

STATE OF MICHIGAN
COURT OF APPEALS

JOHN R. BUDRYS,

Plaintiff-Appellee

v

JOE N. THOMAS, JR.

Defendant-Appellan,

and

JEQUITA D. THOMAS, MICHAEL P. DEIGHAN,
Receiver

Defendants.

UNPUBLISHED
November 1, 1996

No. 177954
LC No. 93-329792

Before: Reilly, P.J. and Cavanagh, and R.C. Anderson.* JJ.

PER CURIAM.

Defendant Joe N. Thomas, the purchaser, appeals as of right the judgment of forfeiture entered following a bench trial in favor of plaintiff, the vendor, in this land contract dispute. We affirm.

Plaintiff and defendant entered into a land contract, which was dated December 20, 1987. The purchase price was \$95,000. Defendant made a \$10,000 down payment, and the remaining balance was to be paid in monthly installments of \$895, which included principal and interest, beginning January 1, 1988. The interest rate was eleven percent per year. The purchasers agreed in section 3(k)(iii) of the land contract "to make application to a bank or other lending institution for financing to pay off the balance of the land contract within two (2) years of the date of this contract."

On November 25, 1988, plaintiff and defendant executed an amendment to the contract "with respect or referral to the pay-off balance within two years."

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

It is understood that the property purchased here needs work before a mortgage can be obtained, therefore without altering the original land contract I, John Budrys, have agreed to extend the payoff period from Dec. 20, 1989 to July 1, 1993.

I, John Budrys, have received \$45,000 in cash leaving a balance of approximately \$38,500. No payments shall be made during this extended period and I will be responsible for taxes due for 1988 and 1989.

Defendant made no further payments on the contract.

On July 9, 1993, plaintiff served defendant with a notice of intention to forfeit the land contract, The notice stated that the land contract was in default for nonpayment of the balance “for a total in arrears for principal of \$48,709.59, PLUS interest from November 25, 1988, in the amount of \$24,735.13 through July 8, 1993, plus \$14.6796 per diem thereafter due hereunder . . .” On July 29, 1993, plaintiff served a notice of forfeiture of land contract that repeated the statement quoted above. On October 20, 1993, plaintiff filed the present lawsuit in Wayne Circuit Court.

At the evidentiary hearing, plaintiff testified that the principal balance owing was “in the forty two to forty five range” and that the \$38,500 amount referred to in the amendment was an approximate number. Defendant testified that the principal balance due as of the date of the amendment was \$38,500, and that he paid \$5,300 for taxes that should have been paid by plaintiff. Neither party presented evidence indicating the dates and amounts that were paid on the land contract.

On July 15, 1994, the trial court issued its written findings of fact and conclusions of law, and ordered plaintiff’s counsel to present a proposed judgment in accordance with its findings and rulings. Plaintiff’s counsel prepared and submitted the judgment. On August 9, 1994, defendant having filed no objections, the court entered the judgment of forfeiture. According to the judgment, defendant owed a principal balance of \$48,709.59; interest from November 25, 1988 through July 8, 1993 in the amount of \$25,735.13; interest payable at the rate of \$14.6796 per day from July 9, 1993 until payment; taxed costs and attorney fees of \$122.00; less the amount paid by defendant for 1988 and 1989 property taxes, upon showing of proper receipts.

On August 19, 1994, defendant filed a motion for relief from judgment in which he asserted that the court was mistaken in determining that the principal amount was \$48,709.59, rather than \$38,500. The circuit court docket entries show that the court held a hearing on defendant’s motion, and yet, despite repeated requests by this Court, defendant did not provide a transcript of that hearing to this Court. The court denied defendant’s motion in a written opinion and order:

The personal representative of the estate clearly testified that the unpaid principal balance on the land contract was agreed to be \$38,500 on November 11, 1988. Although Mr. Thomas claims that no interest was to be charged from then until July 1, 1993, the evidence in the record shows otherwise. The Court correctly ruled regarding the amount owed on the contract. The Court thus found from the evidence that until

those amounts are paid in full, the taxes paid by the plaintiff and interest on all unpaid amounts must be added to the \$38,500 that had been owed on November 11, 1988.

Defendant first contends that the trial court erred in determining that he was in default on the land contract and the subsequent letter to amend. We disagree.

Section 3(k)(iii) states that the purchasers agreed “to make application to a bank or other lending institution for financing to pay off the balance of the land contract within two (2) years of the date of this contract.” Defendant contends that this provision only required him to apply for financing within two years and did not set a deadline for full payment of the purchase price. However, defendant’s suggestion that the parties interpreted section 3(k)(iii) in this manner conflicts with language used by the parties in the amendment. The “Letter to Amend” stated that it was an amendment to the land contract “with respect or referral to the payoff balance within two years.” The amendment further stated that plaintiff agreed to extend the “payoff period” from December 20, 1989, to July 1, 1993. These references indicate that the parties understood that the land contract required payment of the balance within two years, and that the amendment allowed defendant additional time to complete payment. The trial court correctly determined from section 3(k)(iii) of the land contract and the amendment that the balance of the purchase price was due on July 1, 1993.

Defendant next contends that the trial court erred in calculating the amount owed by defendant because: (1) the court determined that interest accrued during the period between December 20, 1989 and July 1, 1993, and (2) the court found that the principal amount was \$48,709.59 rather than \$38,500.00. We conclude that the trial court properly determined that the amendment did not suspend the accrual of interest during the extension period and that defendant has waived any error with respect to the calculation of the amount of principal by failing to provide a transcript of the hearing on defendant’s motion for relief from judgment.

The amendment states “No payments shall be made during this extended period” Defendant argues that the parties intended that interest would not accrue during the period that the monthly installments were not required. The amendment does not support this contention. Suspension of the accrual of interest is not the same as the suspension of payments. As the trial court noted, the amendment specifically stated that plaintiff “without altering the original land contract,” agreed to extend the payoff period. The amendment did not alter the provisions of the land contract with respect to the accrual of interest.

Finally, defendant argues as follows with respect to the alleged erroneous calculation of the judgment:

The court’s findings further indicated that Plaintiff’s claims regarding the amount owed to be “...\$48,709.59 in principal, plus interest from November 25, 1988 in the amount of \$25,735.13 through July 8, 1993, plus interest at \$14.6796 per day from that date.” This is clear error.

It was stipulated in the [t]ranscript of the proceedings that the principal owed under the land contract was thirty eight thousand five hundred (\$38,500.00) dollars pursuant to the amount agreed upon by and between the parties in the “Letter to Amend.” Thus, the above stated principal is incorrect, and thus, the calculated interest is also incorrect.

Defendant’s contention that the court incorrectly determined that \$48,709.59 in principal was outstanding was the subject of defendant’s motion for relief from judgment. As previously noted, the docket entries show that the court held a hearing on this motion. Pursuant to MCR 7.210, defendant, as the appellant, was responsible for securing the filing of the transcripts. Despite repeated requests by this Court, defendant failed to provide a transcript of that hearing. By his failure to provide the transcript of the trial court’s hearing on the calculation of the amount of principal, defendant has abandoned this issue on appeal. See *Waterford Sand Gravel Co v Oakland Disposal, Inc.*, 194 Mich App 571; 487 NW2d 511 (1992).

Affirmed.

/s/ Maureen Pulte Reilly
/s/ Mark J. Cavanagh
/s/ Robert C. Anderson