

STATE OF MICHIGAN
COURT OF APPEALS

TROY 888 LLC,

Plaintiff-Counterdefendant-
Appellee,

v

SUMMIT WILSHIRE LLC,

Defendant-Counterplaintiff-
Appellant,

and

WELLS FARGO BANK NA and MAX J
CORPORATION,

Defendants.

UNPUBLISHED
November 29, 2018

No. 338393
Oakland Circuit Court
LC No. 2016-153128-CZ

TROY 888 LLC,

Plaintiff-Counterdefendant-
Appellant,

v

SUMMIT WILSHIRE LLC,

Defendant-Counterplaintiff-
Appellee,

and

WELLS FARGO BANK NA and MAX J
CORPORATION,

Defendants.

No. 339349
Oakland Circuit Court
LC No. 2016-153128-CZ

Before: SHAPIRO, P.J., and SERVITTO and GADOLA, JJ.

SHAPIRO, P.J. (*concurring*).

I concur with the majority's well-reasoned opinion in all respects except as to the grounds for rejecting appellant's "substantial performance" argument. I believe that a reasonable person could conclude that the conditions set out in the retention pond agreement were met even if the permanent storm drainage system was installed by a person or entity other than the City of Troy. However, I concur with the majority in affirming because it is undisputed that the substantive requirement that Sosnick or his successor "close off and stub the sewer line running from the premises to the retention pond" never took place.

/s/ Douglas B. Shapiro