STATE OF MICHIGAN

COURT OF APPEALS

EUGENE CHOWNYK, RICHARD DELMOTTE and J-V RANCH, Plaintiffs/Cross-Defendants-Appellants,	UNPUBLISHED July 15, 2010
v LEONARD MILLER, DENNIS DETLOFF, DONALD MILLER, DWAYNE MILLER and PAUL M. SUDOL, Defendants/Cross-Plaintiffs-Appellees.	No. 291189 Macomb Circuit Court LC No. 06-001403-CZ

Before: O'CONNELL, P.J., and METER and OWENS, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting summary disposition[1] to defendants in this partnership dissolution dispute. We affirm in part, reverse in part, and remand.

Plaintiffs first argue that the circuit court erred by granting defendants' motion for specific performance of an alleged buy-sell agreement. We agree.

We review a trial court's grant of summary disposition de novo. *Willett v Waterford Charter Twp*, 271 Mich App 38, 45; 718 NW2d 386 (2006). A motion filed under MCR 2.116(C)(10) tests the factual support for a claim, and "[w]here the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). The court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party. *Id.*

[1] Although defendants' motion was styled a "motion for specific performance of partnership buyout provision," it was in substance a motion for summary disposition. The trial court so found and granted the motion. For ease of reference, we refer to the motion as one for summary disposition.

We review the legal questions of the existence and interpretation of a contract de novo. *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006). The elements of a contract are: "(1) parties competent to contract, (2) a proper subject matter, (3) legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation." *Hess v Cannon Twp*, 265 Mich App 582, 592; 696 NW2d 742 (2005). Plaintiffs argue that the buyout provision in the by-laws[2] does not constitute a contract because there was not mutuality of agreement among all the parties allegedly bound. But here, it is irrelevant whether the buyout provision in the by-laws constitutes a contract, because neither that provision nor any other by-law purports, by its terms, to address how property is divided upon dissolution of the partnership. Therefore, the circuit court erred as a matter of law in granting defendants' motion for specific performance of the alleged buyout provision.

Next, plaintiffs argue that the circuit court erred when it held that the majority partners (defendants) have a statutory cause of action against the minority partners (plaintiffs), for damages caused by an alleged wrongful dissolution of the partnership. We agree.

This ruling by the circuit court occurred in the context of its denial of plaintiffs' motion for summary disposition of the counter-complaint. As noted above, we review summary dispositions de novo. *Willett*, 271 Mich App at 45. We review underlying questions of statutory interpretation de novo. *Rohde v Ann Arbor Pub Sch*, 479 Mich 336, 343; 737 NW2d 158 (2007).

Defendants argue that plaintiffs are liable for damages for breach of a partnership agreement. But the partnership agreement expired in 1979. Plaintiffs cannot be held liable for a dissolution in breach of a non-existent partnership agreement. All of the cases cited by defendants deal with partnership agreements, which require unanimous consent. Defendants do not cite any case in which damages were granted for breach of by-laws.

Defendants rely on § 38 of the uniform partnership act[3] (UPA), which provides, in relevant part:

> (1) When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his copartners and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners. . . .

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[2] On October 10, 2003, the partnership adopted amended by-laws. Under article VIII (control of properties), section 3, the by-laws provided: "*Any property currently owned or [that] may be owned by the J.V. Ranch shall be disposed of when the simple majority of the entire membership vote[s] to do so*. [A] J.V. member's payoff as of 4-17-99 shall be $10,000 plus any future assessments."

[3] MCL 449.1 *et seq.*

(2) When dissolution is caused *in contravention of the partnership agreement* the rights of the partners shall be as follows:

(a) Each partner who has not caused dissolution wrongfully shall have:

(I) All the rights specified in paragraph 1 of this section, and

(II) *The right, as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement*. [MCL 449.38 (emphasis added).]

Here, there was no partnership agreement in place at the time plaintiffs sought to withdraw. In fact, at that time, a partnership agreement had not been in place for decades (since 1979, when the original partnership agreement expired). Therefore, plaintiffs did not dissolve the partnership "in contravention of [a] partnership agreement" and as a result, did not "cause[] the dissolution wrongfully," and defendants may not exercise "[t]he right, as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement" against plaintiffs. As a result, the circuit court erred as a matter of law in denying plaintiffs' motion for summary disposition of the counter-complaint.

Next, plaintiffs argue that the trial court erred by denying their motion to compel a sale of the partnership's real property. We agree. Section 38 of the UPA provides, in relevant part: "When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his copartners . . . may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners." MCL 449.38(1). This section applies here. The dissolution, as noted above, was not caused in contravention of the partnership agreement; therefore, each partner is entitled to the amount owed to them, in cash. It follows that plaintiffs were also entitled to have the land converted into cash through a sale. The trial court erred in refusing to compel such a sale.

Finally, plaintiffs argue that the trial court erred by denying their request for appointment of a receiver. The issue of whether the circuit court should have appointed a receiver is abandoned because it was not properly presented to this Court. Plaintiffs cite an entire series of sections of the UPA, which supposedly requires that the affairs of the dissolved partnership be wrapped up, and the assets distributed. But although plaintiffs cite authority supporting the proposition that the trial court had the power to appoint a receiver, they fail to indicate on what authority they rely for the proposition that the court was required to appoint a receiver. We are not obliged to rationalize the basis for a party's claim, develop the argument, and determine what authority supports or rejects it. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). We affirm the trial court's denial of plaintiffs' motion to appoint a receiver.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. Plaintiffs, being the prevailing party, may tax costs pursuant to MCR 7.219. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ Patrick M. Meter
/s/ Donald S. Owens