STATE OF MICHIGAN

COURT OF APPEALS

MILDRED A. STEWART, by RICHARD G. STOLL, her attorney-in-fact, Plaintiff-Appellant, v HENRY FORD VILLAGE, INC., Defendant-Appellee.	UNPUBLISHED January 28, 2014 No. 312130 Wayne Circuit Court LC No. 11-007308-CZ

Before: SERVITTO, P.J., and MURRAY and BOONSTRA, JJ.

PER CURIAM.

Plaintiff[1] appeals by right from the order of the trial court granting summary disposition to defendant Henry Ford Village and denying summary disposition to plaintiff in this breach of contract action.[2] We vacate the trial court's order and remand for further proceedings.

I. PRELIMINARY FACTS AND PROCEDURAL HISTORY

This action arises out of a Residence and Care Agreement ("Agreement") entered into by plaintiff and defendant in 1998. Defendant is a not-for-profit, continuing care retirement community that provides independent living, assisted living, and skilled nursing care to approximately 1,200 residents. The Agreement provided for plaintiff to occupy an independent living apartment identified as unit CS 304. Upon signing the Agreement, and pursuant to its terms, she paid an entrance deposit to defendant. In 2010, upon terminating the Agreement, plaintiff sought the refund of that entrance deposit. Defendant declined that request on the ground that the conditions for refunding the entrance deposit were not satisfied. This lawsuit followed.

[1] We will refer to Mildred A. Stewart as "plaintiff." Richard G. Stoll is Stewart's son and attorney in fact.

[2] The record reflects that, in addition to two contract-based counts, plaintiff's complaint asserted counts entitled "fraud," "detrimental reliance," and "waiver." On appeal, plaintiff does not contest the trial court's entry of summary disposition in favor of defendant on those counts.

The entrance deposit paid by plaintiff totaled $137,053.92. Plaintiff occupied her unit for over 10 years until May 2010 when she fell and broke her foot and ankle. Plaintiff's injuries required her to be hospitalized for several days and, upon her release, it was determined that she could not return to living independently. Plaintiff was temporarily placed in defendant's skilled nursing facility, in unit RG 151, to recover from her injuries. Plaintiff occupied unit RG 151 from May 1, 2010 until August 19, 2010, when her physical and mental conditions were reevaluated under defendant's and Medicare's certification standards, and it was again determined that plaintiff could not return to her independent living unit. Plaintiff's son, Stoll, moved her out of defendant's facility and subsequently made a written demand for return of plaintiff's entrance deposit fee. Defendant's representative told Stoll that, under the Agreement's express terms, the deposit would not be refunded until plaintiff's original unit was re-occupied by another resident. Defendant informed Stoll that plaintiff could lower the unit's entrance deposit to an amount more in accord with the current real estate market to try to possibly expedite the re-occupancy process, and that prospective new residents might only be willing to pay an entrance deposit of about $89,000 for a unit comparable to plaintiff's unit. In that event, plaintiff would receive a refund in the amount of the reduced entrance deposit paid by the new resident. Stoll would not agree to lower the entrance deposit and instead demanded a refund of the full entrance deposit paid by plaintiff. The parties exchanged letters on the subject but could not come to an agreement. As a result of this dispute, plaintiff filed the underlying lawsuit. The trial court granted defendant's motion for summary disposition and denied plaintiff's motion for summary disposition. This appeal followed.

II. STANDARD OF REVIEW

"This Court reviews de novo a trial court's decision on a motion for summary disposition." *Allen v Bloomfield Hills Sch Dist*, 281 Mich App 49, 52; 760 NW2d 811 (2008). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012). A mere possibly that the claim might be supported by evidence at trial is insufficient. *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999); *Bennett v Detroit Police Chief*, 274 Mich App 307, 317; 732 NW2d 164 (2006). This Court must review the record in the same manner as must the trial court to determine whether the moving party was entitled to judgment as a matter of law. *Sal-Mar Royal Village, LLC v Macomb Co Treasurer*, 301 Mich App 234, 239; 836 NW2d 236 (2013). Review is limited to the evidence that had been presented to the trial court at the time the motion was decided. *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 476; 776 NW2d 398 (2009). Issues of contract interpretation language are reviewed de novo on appeal. *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 366-367; 817 NW2d 504 (2012).

III. BACKGROUND OF THE LCDA

Defendant, like all other continuing care retirement communities having an entrance deposit fee in Michigan, is regulated by the State. To sell or offer for sale a life interest or long-term lease in Michigan, defendant must be registered with the Office of Financial and Insurance Regulations (OFIR) and abide by the statutory requirements in the Living Care Disclosure Act (LCDA), MCL 554.801 *et seq*. The LCDA sets forth certain minimum requirements regarding lease or membership agreements between continuing care retirement communities and its residents. MCL 554.810. The LCDA further sets forth requirements for information to be included within a disclosure statement to be utilized by the facility. MCL 554.808. The LCDA

authorizes the OFIR to require the filing and approval before use of any disclosure statement or other communication intended for distribution to prospective residents. MCL 554.826(1). The OFIR requires that a disclosure statement be delivered to the resident at the time of execution the contract or making a payment to reserve a residence unit. Mich Admin Code R 554.26(2).

Under the LCDA, a resident of a continuing care retirement community may cancel the residency, and if he or she has resided in the community for more than six months, "shall be refunded an amount equal to the difference between all amounts paid in by the resident and the cost of caring for the resident based upon the facility's per capita cost and the sales cost in conjunction with the original lease and the cost of refurbishing." MCL 554.810(1)(d). Such refund "shall be made within 45 days after notice or upon resale of the unit, whichever occurs first." MCL 554.810(1)(e)(*iii*).

The LCDA further defines "per capita cost" as "the pro rata distribution of a facility's operating expenses as determined under rules promulgated by" the OFIR. MCL 554.803(8). The related administrative regulations further provide that the term "operating expenses," as used in that statutory section, "includes 1½ % per month of the entrance fee." Mich Admin Code R 554.1(3).

IV. THE REFUND PROVISIONS OF THE AGREEMENT AND DISCLOSURE STATEMENT

As noted, plaintiff signed the Agreement in 1998. At that time, defendant provided plaintiff with a Disclosure Statement.[3] Both documents included details regarding the entrance deposit, cancellations, and refunds.

Specifically, § 6.06(c) of the Agreement provides for a refund both of what it terms the "unearned portion" and the "earned portion," and it distinguishes the two based on the calculations provided for in MCL 554.810(1)(d) and Mich Admin Code R 554.1(3). That is, the Agreement provides that defendant "earns" the portions of the entrance deposit that the statute and regulation allow to be subtracted in computing the refund amount. Any remaining balance is considered "unearned." The Disclosure Statement similarly describes that, "[a]s used in these refund provisions, the terms 'earned' and 'unearned' refer to the statutory refund policy which presumes that Henry Ford Village earns a portion of the Entrance Deposit at a rate of 1.5% per month . . . ."

This distinction is important, inasmuch as the Agreement and Disclosure Statement set forth different conditions for the refunding of "earned" and "unearned" portions of the entrance deposit. Specifically, § 6.06(c) of the Agreement provides that "[t]he unearned portion of such refund shall be paid within 45 days after the Notice is given or upon re-sale of the Continuing Care Unit, whichever occurs first." This is consistent with the language of MCL 554.810(1)(e)(*iii*). By contrast, it provides that "[t]he earned portion of the refund shall be

[3] The record reflects that the OFIR approved defendant's Disclosure Statement by order dated October 24, 1997, in part "with the understanding that all statements contained therein are true and can be substantiated and no material facts have been omitted."

paid upon re-occupancy of the Continuing Care Unity [sic] by another resident." The Disclosure Statement provides similarly.

V. THE TRIAL COURT'S DECISION

At the hearing on the parties' cross-motions for summary disposition, the trial court ruled as follows:

> Let me make my decision. I've reviewed the materials that have been submitted. Both sides have submitted very detailed briefs regarding this matter. There are competing claims, competing summary disposition motions filed pursuant to MCR 2.116(C)(10) alleging no genuine issue of material fact.
>
> In making a determination regarding the disposition of such a motion the Court has to take into consideration the pleadings and all of the other documentary evidence that has been filed by both sides and make a determination as to whether or not there are any genuine issues of material fact.
>
> The Court has reviewed the material that have, the materials that have been submitted, and as to the claim filed by the Henry Ford, Henry Ford Village, the Court will grant that motion. There are no genuine issues of material fact. And as to the claim filed by the Plaintiff the Court will deny that motion. That is the Court's decision.

Subsequently, the trial court entered an order providing that defendant's motion was granted, that plaintiff's motion was denied, and that plaintiff's complaint was dismissed with prejudice "for the reasons stated more fully on the record." As noted, however, the trial court stated no reasons on the record, other than to state that it found no genuine issues of material fact, and instead merely announced its decision without providing any rationale for the decision. Notwithstanding the trial court's failure to articulate the basis for its decision, our review is a de novo one.

VI. ANALYSIS

A. TRANSFER OF ENTRANCE DEPOSIT

Plaintiff first argues that the trial court erred in finding that defendant's contractual obligations were triggered by or revolved around plaintiff's first residence with defendant. That is, plaintiff contends that when she, upon her injury, transferred from her independent living apartment identified as unit CS 304 to her temporary residence in unit RG 151 of defendant's skilled nursing facility, her entrance deposit should have transferred with it. Further, because plaintiff resided in unit RG 151 for less than 5 months, the entirety of the entrance deposit should have been refunded within 30 days after notice of termination, pursuant to MCL 554.810(1)(e)(*i*) ("If the required notice is given during the first 5 months of residency, the refund shall be made within 30 days after the notice is given."). Alternatively, plaintiff contends that defendant would have "earned" only $8,220 of plaintiff's entrance deposit during plaintiff's approximately three-month temporary residence in unit RG 151, such that the balance of $128,833.92 should have been refunded within that 30 day period. We disagree.

Plaintiff provides no support for the proposition that the entrance deposit, which was paid in 1998 when plaintiff signed the Agreement to reside in unit CS 304 (and which was based upon a valuation of that particular unit), transferred to unit RG 151 when she temporarily transferred to that residence in defendant's skilled nursing facility. Plaintiff points to no provision in the Agreement that provides for such a transfer of the entrance deposit, nor have we located any such provision. Further, plaintiff's argument ignores the fact that, pursuant to the provisions of the Agreement, defendant was "earning" portions of the entrance deposit during the more than 10 years she resided in unit CS 304. Simply put, plaintiff's position would convert more than a decade of "earned" portions of the entrance deposit into "unearned" portions by virtue of plaintiff's health-necessitated transfer from unit CS 304 to unit RG 151. Plaintiff was placed in unit RG 151 on a temporary basis, for a maximum length of 100 days consistent with Medicare regulations. Nothing in the Agreement, Disclosure Statement or the LCDA provide for the transfer of an entrance deposit to a temporary unit. We find no contractual or other support for plaintiff's position, and plaintiff's claim that the entrance deposit followed plaintiff from unit CS 304 to unit RG 151 accordingly fails.

B. PLAINTIFF'S ABILITY/OBLIGATION TO ACCEPT A LESSER REFUND AMOUNT

Plaintiff further argues that the trial court erred in finding a contractual basis for defendant's position regarding the refund, and in determining that plaintiff had the ability to determine the amount of the entrance deposit for the next resident of unit CS 304 and that she would have to accept any loss as a result of a reduced entrance deposit from the next resident. Again, as noted, it is difficult to determine from the trial court's ruling whether it made the determinations that plaintiff now ascribes to it. What is evident, however, is that the trial court determined as a matter of law that defendant had not breached the contract.

By its terms, the Agreement provides that "[t]he unearned portion of such refund shall be paid within 45 days after the Notice is given or upon re-sale of the Continuing Care Unit, whichever occurs first." However, "[t]he earned portion of the refund shall be paid upon re-occupancy of the Continuing Care Unity [sic] by another resident." Clear contractual language will be enforced as written. *Rory v Continental Ins Co*, 473 Mich 457, 468; 703 NW2d 23 (2005).

Defendant maintains, and plaintiff does not dispute (other than through the "transfer" argument discussed above), that over the more than 10 years in which plaintiff resided in unit CS 304, defendant "earned" the entirety of the entrance deposit paid by plaintiff in 1998. Consequently, by the time of the termination of the Agreement, there was no "unearned" portion subject to being refunded within 45 days after notice. Rather, since the entirety of the entrance deposit was "earned," the Agreement provides that it "shall be paid upon re-occupancy . . . by another resident." Re-occupancy of unit CS 304 has not yet occurred. Therefore, the quoted

language of the Agreement suggests that the refund is not yet due, and that, as of this point in time, defendant has therefore not breached the Agreement.[4]

Plaintiff relatedly argues, however, that the trial court erred when it found that she had the ability to determine the amount of the entrance deposit to be paid by the next resident of her vacated unit, and in finding that plaintiff must accept the loss if the entrance deposit paid by the next resident of her unit is less than the amount of the refund to which plaintiff is otherwise entitled. We agree that, under the terms of the Agreement, plaintiff has neither the authority nor the obligation to determine the amount of the entrance deposit to be paid by a new resident, and has no obligation to accept a lesser refund amount based on a new resident paying a lower entrance deposit.

In the absence of an express modification of the Agreement,[5] plaintiff therefore has no contractual obligation to accept a lesser refund, should defendant find a new occupant for the vacated unit. To the extent that the trial court's ruling could be read otherwise, such an interpretation would be contrary to the plain language of the Agreement. Simply put, plaintiff is not obligated to set the amount of the entrance deposit charged by defendant for subsequent residents, and is not obligated to accept a refund in the amount of the entrance deposit paid by a subsequent resident; however, apart from the considerations discussed below, defendant also is not obligated to pay plaintiff's refund until re-occupancy occurs.

C. DUTY OF GOOD FAITH

The Agreement must, however, be read in its totality, and in conjunction with the statutory scheme that underlies it. Our consideration of those factors leads us to conclude that summary disposition is premature.

First, we note that the LCDA is designed to provide protections to our aging citizenry. Public Act 440 of 1976, by which the LCDA was enacted, described it as "AN ACT to regulate the offer and sale of life estates life leases, and long-term leases in nursing homes, retirement homes, homes for the aged, and foster care facilities" and to "prohibit fraudulent practices in relation" thereto. Section 6 of the LCDA provides, in part, that "[a] person shall not, in connection with the offer or sale of a life interest or long-term lease, directly or indirectly . . . (b)

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[4] As defendant points out, the LCDA itself does not require a refund of any "earned" portion of the entrance deposit. Rather, that obligation arises only by virtue of the Agreement and related Disclosure Statement.

[5] Parties may modify a contractual agreement by mutual assent. *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 370-371; 666 NW2d 251 (2003). The Agreement provides that amendments to the contract may be made in writing and signed by the resident and defendant. Thus, if plaintiff and defendant were to mutually agree upon refund terms and conditions other than as set forth in the Agreement, the Agreement could be amended to reflect this. However, absent such a modification, nothing in the Agreement compels plaintiff to accept a reduced refund or, as stated below, to bear the risks of a declining real estate market.

[m]ake an untrue statement of a material fact or fail to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading." MCL 554.806(1). As noted, the LCDA and the OFIR also maintain requirements for appropriate disclosures of information to prospective residents, both in contractual documents and in disclosure statements and other written communications. The LCDA further provides for a private right of action, MCL 554.829, joint and several liability, MCL 554.830, enforcement action by the OFIR, MCL 554.833, action by the attorney general for injunction, restraining order, writ of mandamus, or appointment of a receiver or conservator, MCL 554.834, other appropriate actions by the attorney general or prosecuting attorney, MCL 554.835, criminal penalties, MCL 554.836, and fees, MCL 554.838.

Under the Agreement, the earned portion of the refund is to be paid when plaintiff's unit is re-occupied by another resident. By the plain language of the Agreement, plaintiff is entitled to a full refund of her deposit "upon re-occupancy of the Continuing Care Unity [sic] by another resident." Nothing in the language of the Agreement conditions the refund to which plaintiff is entitled (or the amount of the refund) on the receipt of an entrance deposit (or on the amount of any such deposit) paid by a new resident. Rather, it is clear from the Agreement that it is the re-occupancy of the unit, regardless of any deposit (or the amount of any deposit) paid by the new resident, that is the condition precedent to defendant's obligation to refund plaintiff's deposit. See *MacDonald v Perry*, 342 Mich 578, 586; 70 NW2d 721 (1955). Until that condition is fulfilled, defendant is not obliged by the language of the Agreement to provide a refund.

However, the Agreement in this case includes a duty of good faith in the exercise of the parties' discretion. "Where a party to a contract makes the manner of its performance a matter of its own discretion, the law does not hesitate to imply the proviso that such discretion be exercised honestly and in good faith." *Burkhardt v City Nat'l Bank of Detroit*, 57 Mich App 649, 652; 226 NW2d 678 (1975), see also *Ferrell v Vic Tanny Int'l, Inc*, 137 Mich App 238, 243; 357 NW2d 669 (1984). See also, 3A Corbin, Contracts, § 644, pp 78-84; Restatement of Contracts, 2d, § 205. That duty is particularly important where, as here, the fundamental premise of the Agreement is that which underlies the LCDA itself, i.e., the protection of potential residents of the facilities in question, and the obligation to ensure full disclosure, including by truthfully stating all material facts and by not omitting material facts necessary to prevent the stated facts from being misleading. MCL 554.806(1).

Here, the Agreement states, "[u]pon termination of the Agreement by Resident, Resident shall be entitled to a refund of his or her Entrance Deposit." The Disclosure Statement further provided that among the "six types of payments" owed to defendant was a "one-time 100% refundable Entrance Deposit." It also stated that a resident terminating a residency agreement after six months of occupancy was "entitled to a full refund of the Entrance Deposit." That particular reference added a proviso requiring that "the conditions specified in Paragraph 4 below have been met," and that paragraph, as noted (as also is stated in the Agreement) reflected that the "earned portion of the refund shall be refunded upon re-occupancy of the Unit."

We conclude that under a fair reading of the Agreement and the Disclosure Statement, and notwithstanding the "[u]pon termination, "100% refundable," and "entitled to a full refund" language, it was or should have been apparent to a prospective resident that the "earned" portion of the refund was not payable until re-occupancy of the unit. What is not apparent, however, from any of the language of the Agreement or Disclosure Statement, is that if the unit were to

become re-occupied by virtue of a new agreement with a new resident that provided for a lower entrance deposit than that paid by plaintiff, defendant then would refund to plaintiff only the amount of the new entrance deposit, and would not refund the differential. In that event, plaintiff would not receive a "full" or "100%" refund. In other words, it was not apparent that plaintiff would bear the risks of a declining real estate market. What also is not apparent from the Agreement or Disclosure Statement was the process by which the unit would be marketed to potential new residents and by which a corresponding new entrance deposit was to be determined. In other words, it was not apparent that defendant would market the unit to new prospective residents with the identical entrance deposit as was paid by plaintiff, even if under current market conditions the unit could not be successfully marketed with such an entrance deposit, and that defendant would only market the unit with a lower, market-based entrance deposit if plaintiff agreed to reduce the amount of her refund.

It appears in any event that defendant maintains complete control, under the Agreement, of when and how the unit comes to be re-occupied, and therefore of when and how the condition precedent to defendant's obligation to refund plaintiff's entrance deposit is satisfied. Such broad discretion implies a duty to exercise it in good faith. *Burkhardt*, 57 Mich App at 652; *Ferrell*, 137 Mich App at 243.

By these observations, we do not suggest any malicious intent on the part of defendant. Rather, we suspect that in 1998, when the Agreement was signed and the Disclosure Statement was issued, the potential ramifications of a declining real estate market were not given significant consideration. Those considerations likely arose only years later, after the downward spiral of the market occurred.

However, these observations lead us to look still further at the terms and overall construct of the Agreement and Disclosure Statement. While those documents gave rise to a relationship that was rather unique, it is apparent that the status afforded to plaintiff was akin to that of a tenant or lessee, while that afforded to defendant was akin to that of a landlord or lessor. The Agreement defines plaintiff as "Resident." The Disclosure Statement confirms that the facility is "owned and operated" by defendant. The Agreement specifically retains all property rights in defendant. The resident pays an entrance deposit as well as other monthly fees for the "right to occupy and to use" a residency unit and for services. One of the fees paid by the resident to defendant is a "marketing" fee "to cover the cost of marketing the unit to a new resident." The resident is precluded from assigning the right to occupy a unit to any other person. Defendant retains the right of access to the residency units.

Given the totality of the circumstances, the status of the parties, and the rights and obligations as set forth in the Agreement, the Disclosure Statement, and the LCDA, we find no support for the conclusion that plaintiff should or is obliged to bear the risks of a declining real estate market. To the contrary, those risks would seem properly to fall to defendant. By way of example, when a lessee properly complies with his or her lease in vacating a rental property, the lessee bears no responsibility for the fact that the landlord may need to lower the rent to attract a subsequent tenant. Rather, it is the landlord alone who must bear the consequences of the existing market risks. Additionally, plaintiff notes that if the unit was subsequently reoccupied with a *higher* entrance deposit, defendant would not furnish additional monies to plaintiff. Defendant has not suggested otherwise. To the contrary, § 6.01 of the Agreement reflects that one-half of any such increase would be placed in a special fund, the earnings on which "will be

used solely to provide funds to pay increases in lease payments on the facility," and that the other one-half of any such increase would be placed in a capital reserve fund "to be maintained for capital improvements and replacement of capital items." It strikes us an incongruous, as unsupported contractually, and as of questionable good faith (without adequate disclosure), that plaintiff be held to bear the risks of a declining real estate market without the ability to reap the rewards of a booming one.

At a minimum, we can say at this juncture that the omission from the Agreement and Disclosure Statement of any indication that, even if necessary to cause a re-occupancy of unit RS 304, defendant would not market that unit with a lower entrance deposit than that paid by plaintiff unless plaintiff accepted a correspondingly reduced refund amount, gives us great pause in affirming the trial court's grant of summary disposition to defendant.[6]

Rather, we conclude that the appropriate relief in this case, pursuant to MCR 7.216(A)(5), is to remand the case to the trial court allow the parties to present additional evidence concerning whether defendant has complied with its obligation to exercise its discretion under the Agreement in good faith.

VII. CONCLUSION

Because we are unable to determine from the record before this Court whether the trial court appropriately considered the issue of whether defendant acted in accordance with its duty to exercise its discretion under the Agreement in good faith, and whether it interpreted the Agreement as permitting defendant to refuse to market the unit with a lower entrance deposit absent acquiescence to a lower refund amount from plaintiff, we vacate the trial court's order and remand for an evidentiary hearing consistent with this opinion. The trial court should make findings of fact and conclusions of law and place them on the record or in a written opinion. The trial court should then enter an order deciding the issue of summary disposition. We retain jurisdiction to expedite review of that decision in light of a more complete record.

/s/ Deborah A. Servitto
/s/ Christopher M. Murray
/s/ Mark T. Boonstra

[6] We note in that regard that it is of little consequence that the OFIR approved defendant's registration application and authorized defendant's use of the Disclosure Statement. MCL 554.824(1) expressly provides that "[t]he fact that an application for registration under this act has been filed or has become effective does not constitute a finding by the bureau that a document filed under the act is true, complete, or not misleading." Moreover, the OFIR's order authorizing the use of the Disclosure Statement was expressly conditioned on "the understanding that all statements contained [in the Disclosure Statement] are true and can be substantiated and no material facts have been omitted," and on defendant's responsibility, if the Disclosure Statement became obsolete or misleading, to cease its use, to cease offers and sales, and to submit an amended Disclosure Statement to the OFIR.

Court of Appeals, State of Michigan

ORDER

Mildred A Stewart v Henry Ford Village Inc

Docket No. 312130

LC No. 11-007308-CZ

Deborah A. Servitto
Presiding Judge

Christopher M. Murray

Mark T. Boonstra
Judges

Pursuant to the opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We retain jurisdiction.

Proceedings on remand in this matter shall be concluded within 90 days of the Clerk's certification of this order, and they shall be given priority on remand until they are concluded. As stated in the accompanying opinion, we remand this case for an evidentiary hearing regarding whether defendant acted in accordance with its duty to exercise its discretion under the Agreement in good faith. The trial court shall make findings of fact and conclusions of law on the record or in a separate written opinion, and enter an order deciding the issue of summary disposition.

The parties shall promptly file with this Court a copy of all papers filed on remand. Within seven days after entry, appellant shall file with this Court copies of all orders entered on remand.

The transcript of all proceedings on remand shall be prepared and filed within 21 days after completion of the proceedings.

COURT OF APPEALS OF THE STATE OF MICHIGAN
TUEBOR
CIRCUMSPICE
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A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JAN 28 2014
Date

Chief Clerk