

STATE OF MICHIGAN
COURT OF APPEALS

WAYNE MCLELLEN, BRUCE BRIGHT,
VANCE L. KINCAID II, ELEANOR V.
LUECKE, HOWARD L. JONES, BEVERLY
MILLER, BRIAN SMITH, EDWARD SIMMER,
JOHN POLLARD, CITIZENS FOR BETTER
LANSING, LIAISON FOR INTER-
NEIGHBORHOOD COOPERATION,
CONCERNED CITIZENS FOR MERIDIAN
TOWNSHIP, and THE NATURAL AREAS
ASSOCIATION,

Plaintiffs/Counterdefendants-
Appellants,

and

BELINDA FITZPATRICK, BENJAMIN
HASSELL, IRMA HASSELL, MARY
JOHNSON, and JULIE WHEAT,

Plaintiffs,

v

CHARTER TOWNSHIP OF MERIDIAN and
CITY OF LANSING,

Defendants/Crossdefendants-
Appellees,

and

NORTH AMERICAN EQUITIES, INC.,

Intervening
Defendants/Counterplaintiffs-
Appellee.

UNPUBLISHED
December 18, 2003

No. 244353
Ingham Circuit Court
LC No. 01-094397-CE

Before: Talbot, P.J., and Owens and Fort Hood, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting summary disposition in favor of defendants City of Lansing and North American Equities, Inc., (NAE).¹ We affirm.

In 1999, two lawsuits were filed to challenge an agreement between defendants City of Lansing and Meridian Township to annex property in exchange for provision of services to the impacted area and a revenue sharing plan. Defendants modified this "425 Agreement", and the two lawsuits were dismissed. Two years later, this action was filed, in essence, to challenge the satisfaction of the statutory criteria underlying the agreement. Defendant City of Lansing and the intervening defendant NAE, the developer of the annexed property, assumed the defense of the litigation. However, defendant Meridian Township did not file an answer to the complaint. In response to plaintiffs' motion for entry of a default judgment against it, defendant township filed a pleading, indicating that it would not file an answer because the complaint only sought declaratory, not monetary, relief, and the issues presented questions of statutory and constitutional law. Therefore, defendant township would abide by any declaratory determination rendered by the trial court, but would not incur the cost of defending the litigation. The trial court denied plaintiffs' motion for entry of a default judgment.

Defendant City of Lansing filed a motion for summary disposition, alleging that the action was barred by laches based on plaintiffs' inaction for two years in challenging the modified agreement and prejudicial reliance on the agreement as evidenced by the planning, construction, and financial expenditures. Although defendant city moved for summary disposition based on MCR 2.116(C)(8), it attached documentary evidence to the motion, including affidavits from city employees involved in the preparation of the contractual provisions. Defendant NAE joined in the motion for summary disposition and filed an affidavit delineating the large expenditure of funds, retention of contractors, and applications for permits in reliance on the agreement. The trial court granted the motion for summary disposition.²

As an initial matter, plaintiffs allege that summary disposition based on (C)(8) grounds was improper because laches necessarily entails a factual determination, and the trial court clearly considered NAE's affidavit as evidenced by the citation to the prejudice experienced by NAE. However, the parties' label of a motion for summary disposition is not dispositive. Rather, where it is apparent that the trial court relied on documentary evidence beyond the

¹ After the trial court granted the motion for summary disposition filed by defendant City of Lansing, in which intervening defendant NAE joined, the remaining parties involved agreed to dismiss with prejudice any remaining counterclaims and crossclaims. Accordingly, this claim of appeal involves the dismissal of the original action challenging the "425 Agreement" executed between defendants City of Lansing and Meridian Township.

² Although defendants also challenge plaintiffs' standing to file the litigation, the trial court did not address this issue. *Miller v Inglis*, 223 Mich App 159, 168; 567 NW2d 253 (1997). Because we conclude that summary disposition was properly granted based on laches, we need not address this alternative, undecided issue for affirmance raised by defendants.

pleadings, we treat the motion as having been granted pursuant to MCR 2.116(C)(10) and examine the pleadings and documents submitted to the trial court.³ Furthermore, we may affirm the lower court when it reaches the correct result for the wrong reason. *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 470; 628 NW2d 577 (2001).⁴

Plaintiffs allege that the trial court erred in granting summary disposition based on laches. We disagree. Appellate review of a trial court's order granting summary disposition is de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The moving party has the initial burden to support its claim to summary disposition by affidavits, depositions, admissions, or other documentary evidence. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The burden then shifts to the nonmoving party to demonstrate that a genuine issue of disputed fact exists for trial. *Id.* To meet this burden, the nonmoving party must present documentary evidence establishing the existence of a material fact, and the motion is properly granted if this burden is not satisfied. *Id.* Affidavits, depositions, and documentary evidence offered in opposition to a motion shall be considered only to the extent that the content or substance would be admissible as evidence. MCR 2.116(G)(6); *Maiden, supra*. Laches applies where the passage of time coupled with a change in conditions will make it inequitable to enforce a claim, and the lack of diligence on the part of the plaintiff causes prejudice to the defendant. *City of Jackson v Thompson-McCully Co, LLC*, 239 Mich App 482, 494; 608 NW2d 531 (2000).

The affidavits filed by defendants comported with the burden set forth in *Maiden, supra*. The affidavits, admissible documentary evidence containing first hand knowledge rather than hearsay, established the contractual obligations that had been engaged, the amount of funds expended, and the prejudice that would result based on a challenge to the "425 Agreement" two years after it was finalized. However, plaintiffs failed to meet their evidentiary burden. In *Maiden, supra*, the Supreme Court confirmed that admissible documentary evidence must be provided to create a genuine issue of material fact, and "a litigant's mere pledge to establish an issue of fact at trial cannot survive summary disposition." The affidavit filed by the employee of plaintiffs' law firm contained hearsay information purportedly from two employees of defendant City of Lansing. Furthermore, this affidavit failed to contradict the expenditures and preparation set forth in the affidavit filed by NAE.

While plaintiffs contend that defendant NAE deliberately dismissed the counter and crossclaims to avoid discovery of financial information, we note that plaintiffs stipulated to the dismissal and did not seek compulsion of this discovery information prior to agreeing to dismiss

³ We note that plaintiffs' response to the motion for summary disposition did not rely merely on the pleadings alone, and plaintiffs submitted substantial documentation, including many affidavits, in opposition to the motion.

⁴ Plaintiffs also challenge the trial court's consideration of the affidavit filed by NAE based on timeliness. However, the trial court is allowed to consider evidence *then filed* in the action, MCR 2.116(G)(5), and has the discretion to alter the time for hearing of a dispositive motion. MCR 2.116(G)(1)(a). There is no indication that plaintiffs requested an alternate hearing date because of the time frame of the filing of NAE's joinder motion.

those claims. Thus, plaintiffs' contention that factual issues exist regarding the actual expenditures and prejudice is based on speculation of what discovery would have uncovered if it had occurred. The *Maiden* Court definitively clarified that promises of factual issues do not preclude the entry of summary disposition. Accordingly, the trial court properly granted defendants' motion for summary disposition.

Plaintiffs next allege that the trial court erred in denying their motion for entry of a default judgment based on defendant Meridian Township's failure to file an answer to the complaint. We disagree. While the clerk of the court must enter a default judgment that is premised on a sum certain, MCR 2.603(A)(1), (B)(2), plaintiffs did not seek monetary, but rather declaratory relief from defendant township. Therefore, application to the trial court for a default must occur, and the trial court may investigate the matter and conduct hearings to determine the propriety of a default. MCR 2.603(B)(3). While defendant township may not have undertaken the defense of this litigation for financial reasons,⁵ the defense was assumed by defendant City of Lansing, the township's partner in the agreement, and by defendant NAE, the developer of the area in dispute. Consequently, the issue of plaintiffs' entitlement to relief from the agreement was still in dispute. Accordingly, the trial court properly denied the motion for default judgment.

Affirmed.

/s/ Michael J. Talbot
/s/ Donald S. Owens
/s/ Karen M. Fort Hood

⁵ Although plaintiffs alleged that defendant township failed to undertake the defense of the action because it recognized that the agreement was a "sham," defendant township filed a reply to the motion for default judgment, stating that its inactivity was based on fiscal reasons.