STATE OF MICHIGAN

COURT OF APPEALS

FEDERAL FINANCIAL COMPANY, Plaintiff-Appellee,	UNPUBLISHED November 18, 2004
v DIMITRIOS PAPAS and VIOLA PAPAS, Defendants-Appellants.	No. 248574 Wayne Circuit Court LC No. 00-028281-CK

FEDERAL FINANCIAL COMPANY, Plaintiff-Appellee,	
v DIMITRIOS PAPAS, a/k/a DIMITRIOUS PAPPAS, and VIOLA PAPAS, a/k/a VIOLA PAPPAS, Defendants-Appellants.	No. 248575 Wayne Circuit Court LC No. 00-028281-CK

Before: Wilder, P.J., and Hoekstra and Owens, JJ.

PER CURIAM.

This case arises from plaintiff's breach of contract claim against defendants for allegedly defaulting on a debt. The trial court granted summary disposition in favor of plaintiff and defendants appealed. Initially, this Court concluded that defendants' two claims of appeal were untimely and thus dismissed the appeals. However, our Supreme Court remanded, directing that this Court consider the appeals as on leave granted. This Court consolidated the appeals, and we now affirm.

The trial court granted plaintiff's motion for summary disposition on plaintiff's breach of contract claim pursuant to MCR 2.116(C)(10). Defendants argue on appeal that the trial court erred in doing so because it failed to recognize that a factual dispute exists regarding whether defendants were released from their obligation under the modification agreement because plaintiff "substituted in new debtors–the Diamond Dish Group–and did not require any further guarantee or involvement of [defendants]."

We review de novo a trial court's ruling on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim, and when reviewing the motion de novo, the court must consider all of the documentary evidence in the light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 118, 120; 597 NW2d 817 (1999); see also MCR 2.116(G)(4), (5). The moving party is entitled to judgment as a matter of law if the proffered evidence does not establish a genuine issue of material fact. *Id.* at 120. The proper interpretation of a contract and whether contract language is ambiguous are questions of law also subject to de novo review. *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002); *DaimlerChrysler Corp v G-Tech Professional Staffing, Inc*, 260 Mich App 183, 184-185; 678 NW2d 647 (2004).

In its opinion and order granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10), the trial court stated:

> Plaintiff attaches as an exhibit a document entitled "Modification Agreement", dated July 10, 1997, which indicates defendant Dimitrious Papas as debtor. The same document lists defendant Viola Papas as guarantor. The account number listed on this document is "#KC-294." Also submitted by plaintiff is an affidavit from its representative, claiming the account is in default as of August 3, 2000.
>
> Defendants do not dispute the existence of [the] 1997 agreement (and do not comment as to its contents). However, defendants contend defendants were guarantors of the debt in question, and in 1998 the obligation was assumed by new parties. See Defendants' Reply Brief, p.2 and exhibits referenced therein. Defendants contend the third parties' assumption of obligation ended their liability on the debt in question.
>
> Defendants' analysis may have legal merit, however it ignores the facts of the case at bar. That is, plaintiff has established defendant Dimitrious Papas is the debtor contemplated in the 1997 agreement. Defendant submits his affidavit, claiming the modification agreement reaffirmed his status as guarantor on an existing debt. [Emphasis in original.] See Affidavit of Dimitrious Papas, ¶ 5, defendants' exhibit D. However, this claim is clearly and effectively refuted by the language and signature line of the modification agreement.
>
> As plaintiff has conclusively shown defendant Dimitrious Papas was debtor on an agreement, and the debtor thereon is in default, plaintiff is entitled to summary disposition as requested against defendant Dimitrious Papas.
>
> Because defendants cannot demonstrate there has been a change in debtors, which might otherwise alter their obligation as guarantors, defendant Viola Papas is similarly liable to plaintiff in her status as guarantor on the 1997 debt.
>
> Accordingly, plaintiff is entitled to summary disposition.

In their brief on appeal, defendants assume, apparently as they did in the trial court, that they are guarantors of the debt that is the subject of the modification agreement. Working from that beginning point, defendants construct an argument that a sale by AGOPS, Inc. (AGOPS), of its interest in the property that secured the debt to the Diamond Dish Group (Diamond Dish) with the consent of plaintiff, but without notice or approval of defendants, released defendants from their guarantor obligations under the modification agreement. This argument fails to address the basis for the trial court's ruling in granting summary disposition; i.e., that defendant Dimitrios Papas was the debtor under the modification agreement, not a guarantor. On appeal, defendants do not challenge this holding by the trial court. Further, from our review of the record, we agree with the trial court that Dimitrios Papas was the debtor. The modification agreement names him as the only debtor and names Viola Papas and AGOPS as the guarantors. Consequently, the sale by AGOPS to Diamond Dish, even if approved by plaintiff, at most resulted in a substitution of guarantors, but not debtors. Accordingly, defendants' argument that a substitution of debtors without defendants' knowledge or approval released them from their guarantor obligations is unavailing.

Defendants also argue that the trial court erred in failing to find that plaintiff lacks capacity to sue. We disagree.

In support of their argument, defendants rely on MCL 449.101 *et seq*. MCL 449.101 provides in pertinent part, "No 2 or more persons shall hereafter be engaged in carrying on any business as copartners unless such persons shall first make and file with the county clerk of the county in which such copartnership business is or shall be located, a certificate in writing, …." Further, MCL 449.106 states in pertinent part that "any copartnership failing to file the certificate or renewal certificate required by this act shall be prohibited from bringing any suit, action or proceeding in any of the courts of this state until after full compliance with the provisions of this act." MCL 449.106. Here, it is undisputed that plaintiff is an Illinois partnership that has not filed a certificate of partnership. And according to defendants, plaintiff's debt collection activity in Michigan constitutes carrying on business within the meaning of MCL 449.101. Defendants maintain that plaintiff is therefore required to file a certificate of partnership and that plaintiff's failure to do so precludes it from bringing a cause of action in this state.

While neither MCL 449.101 *et seq.*, nor the Uniform Partnership Act, MCL 449.1 *et seq*., define "carrying on any business," Michigan's Business Corporation Act (BCA), MCL 450.1101 *et seq.*, provides that "transacting business in this state" does not include "[s]ecuring or collecting debts …." MCL 450.2012(1)(h) ("a foreign corporation is not considered to be transacting business in this state, for the purposes of this act, solely because it is … [s]ecuring or collecting debts …."). Likewise, article 9 of the revised Uniform Limited Partnership Act (ULPA)contains similar language. MCL 449.1909(a)(8). While our Supreme Court has indicated that the terms of one statute are not determinative in determining the meaning of another, especially where the statutes were not designed to effectuate a common result, the terms of one statute can be taken as a factor in determining the interpretation of another statute. *Louis A Demute, Inc v Michigan Employment Security Comm*, 339 Mich 713, 721-722; 64 NW2d 545 (1954). See *Long Mfg Co, Inc v Wright-Way Farm Service, Inc*, 391 Mich 82, 88-89; 214 NW2d 816 (1974) (With respect to carrying on a business, "'[t]he thing done must be of a character indicative of an intention on the part of the corporation to carry on its business in the state. There is implied in the term 'doing business' a continuity of act and purpose.'"); see also *George*

Morris Cruises v Irwin Yacht & Marine Corp, 191 Mich App 409, 419; 478 NW2d 693 (1991) (in case addressing partnership, determining that the penalty provision in MCL 449.106, being similar in purpose and effect to the penalty provision in the General Corporation Act, express similar intentions). Relying on the provisions of the BCA and the ULPA for guidance in determining whether plaintiff was "carrying on any business" within the meaning of MCL 449.101, we conclude that defendants have not established that plaintiff lacks capacity to sue. From our review of the evidence presented, plaintiff has only engaged in activity to secure and collect debts in Michigan.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Joel P. Hoekstra
/s/ Donald S. Owens