STATE OF MICHIGAN

COURT OF APPEALS

NANCY GOOCH,

Plaintiff-Appellant,

v

MUTUAL SAVINGS BANK,

Defendant-Appellee.

UNPUBLISHED
December 17, 1996

No. 187647
LC No. 94-1030-NZ

RONALD E. WEBER,

Plaintiff-Appellant,

v

MUTUAL SAVINGS BANK,

Defendant-Appellee.

No.187648
LC No. 94-1031-NZ

PAIGE RENFROE,

Plaintiff-Appellant,

v

MUTUAL SAVINGS BANK,

Defendant-Appellee.

No. 187649
LC No. 94-1057-NZ

Before: Young, P.J., and O'Connell and W.J. Nykamp,* JJ.

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

PER CURIAM.

In these consolidated cases, plaintiffs, former employees of defendant bank, appeal as of right the order of the circuit court granting summary disposition in favor of defendant. We affirm.

Plaintiffs contend that the court erred in denying their motion for entry of judgment, predicated on the parties' acceptance of a mediation award, because MCR 2.403(M) expressly provides that if all parties to an action accept the mediation panel's evaluation, the court must enter judgment accordingly. In the present case, defendant moved for summary disposition, the case was then mediated, the court granted defendant's motion, and only then did the mediation panel issue a notice indicating that all parties had accepted the mediation panel's evaluation. Plaintiffs argue that their subsequent motion for entry of judgment should have granted despite the fact that the action had previously been dismissed.

I

In support of their position, plaintiffs submit that the court's order of March 28, 1995, did not dispose of all claims because the order did not address the theory of equitable estoppel which plaintiffs alleged in their second amended complaint. Essentially the question on appeal is a legal one, namely what, if any, effect did the court's opinion and order granting summary disposition regarding counts I through IV have on the estoppel theory. We review questions of law de novo. *People v Medlyn*, 215 Mich App 338, 340; 544 NW2d 759 (1996).

The trial court based its decision, that its opinion and order granting summary disposition regarding counts I through IV entirely resolved the case, on MCR 2.113(E)(3), stating,

> There is no question that mediation was accepted. However, prior to that acceptance, the court had granted defendant's motion for summary disposition on the four counts contained in the complaint. The four counts named in the complaint were the only causes of action before the court. MCR 2.113(E)(3) states as follows:
>
> > Each statement of a claim for relief founded on a single transaction or occurrence or on separate transactions or occurrences, and each defense other than a denial, must be stated in a separately numbered count or defense.
>
> Therefore, if plaintiffs intended to state a claim for relief on the theory of estoppel, that theory would be stated in a separately numbered count. Because plaintiffs did not do so, the estoppel theory asserted must have been in support of the breach of contract claim. Therefore, when the court summarily disposed of the breach of contract claim, it summarily disposed of the estoppel theory underlying it.
>
> For the reasons stated above, plaintiffs' motion for entry of judgment is denied.

"Interpretation of a court rule is subject to the same principles which govern statutory construction." *Michigan Basic Property Ins Ass'n v Hackert Furniture Distributing Co, Inc*, 194 Mich App 230, 234; 486 NW2d 68 (1992). "When a statute is clear and unambiguous, judicial construction or interpretation is unnecessary and, therefore, precluded." *Lorencz v Ford Motor Co*, 439 Mich 370, 376; 483 NW2d 844 (1992). We regard the language of the above-cited court rule to be clear and unambiguous. Thus, the trial court's reasoning is sound.

Plaintiffs do not argue that the language of the court rule is unclear. Instead, they argue that equitable estoppel is a doctrine, not a cause of action, and, thus, plaintiffs had no obligation to plead estoppel as a separate claim. Plaintiffs rely on *Hoye v Westfield Ins Co*, 194 Mich App 696, 704-707; 487 NW2d 838 (1992), where this Court defined equitable estoppel, distinguished it from promissory estoppel, and explained that it was a doctrine and not a cause of action. We agree. However, the doctrine of equitable estoppel is of no benefit to plaintiffs in these cases.

In their second amended complaint, plaintiffs pleaded equitable estoppel, as part of their breach of contract claim, as follows:

> Defendant should be estopped from denying the existence of the contract because a) it assured [p]laintiff that she would be compensated pursuant to the original commission rate as reflected in Exhibit A [a commissions schedule] and b) [p]laintiff relied, to her detriment on [d]efendant's assurances, in not seeking other employment.

According to Prosser, under the doctrine of equitable estoppel, a defendant "may be estopped to deny the truth of his statement." *Id*., 706, citing Prosser, Torts (4th ed), § 105, pp 691-692. Thus, plaintiffs pleaded that defendant should be estopped to deny its assurances that plaintiffs would be compensated according to the commissions schedule. However, equitable estoppel provides no benefit to plaintiffs because defendant does not deny the truth of its assurances to pay plaintiffs according to the commissions *schedule at the time defendant made those assurances*.

The trial court found that defendant was entitled to summary disposition on plaintiffs' breach of contract claim because plaintiffs had all signed the "Employee Handbook Receipt" which expressly reserved to defendant the right to change or end any policy or procedure without notice to plaintiffs. Thus, while defendant had agreed to pay, and did pay, plaintiffs for a time according to the commissions schedule attached to plaintiffs' complaint, defendant was free to unilaterally change the compensation schedule at any time. The trial court found that defendant was entitled to summary disposition on the unjust enrichment count for the same reason. Essentially the court found that there was no inequity here because defendant, in changing the compensation schedule, did only that which it was entitled to do under the terms of the employee handbook, to which plaintiffs had assented by signature.

For similar reasons, the court granted summary disposition to defendant as to plaintiffs' two remaining claims of fraud and innocent misrepresentation. The court found that there was no evidence that defendant had made a false representation; the evidence showed only that defendant promised to

pay, and did pay for a time, according to the commissions schedule, but that defendant subsequently changed the compensation schedule, as was its right.

We need not revisit the evidence which the court cited in support of these conclusions because plaintiffs do not challenge them. Instead, their only claim is that the court's opinion and order granting summary disposition did not entirely resolve the case because it did not address the equitable estoppel theory. That claim is erroneous. Equitable estoppel cannot survive on its own. "[I]t is not a cause of action and, therefore, provides no remedy such as damages." *Id.*, 707. Thus, once the court issued its opinion and order granting summary disposition as to all claims, the case was at an end.

In sum, the court's opinion and order dated March 28, 1995, disposed of all of plaintiffs' claims.

II

Plaintiffs next argue that the trial court erred in denying plaintiffs' motion for entry of judgment premised on the parties' acceptance of the mediation award because MCR 2.403(M) expressly provides that if all the parties to an action accept the mediation panel's evaluation, the court must enter judgment accordingly. This issue is actually a sub-issue of the previous issue in that the conclusion drawn as to issue I dictates the resolution of issue II. The standard of review, then, is that applicable to issue I, namely, questions of law on appeal are reviewed de novo. *Medlyn, supra*, at 340.

MCR 2.403(M)(1) states, "If all parties accept the panel's evaluation, judgment will be entered in that amount." As previously discussed, the trial court's opinion and order granting summary disposition disposed of the case in its entirety. Thus, the parties' purported acceptance of the mediation award, which came after the court issued its opinion and order granting summary disposition, was ineffectual because the case had already been dismissed.[1]

In sum, the trial court did not err in denying plaintiffs' motion for entry of judgment premised on the parties' acceptance of the mediation award because that acceptance came after the court had already disposed of the case in its entirety.

Affirmed.

/s/ Robert P. Young
/s/ Peter D. O'Connell
/s/ Wesley J. Nykamp

[1] We would note that this case is distinguishable from *Joan Automotive Industries, Inc v Check*, 214 Mich App 383; 543 NW2d 15 (1995), in which this Court ruled that the summary disposition of a claim does not, in and of itself, remove that claim from the purview of a mediation panel. In *Joan*, the trial court dismissed several claims but left one claim standing. We held that absent a showing that fewer than all issues were submitted to mediation, all claims were presumed to have been evaluated by

the mediation panel. Thus, this Court was not presented with a situation, as in the present case, where *all* of a parties' claims were summarily dismissed.