. Further, the allegations raised in their brief in response to defendants' motion for summary disposition (regarding alleged misrepresentations made by Krawczyk and in newspaper ads) also relate to future promises. Plaintiffs' allegations of fraud may have been actionable under the "fraud in the inducement" exception but for the clear and unambiguous merger and integration clauses in the franchise agreements. Because plaintiffs failed to establish fraud with regard to the merger clauses themselves, the trial court should have granted summary disposition to defendants on this issue. Though plaintiffs' arguments with regard to defendants' failure to fulfill the terms of the agreements may have been actionable under a breach of contract theory, they were not actionable under a claim of fraud.

Because the trial court should have granted defendants' motion for summary disposition on plaintiffs' fraud claim,[7] we reverse the trial court's order of denial on that basis.[8] As noted,

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[6] Indeed, in their brief below, the only argument plaintiffs asserted with regard to signing the agreement is their description of themselves as "illiterate janitor[s]," implying that they could not read or understand the terms of the agreement, while defendants represented "a sophisticated, commercial entity." Plaintiffs failed to provide documentary evidence to support the assertion regarding plaintiffs' literacy. It appears that defendants anticipated plaintiffs' argument, however, and provided plaintiffs' deposition transcripts. The transcripts indicate that (1) Doty graduated high school and was the third woman in Michigan to receive an insurance agent's license, (2) Mattison graduated high school and attended a year of college, (3) Pelak graduated high school and attended two years of college in electronic engineering, (4) Whitfield graduated high school and achieved the rank of Major in the U.S. Army, and (5) Hill graduated high school and studied business administration in college for a year and a half. Thus, plaintiffs' own testimony suggests that they all at least graduated from high school and some went on to college, which strongly suggests that plaintiffs were not illiterate. Plaintiffs provided no further argument in this regard, they provided no evidence to support a theory that defendants took advantage of their alleged "illiteracy," and they failed to present evidence that would negate their own deposition testimony with regard to their education. Accordingly, plaintiffs failed to establish fraud with regard to the merger clause itself.

[7] Because we find this issue dispositive, we decline to address defendants' other arguments related to their motions for summary disposition.

[8] As noted, JoAnn Doty signed her franchise agreement before Krawczyk joined CleanNet. The trial court should have dismissed Doty's fraud claim because she failed to plead with particularity and did not set forth any alleged misrepresentations or promises made by other CleanNet representatives. Her general allegations of fraud under Count I do not satisfy the "particularity" requirement of MCR 2.112(B)(1) and the only "particular" misrepresentations set forth in the complaint are attributed to Krawczyk. Thus, the complaint was deficient on its face with regard to Doty's claim. Were we to read the complaint very broadly to suggest that *other* CleanNet representatives made promises to Doty that were similar to Krawczyk's, and were we

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the verdict form does not specify on which counts the jury imposed liability. However, the jury awarded exemplary damages to each plaintiff against CleanNet U.S.A. and CleanNet of Greater Michigan. The parties stated on the jury verdict form that the only claim for which plaintiffs could recover exemplary damages against these two defendants was for fraud and plaintiff does not challenge the verdict form on appeal. See *Franzel v Kerr Mfg Co*, 234 Mich App 600, 606; 600 NW2d 66 (1999) (exemplary damages are not recoverable in a breach of contract claim).[9] Because the jury found defendants liable for fraud and awarded substantial damages on this basis, and because the fraud claim should not have gone to trial, the error was not harmless. Defendants do not challenge the jury's possible finding of liability on the breach of contract claim[10] but, because much of the trial concerned alleged evidence of fraud and because it is

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to conclude that the companies that signed Doty, CleanNet of Detroit or Great Lakes Investors Group, were agents of and/or in privity of contract with defendants, Doty's fraud claim should have nonetheless been dismissed for the reasons explained in this opinion.

[9] Defendants argue that the trial court erred by refusing to dismiss the tortious interference claims as a matter of law and that plaintiffs, therefore, were not entitled to exemplary damages. This appears to be an error because the trial court granted defendants' motion for directed verdict on plaintiffs' tortious interference claims against CleanNet U.S.A. and CleanNet of Greater Michigan. As plaintiffs note, the jury only considered the claim with regard to Krawczyk and the jury returned a verdict of no cause for action. The exemplary damages, therefore, were based on the jury's finding of fraud. Defendants do not argue that they were prejudiced by the trial court's failure to dismiss this claim sooner. Because no finding of liability and no damages were assessed on this issue, we agree with plaintiffs that any alleged error was harmless and the issue is moot.

[10] Defendants do argue that the trial court should have dismissed Doty's fraud and breach of contract claims against defendants because Doty signed her franchise agreement with Great Lakes Investors Group, Inc. or Clean Net of Greater Detroit, Inc., neither of which were owned by any of the defendants. In response to defendants' motion, Doty stated that, in her franchise agreement, she was to be paid directly by CleanNet U.S.A. Doty also presented evidence that CleanNet U.S.A. entered contracts with the cleaning account customers and that customers paid CleanNet U.S.A. for the franchisee cleaning services. Doty also showed that CleanNet account customers presented complaints directly to CleanNet U.S.A. Further evidence established that CleanNet U.S.A. referred to the representatives at the CleanNet of Greater Michigan office as "our local management in Troy" and referred to the office as "our offices in Troy." Further, it appears that the trial court relied on a June 26, 1995, memo from Krawczyk to the franchise owners that stated, "CLEANNET USA, INC. WILL ADMINISTER THE OPERATION IN THE MICHIGAN AREA AS CLEANNET OF GREATER MICHIGAN, INC.," and another undated memo from Krawczyk that stated, "back in April, CleanNet USA took over the daily operations of the Detroit office."

While the parties do not dispute that Doty signed her franchise agreement with CleanNet of Detroit, clearly, the trial court ruled that there was no genuine issue of fact for trial regarding whether CleanNet U.S.A. owned and ran the daily operations of the Detroit CleanNet offices, including CleanNet of Greater Michigan and CleanNet of Detroit. As a purely factual matter, the trial court's ruling was supported by evidence that CleanNet U.S.A. and CleanNet of Greater Michigan took over the primary franchise operations in Detroit. For purposes of Doty's contract claim, her allegations of breach continued during the course of her association with CleanNet. The evidence submitted by plaintiffs indicates that, in 1995, CleanNet U.S.A. and CleanNet of Greater Michigan clearly intended to assume the functions of the former franchiser. Arguably,

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impossible to tell on which count the jury awarded past damages, we vacate the entire verdict as to CleanNet U.S.A. and CleanNet of Greater Michigan and remand for a new trial[11] on plaintiffs' breach of contract[12] claims.[13]

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the trial court could have determined that, when CleanNet U.S.A. and CleanNet of Greater Michigan took over the Detroit operations, they took over CleanNet of Detroit's obligations under the agreement. The trial court also could have concluded, on the basis of the relationships among the parties and the continuation of services under the franchise agreement, that there was privity among the parties for purposes of liability for breach of contract.

[11] Because we find it necessary to remand for a new trial, we decline to address defendants' claim that the trial court erred by allowing plaintiffs to reopen their case to present Stanley Prokop's testimony and we decline to consider the evidentiary issues related to this issue or whether the trial court should have granted defendants' motion for judgment notwithstanding the verdict or new trial on this basis.

[12] Defendants' argument regarding the exclusive remedy provision in Hill's franchise agreement may affect his entitlement to contract damages. However, we hold that defendants have abandoned this argument because defendants failed to adequately brief the issue below and, on appeal, defendants merely assert that such clauses may be enforceable, but fail to offer any argument in support of the application of this clause to Hill's particular claims. This Court may "decline to consider . . . issues . . . [if] they were either not raised below or are given only cursory treatment in defendant's brief with little or no citation of supporting authority." *Community Nat Bank of Pontiac v Michigan Basic Property Ins Ass'n*, 159 Mich App 510, 520-521; 407 NW2d 31 (1987).

[13] Plaintiffs do not challenge the jury's no-cause verdict in favor of Krawczyk and, because none of the issues raised affect Krawczyk's potential liability, we see no basis for altering the jury's verdict as to Krawczyk. Regarding Krawczyk's claim that the trial court erred by imposing a sanction of $500 for filing a frivolous or duplicative motion for summary disposition, we agree with Krawczyk. MCR 2.116(E)(3) states that "[a] party may file more than one motion under this rule, subject to the provisions of subrule (F)." The trial court presumably imposed the sanction under 2.114(D)(3) (motion was filed to "harass or to cause unnecessary delay or needless increase in the cost of litigation") and 2.114(E), which provides that, "[i]f a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees."

The trial court should not have imposed costs on Krawczyk here. Krawczyk's arguments were different in his second motion than those brought by all the defendants in the first motion. Further, while Krawczyk did attempt to re-argue the fraud claim in a subsequent motion, he did so using different reasoning and by applying arguments related to him as an individual. Further, in the first motion, the only statement the trial court made with regard to plaintiffs' fraud claim was when it ruled that plaintiffs' reliance on the alleged misrepresentations was reasonable notwithstanding the merger and acquisition clauses in the contract. This did not constitute a ruling that there was a genuine issue of material fact for trial with regard to all of plaintiffs' fraud allegations against Krawczyk. Therefore, it was not unreasonable for Krawczyk to bring a motion on his own behalf, particularly with regard to the specific misrepresentations he purportedly made. Accordingly, we reverse the trial court's imposition of sanctions on Krawczyk.

Reversed in part, vacated in part,[14] and remanded for further proceedings.[15] We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Mark J. Cavanagh
/s/ Henry William Saad

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[14] We also vacate the trial court's award of costs, though it may be reconsidered, if raised, after the new trial.

[15] Though we vacate the jury award in favor of plaintiffs, we find it necessary to address defendants' claim that the trial court should have sanctioned plaintiffs because they violated MCR 2.614(A)(1) by filing writs of garnishment. Defendants also assert, without explanation, that they are entitled to a refund of the amount spent on the first appeal bond. We hold that sanctions and a refund are unwarranted in this case.

While plaintiffs may have erroneously argued to the trial court that the December 18, 2000 judgments were final orders, the record reflects that the trial court was convinced, based on its own reasoning, that the orders were final. As the trial court judge stated at the sanctions hearing, he strongly believed that the orders were final and that plaintiffs could execute on them. Plaintiffs did not attempt to execute on the judgments until after the trial court ruled that the orders were final. Furthermore, plaintiffs waited the requisite twenty-one days, pursuant to MCR 2.614, before they entered the writs of garnishment. While the record reflects that defendants filed a motion for JNOV or new trial, plaintiffs maintained that they did not receive the motions until late January and, therefore, would not have known that the automatic stay was in force. Plaintiffs should not be unduly punished for attempting to collect on the judgment after the trial court explicitly ruled that the orders were final. Further, we do not conclude that plaintiffs' technical violation of MCR 2.614 should be deemed a wilful violation of the Michigan Court Rules. See defendants' cited case, *In re Contempt of Calcutt*, 184 Mich App 749; 458 NW2d 919 (1990).

Moreover, even before the parties learned that the orders were not final (per the Court of Appeals), defendants voluntarily posted the appeal bond in order to obtain a stay in the trial court. Plaintiffs also presented evidence that, as soon as the attorneys agreed to the stay and to the appeal bond, plaintiffs' counsel made efforts to withdraw or release the writs of garnishment. Therefore, defendants will not be heard to argue that they were unduly prejudiced by writs of garnishment that were in effect for only a few days (particularly where some evidence shows that *defense counsel* volunteered to send out the garnishment releases). Moreover, defendants may not recover costs for obtaining the appeal bond because (1) defendants voluntarily agreed to do so in exchange for a court-ordered stay, and (2) defendants could have sought to discharge the bond immediately after the Court of Appeals dismissed the initial appeal, in late January 2001, but they instead waited months to do so.