

STATE OF MICHIGAN
COURT OF APPEALS

BAILEY & SMITH, P.C., a/k/a BAILEY SMITH
& BAILEY, P.C.,

UNPUBLISHED
November 24, 2009

Plaintiff-Appellant,

v

No. 288623
Shiawassee Circuit Court
LC No. 08-006793-CH

RANDY POISSON-BROWN, MARGARET M.
BROWN, and RANDY B. BROWN,

Defendants-Appellees.

Before: Talbot, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

In this dispute over payment of attorney fees, plaintiff appeals as of right the circuit court's order granting summary disposition to defendants. We reverse and remand. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant Randy Poisson-Brown pleaded guilty to unarmed robbery,¹ and was sentenced to a term of imprisonment in 2002. Plaintiff defended Poisson-Brown in the matter, pursuant to a flat-fee agreement executed by plaintiff, Poisson-Brown, and the latter's mother, defendant Margaret Brown.

The agreement specifies a flat fee of \$17,000, but for contingencies that did not come about, and notes that \$2,500 of this had been paid by bank transfer. The agreement continues, "the remaining balance of \$14,500.00 will be paid upon the sale of the property owned by the client's mother, MARGARET BROWN, pursuant to an Attorney's Lien, recorded with the Shiawassee Counter Register of Deeds."

Defendant Randy Brown also held a lien in the subject property, entitling him to one-half of the proceeds in the event of its sale. Although this was part of a judgment of divorce preceding the fee agreement here at issue, Randy Brown's lien was not recorded until after plaintiff recorded its lien.

¹ MCL 750.530.

Plaintiff filed suit in 2008, complaining that its fee had gone unpaid for more than three years, and requesting foreclosure of its lien. The parties filed cross motions for summary disposition.

Counsel for Randy Brown challenged the validity of plaintiff's lien on the ground that a lien does not attach until the work has been performed, but this one was filed one day before the subject agreement was signed. Counsel further suggested that the applicable statute of limitations might have extinguished plaintiff's enforcement rights. Finally, counsel pointed out that the agreement included no sale-by date, and argued that plaintiff was thus entitled to certain proceeds from the sale of the subject property only if and when Margaret Brown's continued best efforts resulted in a sale.

Counsel for Margaret Brown and Poisson-Brown suggested the possibility that plaintiff might have remedies "in equity for unjust enrichment . . . or some form of breach of the overall contract," but otherwise echoed the argument that this one-count foreclosure action was governed by the four corners of the agreement, and thus that plaintiff was entitled to certain proceeds from the sale of the subject property only if and when Margaret Brown succeeded in selling it.

The trial court rejected the statute of limitations argument, on the ground that the period of limitations ran not from the execution of the fee agreement, but from the end of the representation. However, the trial court granted summary disposition to all defendants on the ground that foreclosure was premature. The court elaborated, "the retainer itself is based on an event that may or may not ever happen. So in the context of this action, I don't see any remedy for the Plaintiff."

This Court reviews a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). Contract interpretation likewise presents a question of law, calling for review de novo. See *Sands Appliance Services, Inc v Wilson*, 463 Mich 231, 238; 615 NW2d 241 (2000). The primary goal in contract interpretation is to ascertain and effectuate the intent of the parties. *Old Kent Bank v Sobczak*, 243 Mich App 57, 63; 620 NW2d 663 (2000). To determine the parties' intent, this Court will read the contract as a whole and attempt to apply its plain language. *Id.*

We cannot accept the trial court's conclusion that payment of that fee was entirely contingent on Margaret Brown's sale of the subject property. The contract here at issue sets forth as the fee remaining due the sum certain of \$14,500, and decrees that it "will be paid upon the sale of the property owned by the client's mother, MARGARET BROWN, pursuant to an Attorney's Lien, recorded with the Shiawassee Counter Register of Deeds." That the stated fee amount is actually due and owing is clear. The agreement further states that the fee "will be paid upon the sale of the property," not "if" the property is sold. Nor does the agreement specify that only a sale conducted by Margaret Brown is envisioned. The agreement's acknowledgement of the existence of a recorded attorney's lien is also significant. In light of these terms, the interpretation of the agreement as conditioning plaintiff's entitlement to be paid entirely on

Margaret Brown's success, with or without best efforts, in selling the subject property is not a reasonable one. Indeed, that interpretation creates in that defendant a dire incentive to delay any progress on sale of the property until, as is now a concern in this case, plaintiff's ability to enforce collection of its fee is threatened by the applicable statute of limitations.²

Instead, the agreement implies the duty on the part of Margaret Brown to expend best efforts to achieve timely sale of the property, with a right of intervention on the part of plaintiff should there be no sale in reasonable time. For these reasons, we reverse the result below and remand this case to the trial court for further proceedings.

We express no opinion on whether foreclosure is the proper course of action at this time, whether there should be some inquiry into Margaret Brown's best efforts to sell the subject property, the priorities of plaintiff's and Randy Brown's respective liens, or the extent to which the trial court might invoke its equitable powers—such as in refining the written agreement, or in applying such equitable doctrines as unjust enrichment, as suggested by one defense attorney—to resolve this matter.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Peter D. O'Connell
/s/ Alton T. Davis

² See MCL 600.5807(8) (six years for sums due for breach of contract).