STATE OF MICHIGAN

COURT OF APPEALS

BARTLETT BUILDERS, INC.,

Plaintiff/Counterdefendant-Appellee,

v

STONE RIDGE ENTERPRISES, RICHARD T. MILLER, LARRY SNYDER, and BEN LERNER,

Defendants/Counterplaintiffs-Appellants.

UNPUBLISHED
March 7, 1997

No. 191192
Midland Circuit Court
LC No. 95-004687-CH

Before: Griffin, P.J., and McDonald and C. W. Johnson*, JJ.

PER CURIAM.

Defendants appeal as of right an order of the circuit court rescinding a portion of an option contract. We affirm.

Plaintiff purchased an option to buy five lots in defendants' subdivision. Before plaintiff signed the agreement, defendants furnished plaintiff with subdivision maps which depicted a closed storm sewer across some of the lots. Thereafter, however, the Michigan Department of Natural Resources (DNR) compelled abandonment of the enclosed storm sewer plan by requiring an open drainage ditch. Further, before the option expired, the subdivision plan underwent several other changes, including wetland mitigation and alterations in the position and size of some lots.

After defendants refused to refund the price of the options, plaintiff brought this suit for rescission. Plaintiff claims that, due to changes in the subdivision plan, defendants could not deliver the property as described. The trial court found that plaintiff could not have reasonably foreseen that the drainage ditch that borders lots 15 and 32 would be unenclosed. Hence, the trial court rescinded the option contract as to lots 15 and 32 on the basis that defendants were unable to deliver the lots in the condition for which plaintiff had bargained. However, the trial court refused to rescind the options on lots 2, 17, and 40 because it found that the changes to those lots were foreseeable. Finally, the trial court extended plaintiff's deadline for exercising the options on lots 2, 17, and 40 by sixty days.

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

On appeal, defendants claim that the trial court abused its discretion in admitting into evidence the site plans defendants showed plaintiff before the options were signed. We disagree. Defendants waived this issue by stipulating to the admission of this evidence at trial. *Booth Newspapers, Inc v Univ of Michigan Bd of Regents,* 444 Mich 211, 234; 507 NW2d 422 (1993); *Detroit v Larned Associates,* 199 Mich App 36, 38; 501 NW2d 189 (1993). Further, we note that the contract identified the relevant properties through reference to site plans. Thus, the site plans were necessary to interpret the contract and therefore the trial court properly admitted them into evidence. See, generally, *Schmude Oil Co v Omar Operating Co,* 184 Mich App 574, 580; 458 NW2d 659 (1990).

Defendants next argue that the trial court erred in rescinding the contract on lots 15 and 32. Defendants contend that the option was a mutual gamble, with plaintiff's only recourse being to not exercise the option when defendants could not sell lots 15 and 32 as represented. We disagree. An option is a contract. Restatement Contracts, 2d, § 25. In the present case, defendants promised they would sell plaintiff five specific lots. Plaintiff paid for the option to either buy or not buy these lots within a specified time. A material breach occurred when the lots changed such that defendants could not deliver lots 15 and 32 in substantially the same condition as promised. Rescission is the appropriate remedy where a material breach affects a substantial or essential part of an option contract. *Walker & Co v Harrison,* 347 Mich 630, 635; 81 NW2d 352 (1957); *Holtzlander v Brownell,* 182 Mich App 716, 712; 453 NW2d 295 (1990). A breach is material if the nonbreaching party does not obtain the benefit for which he reasonably expected. *Holtzlander, supra* at 722.

The trial court did not clearly err in finding that the change in plans regarding the open drainage ditch was not reasonably foreseeable and precluded defendants from delivering lots 15 and 32 in their bargained-for condition. Plaintiff's president, Mark Bartlett, testified that, before purchasing options on lots 15 and 32, he was shown site plans depicting an enclosed drain, not an open ditch. Bartlett testified that he did not anticipate any changes in the plan for an enclosed drain. Further, Bartlett testified that an uncovered drainage ditch makes lots 15 and 32 unmarketable. Because the unanticipated change in condition diminished the value of the investment property, plaintiff was unable to obtain the benefit it reasonably expected. Therefore, the breach was material, affected an essential part of the contract, and the trial court correctly rescinded the options on lots 15 and 32. See *Gray v Pann,* 203 Mich App 461, 464; 513 NW2d 154 (1994).

Affirmed.

/s/ Richard Allen Griffin
/s/ Gary R. McDonald
/s/ Charles W. Johnson