STATE OF MICHIGAN

COURT OF APPEALS

BAGOZZI & DAUGHTERS BAKERY & DELICATESSEN, INC.,

Plaintiff-Appellee,

v

DEARBORN VILLAGE ASSOCIATES III & IV-LIMITED PARTNERSHIPS, and PROPERTY MANAGEMENT GROUP, INC.,

Defendants-Appellants,

and

WESTMINISTER ENTERPRISES, INC.,

Defendant.

UNPUBLISHED
September 17, 1996

No. 183032
LC No. 94-402209 CK

Before: Gribbs, P.J., and Young and W. J. Caprathe,* JJ.

PER CURIAM.

Defendants appeal as of right the trial court's denial of their motion for sanctions. We affirm.

A trial court's findings regarding a motion for sanctions will not be disturbed unless it was clearly erroneous. *Cvengros v Farm Bureau Ins*, 216 Mich App 261, 266; 548 NW2d 698 (1996). Thus, unless we are left with a definite and firm conviction that the trial court made a mistake in its ruling, we must affirm the trial court's denial of defendants' motion for sanctions. *Miller v Riverwood Recreation Center, Inc*, 215 Mich App 561, 572; 546 NW2d 684 (1996).

An attorney, in representing a client, "has an affirmative duty to conduct a reasonable inquiry into the factual and legal viability of a pleading before it is signed." *Cvengros, supra* at 266. A claim

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* Circuit judge, sitting on the Court of Appeals by assignment.

should be found to be frivolous when "(1) the party's primary purpose was to harass, embarrass, or injure the prevailing party, or (2) the party had no reasonable basis upon which to believe the underlying facts were true, or (3) the party's position was devoid of arguable legal merit." *Id.* at 266-267; MCL 600.2591(3)(a); MSA 27A.2591(3)(a).

The trial court did not clearly err in denying defendants' motion for sanctions. Plaintiff recognized that when defendants entered into a lease agreement with Westminster Enterprises while plaintiff was in default of the lease for failure to make timely payments, defendant did not breach the exclusivity provision of the lease with plaintiff. However, plaintiff asserted that after it cured its default of the lease by making the overdue lease payments, defendant was in default of the exclusivity provision of the lease by holding a lease with Westminster. Plaintiff relied on *Aspen Enterprises, Ltd v Bray*, 148 Mich App 9; 384 NW2d 65 (1985), and *Park Forest of Blackman v Smith*, 112 Mich App 421; 316 NW2d 442 (1982), in support of its argument. Although, as recognized by the trial court, plaintiff's argument was tenuous, we simply cannot say that the trial court's conclusion that it was not devoid of arguable legal merit was clearly erroneous.

Affirmed.

/s/ Roman S. Gribbs
/s/ Robert P. Young, Jr.
/s/ William J. Caprathe