STATE OF MICHIGAN

COURT OF APPEALS

RICHARD L. FINNILA and SUSAN A. FINNILA,

Plaintiffs/Counter Defendants-Appellants,

v

MARTIN S. ARKIN,

Defendant/Counter Plaintiff-Appellee.

UNPUBLISHED
March 16, 2004

No. 243371
Grand Traverse Circuit Court
LC No. 01-021448-CH

RICHARD L. FINNILA and SUSAN A. FINNILA,

Plaintiffs/Counter Defendants-Appellees,

v

MARTIN S. ARKIN,

Defendant/Counter Plaintiff-Appellant.

No. 244155
Grand Traverse Circuit Court
LC No. 01-021448-CH

Before: Fitzgerald, P.J., and Cavanagh and Hoekstra, JJ.

PER CURIAM.

Plaintiffs appeal as of right the order granting defendant's motion to amend his second amended counterclaim and the opinion and order entered in defendant's favor following a three day bench trial in this real property dispute. We affirm. Defendant cross appeals the trial court's denial of his motion for fees and costs. We reverse.

Plaintiffs first argue that the trial court erred in permitting defendant to amend his counterclaim. The trial court did not abuse its discretion. See *Phillips v Deihm*, 213 Mich App 389, 393; 541 NW2d 566 (1995). Plaintiffs' claim that defendant's requested relief was

"repeatedly contradicted" is without merit—defendant consistently sought the property that was the subject of, and described in, the Purchase Agreement.

Plaintiffs next argue that defendant's claim for specific performance of the Purchase Agreement was barred by the six-year statute of limitations. See MCL 600.5807(8). After de novo review, we disagree. See *Insurance Comm'r v Aageson Thibo Agency*, 226 Mich App 336, 340-341; 573 NW2d 637 (1997).

In general, a claim accrues when a lawsuit may be brought. *Blazer Foods, Inc v Restaurant Properties, Inc*, 259 Mich App 241, 245-246; 673 NW2d 805 (2003); *Harris v Allen Park*, 193 Mich App 103, 106; 483 NW2d 434 (1992). Here, defendant's specific performance claim did not accrue until plaintiffs initiated the revocation action with regard to the landscape easement, on March 13, 2001, because until that time, plaintiffs had not repudiated defendant's rights with regard to the property. See *Stonehouse v Stonehouse*, 156 Mich 43, 46; 120 NW 23 (1909). Accordingly, defendant's claim was timely filed and it is not necessary for us to address whether plaintiffs' purportedly fraudulent actions extended the statute of limitations.

On cross appeal, defendant argues that the trial court erred in failing to award him reasonable attorney fees and costs pursuant to the Purchase Agreement. We agree.

Contract provisions that provide for the payment of reasonable attorney fees are enforceable. *Central Transport, Inc v Fruehauf Corp*, 139 Mich App 536, 548; 362 NW2d 823 (1984). Here, the Purchase Agreement provided:

> 16. ATTORNEY'S FEES: In any action or proceeding arising out of this agreement, the prevailing party, including any Realtor so involved, shall be entitled to reasonable attorney's fees and costs from the non-prevailing party.

In their complaint plaintiffs averred that, since the Purchase Agreement did not provide for a landscape and maintenance easement, the easement agreement should have been revoked and rescinded. In his counterclaim, defendant sought specific performance of the Purchase Agreement since plaintiffs unilaterally and without notice caused the legal description contained in the property deed to be significantly changed from the Purchase Agreement description. At the conclusion of the trial, the trial court ordered the property description in the deed reformed to conform with the property description in the Purchase Agreement. Accordingly, this was an "action or proceeding arising out of this [Purchase] agreement" and defendant was the "prevailing party." Therefore, defendant was "entitled to reasonable attorney's fees and costs" from plaintiffs pursuant to their contractual agreement.

Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Mark J. Cavanagh
/s/ Joel P. Hoekstra