STATE OF MICHIGAN

COURT OF APPEALS

JACOB BRODBECK, ALFREDA BRODBECK, CINDY RAE, L.L.C., and SPRING RENEWAL, L.L.C.,

Plaintiffs-Appellants,

v

CRYSTAL F. DARLING, M.D., and CARLA SAMUEL-PARKS, M.D.,

Defendants-Appellees.

UNPUBLISHED
July 30, 2009

No. 282760
Allegan Circuit Court
LC No. 06-040034-CH

Before: Saad, C.J., and Jansen and Hoekstra, JJ.

PER CURIAM.

In this breach-of-purchase-agreement action, plaintiffs appeal by right the trial court's entry of judgment of no cause of action following a bench trial. We affirm.

Plaintiffs first argue that the trial court erred by failing to apply the doctrine of substantial performance in determining whether the financing contingency provision of the purchase agreement was satisfied. This issue is not preserved because it was not raised before, addressed, or decided by the trial court. *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 97; 693 NW2d 170 (2005). More importantly, plaintiffs have abandoned this issue by providing only a conclusory statement that our courts follow the substantial performance test with respect to conditions precedent, and that the trial court failed to apply it in the instant case. Plaintiffs cite no authority for the proposition that substantial compliance with a condition precedent is sufficient to satisfy the condition precedent. Appellants may not merely announce their position and leave it to this Court to discover and rationalize the basis for their claims; nor may they give issues cursory treatment with little or no citation of supporting authority. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). The issue is abandoned. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002). Nevertheless, we have reviewed the issue and decline to extend the doctrine of substantial performance to the condition precedent in this case.

Next, plaintiffs assert that defendants did not exercise good faith in pursuing financing that would satisfy the financing contingency provision of the purchase agreement. This Court reviews the trial court's findings of fact for clear error, and reviews its legal conclusions de novo. *Harbor Park Market v Gronda*, 277 Mich App 126, 130; 743 NW2d 585 (2007). A finding of

fact is clearly erroneous if this Court is left with a definite and firm conviction that a mistake has been made. *Id.*

In the instant case, the trial court found no bad faith. The finding was not clearly erroneous. Defendant Crystal Darling applied for a loan with Republic Bank, and she did so because that bank was familiar with the property and business. The trial court noted that during the relevant time frame the bank "kept increasing the available loan amount." The record does not demonstrate that the bank ever offered an interest rate at or below seven percent, which was the figure set out in the condition precedent. Yet, Darling kept working to get the transaction completed. The trial court opined that "the testimony and evidence showed that Darling was trying the hardest to make the deal work despite that she was never obligated to proceed with the transaction." The trial court further found it to be inconsequential that defendant Carla Parks quit her job before financing was secured. The trial court noted that the loan officer testified that the bank would make the loan on the strength of Darling and the real estate. Even though Parks's withdrawal from the venture prevented the parties from closing the transaction on August 15, 2006, the closing kept being moved on agreement of the parties and Parks was not essential to approval. Both the bank and SPA approved the loan without Parks. The trial court concluded that "[t]o hold that Defendants acted in bad faith would mean that every time a buyer didn't get the exact approval in a purchase agreement but still tried to make the deal go through, the buyer would be subject to liability." Because the record supports a view that Darling sought to work with Republic Bank to obtain financing that comported with the financing contingency, that the delays in obtaining financing were generally due to the bank or small business association (SBA) in processing the loan, and that plaintiffs agreed to extend the closing date on three occasions, we affirm the trial court's decision. Ultimately, we are not left with a definite and firm conviction that a mistake has been made as to the trial court's factual findings. *Id.*

Next, plaintiffs essentially contend that defendants are estopped from raising the financing contingency provision of the purchase agreement as a defense because defendants waived the provision. We disagree. Again, we review the trial court's findings for clear error. *Harbor Park Market, supra* at 130. Issues of contract interpretation present questions of law subject to de novo review. *46th Circuit Trial Court v Crawford Co*, 476 Mich 131, 140; 719 NW2d 553 (2006).

Plaintiffs failed to establish below that defendants expressly waived the financing contingency provision. See *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 364-365; 666 NW2d 251 (2003); see also *Burke v City of River Rouge*, 240 Mich 12, 14; 215 NW 18 (1927). Moreover, there was no evidence to support an implicit waiver such that defendants would be estopped from raising the financing contingency as a defense.

Looking at the language of the contract, and conducting a fact-specific analysis, we affirm the trial court's findings in this regard. The primary goal in interpreting a contract is to honor the parties' intent. *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998). If there is no ambiguity or internal inconsistency, then contractual interpretation begins and ends with the actual words of a written agreement. *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 354; 596 NW2d 190 (1999). The plain language of the financing contingency provision provides that the agreement was "contingent" or conditional on Darling's "ability to obtain an SBA or conventional 20-year mortgage in the amount of 90 percent of the sale price ($562,500) with an interest at a rate not to exceed seven

percent per annum (rate at the time of loan application), on or before the date the sale is to be closed."

Darling never had the specified financing when the parties were set to close, and despite repeated addenda, moving the closing date, plaintiffs sued before financing was ultimately approved. That proposed financing does not appear to have met the financing contingency, and the record does not show that Darling accepted it. Moreover, there is no indication that defendants placed any obstacles in the way of obtaining the financing necessary under the agreement. There is simply no indication that Darling or Parks waived the financing contingency. The trial court's findings were not clearly erroneous, *Harbor Park Market*, *supra* at 130, and as such, defendants were not precluded from using the financing contingency as a defense in this breach-of-contract action.

Lastly, plaintiffs claim that defendants breached the purchase agreement by impairing their credit when Parks quit her job. This claim has no merit. The financing contingency provision provided in relevant part that "Buyer agrees . . . not to impair the Buyers' credit after the date hereof." Darling signed the purchase agreement on March 6, 2006. Parks never signed the purchase agreement. "It goes without saying that a contract cannot bind a nonparty." *Equal Employment Opportunity Comm v Waffle House, Inc*, 534 US 279, 294; 122 S Ct 754; 151 L Ed 2d 755 (2002). While Parks signed the June 2, 2006, and June 28, 2006, addenda to extend the closing date, she was never a capital partner in the venture, and the loan officer testified that her employment status was ultimately not relevant to this transaction. The only significance in Parks's actions was that there was a slight delay because the bank and the SBA had to reconsider the loan. There was no evidence to support plaintiffs' argument that Parks had impaired her credit or prevented fulfillment of the condition precedent. The trial court's findings were not clearly erroneous on this issue. *Harbor Park Market*, *supra* at 130.

Affirmed.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Joel P. Hoekstra