

STATE OF MICHIGAN
COURT OF APPEALS

SHARON O'BERRY and MARK DRAVESKI,

Plaintiffs/Counter-Defendants-
Appellees,

UNPUBLISHED
September 10, 2009

v

PITCAIRN DEVELOPMENT LP, d/b/a
PITCAIRN ADVISORY INC., PITCAIRN
EQUITIES, and PETER ZIOLKOWSKI,

No. 285919
Genesee Circuit Court
LC No. 07-085874-CK

Defendants/Counter-Plaintiffs-
Appellants.

Before: M. J. Kelly, P.J., and K. F. Kelly and Shapiro, JJ.

PER CURIAM.

Defendants appeal as of right the trial court's order that granted plaintiffs summary disposition. We reverse and remand for further proceedings.¹

I. Basic Facts

On September 7, 2005, the parties entered into an agreement for plaintiffs to purchase a condominium to be constructed by defendants in Texas. Plaintiffs each paid half of the \$24,100 earnest money deposit. The condominium was constructed, but it was not constructed according to the specifications agreed upon by the parties.

In March 2007, plaintiffs brought this action alleging conversion, violation of the Michigan Consumer Protection Act, misrepresentation, fraudulent misrepresentation, silent fraud, negligence, and breach of contract. Plaintiffs moved for partial summary disposition pursuant to MCR 2.116(C)(10) with respect to their breach of contract and innocent misrepresentation claims. The trial court concluded that defendants breached the contract, granted plaintiffs' motion for summary disposition, ordered defendants to pay plaintiffs \$24,100

¹ This appeal has been decided without oral argument pursuant to MCR 7.214(E).

and \$14,529.86 in attorney fees and costs, and dismissed the case in its entirety.² The court subsequently denied defendants' motion for new trial or reconsideration.

II. Standards of Review

Our review of a trial court's decision on a motion for summary disposition is de novo. *Amerisure Ins Co v Plumb*, 282 Mich App 417, 423; 766 NW2d 878 (2009). Summary disposition under MCR 2.116(C)(10) should be granted where the evidence shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Id.* Further, "[w]hether a trial court has subject-matter jurisdiction is a question of law that this Court reviews de novo." *Brooks v Mammo*, 254 Mich App 486, 492; 657 NW2d 793 (2002). We also review de novo issues involving conflicts of law. *Frederick v Federal-Mogul Corp*, 273 Mich App 334, 336; 733 NW2d 57 (2006).

III. Subject Matter Jurisdiction

Defendants first argue that the circuit court lacked subject matter jurisdiction because the jurisdictional amount did not exceed \$25,000, and therefore the district court had exclusive jurisdiction pursuant to MCL 600.8301(1). We disagree. Our review of the record indicates that the amount plaintiffs claimed in their complaint exceeded \$25,000. Plaintiffs asserted that defendants converted the \$24,100 deposit and that they were eligible to recover treble damages for the conversion of this money. See MCL 600.2919a(1)(a). Such an amount, if awarded, would exceed \$25,000. It is well settled that jurisdiction is determined by the amount claimed, not by the amount ultimately recovered. See *Strong v Daniels*, 3 Mich 466 (1855); *Grubb Creek Action Comm v Shiawassee Co Drain Comm'r*, 218 Mich App 665, 668; 554 NW2d 612 (1996). Accordingly, the trial court properly concluded that it had jurisdiction.

IV. Choice of Law

Defendants also contend that the trial court erred by failing to apply Texas law to plaintiffs' contract claim. We agree.

Generally, "interpretation of contract provisions is governed by the law of the state in which the contract was entered." *Jones v State Farm Mut Auto Ins Co*, 202 Mich App 393, 398; 509 NW2d 829 (1993). However, the transfer of real property is regulated by the *lex loci rei sitae*, i.e., the law of the state in which the property is located. See *Fuller v McKim*, 187 Mich 667, 675; 154 NW 55 (1915) (citation omitted). This is consistent with the Restatement Conflict of Laws, 2d, § 189, which states: "The validity of a contract for the transfer of an interest in land and the rights created thereby are determined, in the absence of an effective choice of law by the parties, by the local law of the state where the land is situated unless, with respect to the particular issue, some other state has a more significant relationship . . . to the transaction and the parties" Another treatise similarly states:

² The dismissal of plaintiffs' remaining claims is not challenged on appeal.

The law of the place where the property is situated, “lex loci rei sitae” or “lex situs,” governs matters relating to real property. . . .

All matters concerning taxation of realty, title, alienation and transfer of realty and the validity, effect and construction which is accorded agreements intending to convey or otherwise deal with such property are determined by the law of the place where the land is located. This rule also governs exclusively the rights of the parties to real property and the methods of its transfer, including devise by will. . . .

The doctrine of “lex loci rei sitae” exists because it is particularly important that there be certainty, predictability and uniformity of result and ease in determination and application of law to be applied concerning transactions of property and the management of property. [15A CJS, Conflict of Laws, § 51, p 249.]

Application of Texas law to a contract for the construction of a condominium in Texas is also consistent with Michigan law recognizing that “[a] contract executed in one state but intended to be performed in another state is governed by the law of the state of performance,” unless otherwise indicated in the contract. *Podlaha v Mgt Recruiters Int’l, Inc*, 171 Mich App 1, 3; 429 NW2d 622 (1988); see also *George Realty Co v Gulf Refining Co*, 275 Mich 442, 451; 266 NW 411 (1936).

In the present matter, the contract at issue concerned the sale of real property located in Texas. No provision in the contract indicated that Michigan law should apply to the transaction. Further, because the contract concerned the sale of land located in Texas, it is plain that Texas law applies to plaintiffs’ contract action pursuant to the *lex loci rei sitae* rule. In any event, the contract itself indicates that the parties recognized that Texas law would be applicable to the transaction: The contract is entitled “Texas Association of Realtors® New Residential Condominium Contract” and it is replete with references to Texas law.

We also note that plaintiffs’ reliance on *Sutherland v Kennington Truck Service, Ltd*, 454 Mich 274; 562 NW2d 466 (1997), is misplaced. *Sutherland* is a tort case and that Court’s discussion of the abandonment of the *lex loci delicti* rule has no bearing on the present matter. Accordingly, the trial court erred by applying Michigan law to plaintiffs’ contract claim.³

³ Defendants assert that they should be granted summary disposition on the basis of Texas law. See Texas Property Code Ann 82.156(b). However, we do not consider it appropriate to determine the proper application of Texas law given the limited briefing of the issue in the parties’ briefs on appeal.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Michael J. Kelly
/s/ Kirsten Frank Kelly
/s/ Douglas B. Shapiro