

STATE OF MICHIGAN
COURT OF APPEALS

CARLOS DOS, INC. and CARLOS A. DAVILA,

Plaintiffs-Appellants,

v

GARNETT'S LOUNGE, INC. and NORMA
BURTON,

Defendants-Appellees.

UNPUBLISHED

September 20, 1996

No. 177760

LC No. 94-402692 CK

Before: Wahls, P.J., and Murphy and C.D. Corwin,* JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting summary disposition to defendants in this contracts case. Plaintiffs sought specific performance of both a contract for the sale of a business and a contract for the sale of the land on which the business is located. We affirm.

On April 26, 1993, plaintiff Carlos Dos, Inc., entered into a purchase agreement with defendant Garnett's Lounge, Inc., for the sale and purchase of Garnett's Lounge, a business located in Westland, Michigan. On the same date, plaintiff Carlos A. Davila, the sole shareholder of Carlos Dos, Inc., contracted with defendant Norma Burton, the sole shareholder of Garnett's Lounge, Inc., to purchase by land contract the property on which Garnett's Lounge is located.

The two contracts were mutually contingent. In addition, the real estate agreement provided that closing would not take place until after the Michigan Liquor Control Commission (MLCC) approved the transfer of the Class C liquor license to Carlos Dos, Inc. Also under this agreement, Davila agreed to take the premises in an "as is" condition. The sale price of the property was reduced by \$15,000 "in consideration of the Buyer's assuming the obligation to do any and all repairs and to assume the sole responsibility for any work necessitated by the City of Westland or any other governmental agency."

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

As part of its investigation process, the MLCC requires approval of premises by the local government. After inspecting the premises, the City of Westland refused to give its approval to the MLCC until certain repairs were made. It is not in dispute that defendants refused to give plaintiffs or plaintiffs' work crew access to the premises to conduct the repairs.

Plaintiffs filed this suit seeking specific performance of both purchase agreements and an order requiring defendants to allow plaintiffs onto the premises to make the repairs required by Westland. Both sets of parties filed motions for summary disposition pursuant to MCR 2.116(C)(10). The trial court granted defendants' motion and denied plaintiffs' motion.

Plaintiffs argue that the trial court erred by granting defendants' motion for summary disposition and by denying their motion. We disagree. A motion for summary disposition based on MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Lytle v Malady*, 209 Mich App 179, 183; 530 NW2d 135 (1995). An appellate court must give the benefit of the doubt to the nonmoving party and determine whether the moving party was entitled to judgment as a matter of law. *Id.* This Court reviews a summary disposition determination de novo as a question of law. *Id.*, pp 183-184.

Construction of an unambiguous and unequivocal contract is a question of law. *In re Loose*, 201 Mich App 361, 366; 505 NW2d 922 (1993). The primary rule in construing a contract is to ascertain the intent of the parties. *Id.*, p 367. In determining the true intent of the parties, the court should consider the language used in the contract, its subject matter, and the circumstances surrounding the making of the agreement. *Remes v Holland*, 147 Mich App 550, 555; 382 NW2d 819 (1985).

The trial court read the real estate agreement and the business purchase agreement as two independent contracts. We agree with plaintiffs that the two agreements should be read together. Each contract contains a provision declaring the contract null and void if the other contract is not successfully completed. Furthermore, each contract contains a provision declaring a breach of one contract to be a breach of the other contract. Accordingly, it is clear that the real estate agreement and the business purchase agreement were interdependent. *Culver v Castro*, 126 Mich App 824, 826; 338 NW2d 232 (1983); see 17A Am Jur 2d, Contracts, § 390, p 416.

Even when read together, it appears that the trial court correctly granted defendants' motion for summary disposition. The real estate agreement provided that closing would not occur until after the transfer of the liquor license was approved by the MLCC. There is no provision in the real estate agreement allowing Davila to enter the property to make repairs prior to closing. Plaintiffs argue that such access was required under § 3 of the business purchase agreement, which states:

It is distinctly agreed and understood between the parties herein that immediately after the execution of this Agreement, both parties will take whatever steps shall be necessary

in a diligent and expeditious manner to have the said liquor license transferred from the Seller to the Buyer by the Michigan Liquor Control Commission.

According to plaintiffs, this provision required Burton to allow Davila to enter the premises to make the repairs for which he took responsibility under the “as is” clause in the real estate agreement. However, Burton swore in an affidavit that her purpose for conveying the property in an “as is” condition was to transfer responsibility for all building code violations and liability for all negligence claims arising out of the repair or renovation of the premises to Davila. Burton argues that construing § 3 in the manner favored by plaintiffs would result in her liability for claims arising out of the repairs on her property. Plaintiffs do not dispute that defendants’ intention in inserting the “as is” provision was to avoid liability for repairs, but counter that the “as is” provision includes an assumption of liability by plaintiffs.

This court should attempt to effectuate the intent of the parties at the time the agreement was consummated. *Remes, supra*, p 555. Here, the business purchase agreement was conditioned not on approval by the City of Westland, but by the MLCC. Thus, even if defendants allowed plaintiffs’ workers onto the property to make repairs, and Westland approved the property, the MLCC could still refuse to approve the transfer of the liquor license. In that case, both contracts would be null and void, and defendants would be unable to rely on § 3 of the business purchase agreement to shift liability to plaintiffs for claims arising out of the repairs. Such an assumption of liability conflicts with the parties’ expressed intent as evidenced by the “as is” provision of the real estate agreement.

Accordingly, we hold that defendants did not have a contractual obligation to allow plaintiffs’ workers onto the premises. It is not disputed that the MLCC discontinued its investigation into the liquor license transfer, and that both contracts are contingent upon approval of that transfer. Accordingly, the trial court did not err in granting defendants’ motion for summary disposition, and denying plaintiffs’ motion.

Affirmed.

/s/ Myron H. Wahls
/s/ William B. Murphy
/s/ Charles D. Corwin