STATE OF MICHIGAN

COURT OF APPEALS

MIRANDA & ASSOC INC, MARY Y. ABRO, TED B. ABRO, ROBERT B. ABRO, and JOHN B. ABRO.,	UNPUBLISHED December 29, 2009
Plaintiffs-Appellees,	
v	No. 287230 Wayne Circuit Court
GEORGE ABRO and JOHNNY ENTERPRISES INC.,	LC No. 06-614580-CK
Defendants-Appellants.	

Before: Saad, C.J., and O'Connell and Zahra, JJ.

PER CURIAM.

Defendants George Abro and Johnny Enterprises, Inc. (Johnny Enterprises) appeal as of right following entry of a July 29, 2008 "stipulated order of settlement and payment of attorney fees." On appeal, defendants primarily challenge a May 14, 2007 judgment in favor of plaintiffs Miranda & Assoc Inc, (Miranda & Assoc) Mary B. Abro, Ted B. Abro, Robert B. Abro, and Jason B. Abro, which in relevant part, directed the parties to execute a "land contract with no pre-payment penalty," and ordered defendants to transfer real property located at 16215 Livernois, Detroit, (the subject property) to plaintiffs. Defendants also seek to reverse a $27,417 award of attorneys' fees to plaintiff, should defendants prevail on appeal. We affirm but remand to strike the "pre-payment" penalty provision in the land contract.

I. Basic Facts and Proceedings

The subject property houses a convenience store called the Pied Piper located in Detroit, purportedly[1] owned by Johnny Enterprises. George Abro is the president and owner of Johnny Enterprises. Plaintiff Mary Abro is George's sister and plaintiffs Ted Abro, Robert Abro and Jason Abro are George's nephews.

[1] Toward the end of the proceedings in the instant case there was evidence presented that the subject property was actually owned by John J. Seman. At a December 14, 2007 hearing, defense counsel indicated that the problem with title could be redressed.

Mary Abro and her sons wished to purchase the business and building from George Abro. In December of 1999, Mary, Ted, Robert and Jason executed an agreement to purchase the business (Business Purchase Agreement) from Johnny Enterprises for $600,000, plus inventory. Mary, Ted, Robert and Jason signed the agreement, "on behalf of a corporation to be formed," which would later be Miranda and Assoc. George Abro signed the agreement as president and authorized agent of Johnny Enterprises. The Business Purchase Agreement contained the following in regard to an option to purchase the subject property:

> XIII. REAL ESTATE LEASE AGREEMENT
>
> It is agreed between the parties that this Business Purchase Agreement is made subject to Purchaser's ability to obtain a Lease Agreement with the present owner of the real estate with the following terms and conditions:
>
> 1. Term: Fifteen (15) years.
>
> 2. Rental: $4,000.00 per month, plus triple net charges.
>
> 3. Option to purchase: Tenant shall have an option to purchase the real estate after the first (5) five years of the lease term and for a period of three (3) years for the purchase price of Four Hundred Thousand ($400,000) Dollars payable with One Hundred Twenty Thousand ($120,000) Dollars as down payment and the balance shall be evidenced by a Land Contract payable in one hundred twenty (120) monthly payments with nine (9%) percent interest.

On April 30, 2001, the parties also signed a Corporate Lease Agreement for the subject property that included the same option language contained in the Business Purchase Agreement (collectively referred to as the Option).[2] Plaintiff Mary Abro signed the lease on behalf of Miranda Assoc. as "its president and duly authorized agent, and plaintiffs Ted Abro, Robert Abro, and John Abro signed the lease as guarantors. Defendants soon after transferred all interests in the furniture, fixtures, equipment, supplies and the liquor licenses to plaintiffs.

Also on April 30, 2001, George Abro executed a mortgage with Comerica Bank on three parcels of property in exchange to "secure when due . . . all existing and future indebtedness (indebtedness) to Mortgagee of MIRANDA & ASSOCIATES, INC . . . including without payment of SIX HUNDRED FIFTY THOUSAND DOLLARS AND 00/100 dollars ($650,000) . . . ." One of the mortgaged properties was the subject property. The mortgage also provided

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[2] The Corporate Lease Agreement expressly provided that:

> Tenant shall have the option to purchase the real estate after the first five (5) years of the lease term and for a period of three (3) years. The purchase price shall be Four Hundred ($400,000) Dollars payable with One Hundred Twenty Thousand ($120,000) Dollars a down payment and the balance shall be evidenced by a Land Contract payable in One Hundred Twenty (120) monthly payments with (9%) percent interest.

that, "Atour Abro, wife of George Abro, signs this mortgage document for the sole purpose of barring her dower interest in the property." Defendants maintain, and plaintiffs agree, that defendants mortgaged the subject property to help finance the operation of plaintiffs' business.

In January of 2006, plaintiffs, through an attorney, sent a letter to defendants indicating that they had intended to exercise the Option to buy the subject property. The letter indicated that plaintiff would supply defendants with the $120,000 down payment and a land contract to effectuate a May 1, 2006 closing, which was the date the Option became available. Defendants did not respond, and plaintiffs sent a similar letter in late April of 2006. Defendants again did not respond.

Plaintiffs filed the instant suit in May of 2006, alleging breach of contract (Count I), specific performance (Count II), innocent misrepresentation (Count III), negligent misrepresentation (Count IV[3]), declaratory relief (Count V) and injunctive relief (Count VI). In August of 2006, plaintiffs filed a motion requesting defendants show cause as to why specific performance should not be granted. At the August 11, 2006 hearing, plaintiffs argued that defendants did not respond to their letters and requested the circuit court enforce the Option within the Business Purchase Agreement and Corporate Lease Agreement. Defendants argued that plaintiffs had not sent them a land contract. Defendants also argued that the Option was not valid because George Abro's wife, Atour Abro, had not released her dower rights to the subject property. In response, plaintiffs argued that Atour had waived her right to dower by executing the Comerica mortgage on the subject property which provided that "Atour Abro, wife of George Abro, signs this mortgage document for the sole purpose of barring her dower interest in the property." The circuit court held:

> The arrangement between the parties appears to me to be pretty straightforward. There was an agreement entered into providing for [sic] the Plaintiff with the option to purchase. The Plaintiff carried through on all of the requirements listed in that contract and then made the election to purchase the property and then the Defendant, for whatever reason, did not follow through. There are no disputed issues in this matter that would require further litigation.

In an order dated August 11, 2006, the circuit court granted specific performance and ordered:

> NOW THEREFORE, IT IS HEREBY ORDERED that Plaintiff's Motion to Show Cause As to Why Specific Performance Should Not Be Granted is GRANTED for the reasons stated on the record;
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> IT IS FURTHER ORDERED Defendant specifically perform the sale of the property located at 16215 Livernois, Detroit, Michigan as stated in the corporate Lease dated April 30, 2001;

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[3] Plaintiffs labeled this allegation Count III, but already had labeled innocent misrepresentation as Count III.

> IT IS FURTHER ORDERED Plaintiff and Defendant execute a land contract with no pre-payment penalty;
>
> IT IS FURTHER ORDERED all monthly rental payments made since May 2006 to present be applied to the purchase price;
>
> IT IS FURTHER ORDERED that Defendant, George Abro, comply and execute any and all documents necessary to convey the real estate located at 16215 Livernois, Detroit, Michigan.

Following an unsuccessful appeal of the above order to this Court,[4] plaintiffs filed a motion for summary disposition based on the circuit court's decision granting plaintiffs specific performance. Plaintiffs also included deposition testimony from George Abro in which he agreed that he had offered plaintiffs the Option on the subject property but did not know whether he intended to sell the subject property. In response, defendants maintained that plaintiffs had not complied with the Option. Defendants again argued that plaintiffs presented defendants a "Real Estate Purchase Agreement and proposed Land Contract, both of which contain terms and conditions not contained within the Offer/Option to Purchase." Defense counsel argued:

> It may be unfortunate that the Option to Purchase does not detail any additional terms or conditions, such as those typically contained within a real estate agreement, however, this hindsight and /Miranda, Mary and her sons are stuck with the Option to Purchase offered by George.
>
> In summary, as bare bones as it may be, Miranda, Mary and her sons only alternatives are to accept the terms and condition of the Option to Purchase "as is" or not buy the real property. George is not required to accept any other payment terms; he is not required to place a Warranty Deed in escrow; he is not required to grant a grace period for any late payment; he is not required to eliminate any liens, encumbrances or mortgages on the property prior to being paid; he is not required to agree to any other covenants, representations or warranties, all of which terms and conditions Miranda, Mary, and her sons have included within the Real Estate Purchase Agreement and Land contract they have presented to George.

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[4] On September 1, 2006, defendants filed a claim of appeal with this Court. [Docket No. 272843.] On October 18, 2006, this Court ordered that "[t]he claim of appeal from the August 11, 2006 declaratory judgment regarding specific performance is DISMISSED for lack of jurisdiction since the claims for monetary damages were still pending when appellants claimed their appeal. MCR 2.604(A), 7.202(6)(a)(i), and 7.203(A)(1)." This Court further indicated that "[i]f appellants want to appeal this interlocutory order before the entry of the final order, they must file a delayed application for leave to appeal. MCR 7.203(B)(1) and 7.205(F)(1)."

Defendants also argued that the court erred in ordering them to transfer the property where George Abro's wife did not agree to the transfer of property, which would nullify her dower rights.

After a hearing on February 16, 2007, the circuit court ruled:

> You know, we might be splitting, splitting hairs, and probably that's what we're here to do, split hairs, but the cases seem to be pretty clear that the option, the option is an offer which requires strict compliance with the terms of the option. But the option that we have here is pretty specific as to what is required; payment, interest rate and the like. The things that [are] not included are standard arrangements that would be required for any land contract. I'm going to grant the motion [for summary disposition]. Your motion is granted.

Defendant filed objections but the circuit court, on May 14, 2007, entered an order providing in pertinent part:

> IT IS HEREBY ORDERED AND ADJUDGED that Plaintiffs' Motion for Summary Disposition is granted for the reasons stated on the record.
>
> IT IS FURTHER ORDERED AND ADJUDGED that Plaintiffs' relief for specific performance is granted and Defendants shall immediately sell the property located at 16215 Livernois, Detroit, Michigan to Plaintiffs in the form of a standard form land contract with usual and customary covenants for the sale of real property.
>
> IT IS FURTHER ORDERED AND ADJUDGED that the purchase price for the sale of the property located at 16215 Livernois, Detroit, Michigan, shall be Four Hundred Thousand ($400,000) Dollars and Plaintiffs shall receive a credit towards the land contract payments. The credit towards the land contract payments shall be based upon the monthly rental payments of Four Thousand ($4,000.00) Dollars per month. The credit towards the land contract payments shall begin from May 2006 and continue thereafter until closing of said property.
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> IT IS FURTHER ORDERED AND ADJUDGED that the adjusted purchase price, applying the aforementioned credits, shall be based on an amortization schedule with payments commencing May 1, 2006.
>
> IT IS FURTHER ORDERED AND ADJUDGED that consistent with the Court's prior Orders in this matter and the relief requested in Plaintiffs' Motion for Summary Disposition that the sale and purchase of the property shall be made with no prepayment penalty.
>
> IT SO ORDERED AND ADJUDGED that Defendant, George Abro, comply with all past Orders of this Court, including but not limited to the August 11, 2006 Order.

The order noted that plaintiffs' request for attorneys' fees remained outstanding.

Following an unsuccessful appeal of the above order to this Court,[5] plaintiffs, on August 14, 2007, filed a motion "to show cause as to why defendants should not be held in contempt of court." Plaintiffs argued that defendants still refused to execute the purchase agreement. [lower court file I.] Defendants again responded by claiming that plaintiffs "are attempting to force Defendants to sign a land contract which . . . contains terms and conditions which have not been agreed upon by the Defendants and are not contained within the Option to Purchase." The circuit court entered an order in part "granting plaintiffs' motion to show cause as to why defendants should not be held in contempt of court." The hearing was held on September 6, 2007, at which time the court ordered George to obtain Atour's signature on the land contract by 1:00 p.m. that day.

The record reflects that the parties executed a land contract for the subject property on September 6, 2007. The land contract included the terms under the Option in the Business Purchase Agreement and Corporate Lease Agreement. The land contract also included terms that defendants had maintained were not contemplated in the Option.

On December 7, 2007 plaintiffs filed a motion "to enforce land contract provisions." Plaintiffs claimed that defendants were required under the executed land contract to provide plaintiffs with evidence of title to the subject property, either by providing plaintiffs a policy of title insurance or an abstract of title. Plaintiffs claimed that they requested defendants produce this documentation but did not receive a response. Plaintiffs further claimed that they performed a title search and discovered that John J. Seman owned the subject property. Plaintiffs also presented an affidavit from Kelly Kowalski, a title researcher for Clear Title Agency, Inc, verifying that John J. Seman owned the subject property. Plaintiff requested the circuit court "order Defendants to obtain a deed for [the subject property] from John J. Seman."

Also on December 7, 2008, plaintiffs filed a motion for attorneys' fees. Plaintiffs requested that the court award $29,930.13 in court costs and attorneys' fees to "put the Plaintiffs in nearly as possible the position they would have occupied had the conveyance of real property occurred when required by the Corporate Lease Agreement."

On December 14, 2007 the circuit court conducted a hearing in regard to plaintiffs' motion "to enforce land contract provisions," and plaintiffs' motion for attorneys' fees. At that time, defense counsel expressed that defendants were attempting to obtain the signature of John Seman, who defense counsel indicated is not someone from which defendants purchased the subject property.

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[5] One June 1, 2007, defendants filed a claim of appeal in this Court seeking reversal of the circuit court's order granting plaintiff summary disposition. [Docket No. 278456.] This Court dismissed defendants' appeal for failure to "provide a copy of an order setting the amount of banking costs and attorney fees resulting from the breach of contract claim." [Docket No. 278456.] On June 21, 2007, defendants filed a delayed application for leave to appeal in this Court again seeking reversal of the circuit court's order granting plaintiff summary disposition. [Docket No. 278818.] This Court denied defendants' application "for failure to persuade the Court of the need for immediate appellate review.

On January 15, 2008, the circuit court entered an order "granting plaintiffs' motion to enforce land contract provisions and dismissing plaintiffs' motion for attorney fees." The court ordered that "Defendants shall obtain a deed to Lots 35 through 41, inclusive, of the property located at 16215 Livernois, Detroit, Michigan and will provide Plaintiffs with title insurance to the property located at 16215 Livernois, Detroit, Michigan within forty-five (45) days of the entry of this Order. The order also provided that plaintiff counsel provide defense counsel with invoices in support of a claim for attorneys' fees and allowed for defense counsel to depose plaintiff counsel in regard to the invoices. The order specified that "Plaintiffs' Motion for Attorney Fees is dismissed without prejudice and Plaintiffs may refile their Motion at a later date."

On April 18, 2008, plaintiff filed another motion seeking attorneys' fees. In this motion, plaintiffs cited defendants' initial refusal to execute the land contract pursuant to the Option and the discovery that defendants did not own the subject property. Plaintiffs also cited the Corporate Lease Agreement, which provided:

> 18. Attorney's Fees If suit is brought to enforce any convenant of this Lease or the breach of any covenant or condition herein contained, the parties hereto agree that the losing party shall pay to the prevailing party a reasonable attorney's fee, which shall be fixed by the Court, and the court costs. [Appellants' Brief on Appeal, Exhibit 1.]

Plaintiffs sought $28,592 in costs and attorneys' fees. On July 29, 2008 the circuit court entered a "stipulated order of settlement and payment of attorney fees." The order provided that defendant George Abro pay plaintiffs $27,417 in attorneys' fees. This appeal ensued.

II. Analysis

This Court reviews de novo a trial court's grant or denial of summary disposition under MCR 2.116(C)(10). *McManamon v Redford Charter Twp*, 256 Mich App 603; 610, 671 NW2d 56 (2003). A motion filed under subrule (C)(10) tests the factual support for a claim, *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003), and should be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Miller v Purcell*, 246 Mich App 244, 246; 631 NW2d 760 (2001). When the burden of proof at trial would rest on the nonmoving party, the nonmovant may not rely on mere allegations or denials in the pleadings, but must, by documentary evidence, set forth specific facts showing that there is a genuine issue for trial. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). A genuine issue of material fact exists when the record, viewed in the light most favorable to the nonmoving party, leaves open an issue on which reasonable minds could differ. *West v Gen. Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

A suit for specific performance is an equitable action, and the ultimate determination is reviewed de novo and the findings of fact for clear error. A trial court's findings are clearly erroneous only when the appellate court is left with a definite and firm conviction that a mistake has been made. *Samuel D Begola Services, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995).

The proper interpretation of a contract, such as a mortgage, is a question of law subject to de novo review on appeal. *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 408, 646 NW2d 170 (2002).

A. The Option

The resolution of this case involves interpretation of either the Business Purchase Agreement or the Corporate Lease Agreement, which both provide the terms of the Option to purchase. Accordingly,

> [I]n interpreting a contract, it is a court's obligation to determine the intent of the parties by examining the language of the contract according to its plain and ordinary meaning. If the contractual language is unambiguous, courts must interpret and enforce the contract as written, because an unambiguous contract reflects the parties' intent as a matter of law. However, if the contractual language is ambiguous, extrinsic evidence can be presented to determine the intent of the parties. [*In re Smith Trust*, 480 Mich 19, 24; 745 NW2d 754 (2008) (Citations omitted).]

Here, the Business Purchase Agreement expressly provided that,

> 3. Option to purchase: Tenant shall have an option to purchase the real estate after the first (5) five years of the lease term and for a period of three (3) years for the purchase price of Four Hundred Thousand ($400,000) Dollars payable with One Hundred Twenty Thousand ($120,000) Dollars as down payment and the balance shall be evidenced by a Land Contract payable in one hundred twenty (120) monthly payments with nine (9%) percent interest.

As noted earlier, this provision of the Corporate Lease Agreement is nearly identical to that in the Business Purchase Agreement.

An option is basically an agreement by which the owner of the property agrees with another that he shall have a right to buy the property at a fixed price within a specified time. *Randolph v Reisig*, 272 Mich App 331, 338; 727 NW2d 388 (2006), citing *Marina Bay Condominiums, Inc v Schlegel*, 167 Mich App 602, 607; 423 NW2d 284 (1988). To accept an option there must be "strict compliance with the terms of the option both as to the exact thing offered and within the time specified." *Oshtemo Twp, Kalamazoo County v City of Kalamazoo*, 77 Mich App 33, 37; 257 NW2d 260 (1977), citing *Bailey v Grover*, 237 Mich 548; 213 NW 137 (1927); *Bergman v Dykhouse*, 316 Mich. 315; 25 NW2d 210 (1946). "Failure to so comply results in loss of the rights under the option." *Id*., citing *Oshtemo Twp*, *supra*; *Bailey*, *supra*. However, an optionor may not deprive the optionee of the optionee's rights under an option by avoiding the optionee or refusing to perform. *O'Toole & Nedeau Co v Boelkins*, 254 Mich 44, 235 NW 820 (1931).

> Where the terms of the option require that payment of the purchase money, or a part thereof, accompany the election to exercise the option, such provision must ordinarily be complied with; on the other hand, its terms may merely require that notice be given of the exercise of the option and leave the matter of the payment

> of the purchase money to be thereafter settled as in the case of the ordinary executory contract of sale. In the first instance payment is a condition precedent to the creation of a contract. In the second, it is a condition subsequent to creation.' *Catsman v Eister*, 8 Mich App 563, 155 NW2d 203 (1967) quoting 25 Callaghan, Michigan Civil Jurisprudence, § 9, pp 10, 11.

Here, the Option did not specify how plaintiffs should exercise the Option. The Option did not require that plaintiffs tender payment or propose a land contract to exercise the Option. An example of an option that would require payment would simply provide, for instance, that, "In consideration of $1,000 paid, O promises B to convey Blackacre on payment of $50,000 within 30 days." Corbin on Contracts, 3rd ed, § 11.8. In this example, the offeror promises to convey property "on payment." Here, the Option does not specify any action to accept the Option, and thus written notification sufficiently exercised the Option.

Further, an option may be exercised by a suit for specific performance, at least if the suit does not contain any terms that are contrary to the option. See *Rashken v Smith*, 236 Mich 440; 210 NW 485 (1926); *Shiller v Lunge*, 217 Mich 121, 185 NW 699 (1921). Here, the verified complaint only requested that defendants "specifically perform in accordance with the option to purchase contained in the Corporate Lease Agreement." Thus, plaintiffs alternatively accepted the Option by filing a suit for specific performance.

B. Land Contract Terms Not Expressed in the Option

Defendants also argue that the circuit court erred in requiring defendants execute a land contract that contained terms additional to the parties' agreement. Specifically, defendants claim that the land contract improperly contained a term that provides, "this land contract may be prepaid in whole or in part at anytime without Seller's consent and without any prepayment penalty."

The record reveals that throughout the proceedings of the instant case defendants have attempted to repudiate the Option contract and refused to accept any proposed terms to effectuate the Option. An optionor may not deprive the optionee of the optionee's rights under an option by avoiding the optionee or refusing to perform. *O'Toole & Nedeau Co, supra*. In granting specific performance, the circuit court essentially agreed with plaintiffs that the Option required that the "standard" land contract include terms ordinarily and customarily used in any land contract. Defendants objected to various terms included in the "standard" land contract, but the court indicated that defendants were merely "splitting hairs."

The Option simply refers to a "land contract," without further elaboration. However, a "general requirement for a valid contract for the sale of land is that it contain certain essential elements." *Zurcher v Herveat*, 238 Mich App 267, 282; 605 NW2d 329 (1999), citing 77 Am. Jur. 2d, Vendor and Purchaser, § 5, p 121. In Michigan, those essential provisions are the "identification of (1) the property, (2) the parties, and (3) the consideration." *Id*. at 290-291. The Option contract includes these essential terms. Further, some terms of the land contract are implied by law if not stated. For instance, in the absence of an agreement to the contrary, a warranty deed is required because it is the deed customarily used in Michigan. Mich Civ Jur, Vendors and Purchasers. § 40, Seller's deed in fulfillment of contract (2009), citing *Gault v Van Zile*, 37 Mich 22 (1877). Likewise, in the absence of an agreement to the contrary, the seller

must deliver marketable title. *Frederick v Hillebrand*, 199 Mich 333, 344; 165 NW 810 (1917). Further, by statute the seller pays the transfer taxes when the deed is recorded. MCL 207.502.

On the other hand, the executed land contract clearly contains provisions that are not implied by law. The provision primarily challenged on appeal is the "no pre-payment penalty" clause. Although plaintiff counsel argued that this clause was customary, the clause was typewritten into the so-called "standard" land contract as an "additional provision." And while there is no Michigan case supporting the conclusion that a "no pre-payment penalty" clause is implied, treatises on real estate largely recognize that "[w]hen a contract of indebtedness does not contain a provision permitting prepayment, that indebtedness may not be prepaid by the borrower without the consent of the lender unless a statute provides otherwise." 60 Am Jur 2d Payment § 8. Similarly, "if a debt is payable in installments at fixed dates, the lender is generally not obligated to accept an installment before its due date, unless the parties have expressly agreed or a statute provides that the borrower may prepay installments." 70 CJS Payment § 9; See also Powell on Real Property, § 84D.02[05]. The concept underlying the refusal to imply a prepayment privilege is that "the creditor would be deprived of its bargained for right to a stream of payments, not to mention its agreed upon interest." 28 Williston on Contracts § 72:34 (4th ed). Thus, the circuit court improperly determined that the parties agreed to a privilege or right to prepay the land contract.

C. Dower

MCL 558.1, provides that, "[t]he widow of every deceased person, shall be entitled to dower, or the use during her natural life, of 1/3 part of all the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage, unless she is lawfully barred thereof." MCL 558.1.

While the inchoate right of dower has, in many connections, been called by many names, it is 'a contingent estate, which will become vested on the death of the husband, and is entitled to protection before as well as after it has become vested, and no act of the husband alone can prejudice this right.' *Oades v Standard Sav & Loan Ass'n*, 257 Mich 469, 241 NW 262 (1932), citing *Bonfoey v Bonfoey*, 100 Mich 82, 58 NW 620; Wiltsie on Mortgage Foreclosure, vol. I, § 351; 19 CJ 493.

Defendants argue that the trial court erred in ordering George Abro to transfer the property because it was subject to Atour's dower rights. We conclude this issue was rendered moot when Atour signed the land contract. A case is moot if it presents only abstract questions of law that do not rest on existing facts or rights. *Ryan v Ryan*, 260 Mich App 315, 330; 677 NW2d 899 (2004). Defendants, for the first time on appeal maintain that since Atour "held a dower interest in the property, [she] could not be forced to sign the Land Contract." Issues first raised on appeal need not be addressed by the appellate court. *Booth Newspapers, Inc v Univ of Mich Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993). We decline to review this issue. Moreover, the record does not indicate the circumstances under which Atour signed the land contract. Atour did not move to intervene in the lower court proceedings and she is not a

party to this appeal. We therefore conclude that defendants failed to establish plain error affecting substantial rights.[6]

D. Attorneys' Fees

Defendants stipulated to the plaintiff's attorneys' fees pursuant to paragraph 18 of the Corporate Lease Agreement. Defendants argue only if that if they prevail in this appeal they are entitled to attorneys' fees. However, defendants have not fully prevailed on appeal.

III. Conclusion

We affirm but remand to the trial court to strike the "pre-payment" penalty provision in the Land Contract. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Henry William Saad
/s/ Peter D. O'Connell
/s/ Brian K. Zahra

[6] Defendants initially failed to provide this Court with the relevant December 6, 2007 hearing transcript, which alone is a basis to decline review of this issue. *PT Today, Inc v Comm'r of Financial & Ins Services*, 270 Mich App 110, 151-152; 715 NW2d 398 (2006).