STATE OF MICHIGAN

COURT OF APPEALS

DENNIS COOPER and VIRGINIA COOPER,

Plaintiffs/Counterdefendants-Appellants,

v

SCOTT E. SHELDON and SANDRA SHELDON,

Defendants/Counterplaintiffs-Appellees.

UNPUBLISHED
May 27, 1997

No. 191741
Gratiot Circuit County
LC No. 95-003335-CH

Before: Michael J. Kelly, P.J., and Wahls and Gage, JJ.

PER CURIAM.

Plaintiffs appeal by right from an order of summary disposition for defendants pursuant to MCR 2.116(C)(10). We affirm.

Plaintiffs owned real property that they had originally purchased while it was still subject to a purchase option held by defendants. When plaintiffs later sought to sell the property to a third party, the third party refused to complete the transaction so long as defendants' option still encumbered the property. Plaintiffs therefore requested defendants to either exercise or release their option, and, when defendants initially refused to do either, plaintiffs brought a declaratory judgment action alleging, inter alia, that defendants had thereby clouded plaintiffs' title.

We initially note that purchase options such as that held by defendants have long been recognized in Michigan, and are not improper restraints on the alienation of real property. See, e.g., *Lantis v Cook*, 342 Mich 347, 358; 69 NW2d 849 (1955) (An "ordinary . . . option is not regarded as a direct restraint on alienation and is everywhere held valid even though it specifies a fixed price . . . ."); see also *Bowkus v Lange*, 196 Mich App 455, 460; 494 NW2d 461 (1992), rev'd on other grounds 441 Mich 930 (1993) ("An option is a mere offer that may ripen into a binding bilateral contract upon a reasonable acceptance of the terms recited therein."). Therefore, "[o]ptions are . . . excluded specifically from the coverage of the Restatement of Property regarding restraints on alienation . . . . [T]he primary purpose of an option is to enable a particular person to buy, not to prevent anyone from selling." Anno: *Independent option to purchase real estate as violating rule against perpetuities or restraints on alienation*, 66 ALR3d 1294, § 4, p 1307. As such, the trial

court properly granted summary disposition for defendants on this issue. *Taylor v Lenawee Co Bd of Co Rd Comm'rs*, 216 Mich App 435, 437; 549 NW2d 80 (1996).

We note and reject plaintiffs' contention that defendants' refusal to exercise their option upon plaintiffs' initial demand served as an "alienation" of plaintiffs' property.[1] Plaintiffs knew fully well that their property was encumbered by defendants' purchase option when plaintiffs originally bought it. Although defendants' refusal to exercise or release their option later effectively prevented plaintiffs from selling their property to a particular buyer, such result was certainly contemplated by the substance of the bargain plaintiffs struck when they purchased the encumbered property.

Further, we find no merit to plaintiffs' contention that defendants were not entitled to specific performance of their option when, in their answer to plaintiffs' instant complaint, defendants stated that they thereby exercised the option and were prepared to tender the option price. In so stating, defendants were ready, willing, and able to perform the contract in its entirety. The law requires no more. *Bowkus*, *supra* at 460.

Affirmed. Defendants having prevailed, they may tax costs pursuant to MCR 7.219.

/s/ Michael J. Kelly
/s/ Myron H. Wahls
/s/ Hilda R. Gage

[1] We believe plaintiffs use the term "alienation" to mean something synonymous with "restraint" or "clouding title."