

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JEAN BROWN MADARAS,

Plaintiff-Appellee,

v

J. PAUL BEITLER, JR., PENNY P. BEITLER,  
LAKE MICHIGAN RECREATIONAL TRUST, and  
ALVIN CHARLES KATZ, Trustee,

Defendants-Appellants.

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UNPUBLISHED  
October 31, 1997

No. 198218  
Emmet Circuit Court  
LC No. 93-002434-CH

Before: Griffin, P.J., and Wahls and Gribbs, JJ.

PER CURIAM.

Defendants appeal by right from a judgment for plaintiff. Plaintiff alleged that defendant J. Paul Beitler, Jr. breached his fiduciary duty as agent for a joint venture of which plaintiff was a member when he bought property along the Lake Michigan shoreline for defendants that the joint venture sought to acquire for its members, whose properties adjoined the parcel. The trial court found that a continuing joint venture was reached by agreement of the members to buy the property at the best possible price and to have Beitler act as their sole spokesperson and negotiator. As a result of this finding, the court concluded that Beitler breached his fiduciary duty to plaintiff when he purchased the portion of the property adjoining plaintiff's lot on behalf of the Lake Michigan Recreational Trust, which is controlled by Beitler and his wife, Penny P. Beitler, without providing plaintiff with prior notice or opportunity to obtain the parcel herself. The trial court imposed a constructive trust on the property in favor of plaintiff, but declined to specify the amount plaintiff was to pay defendants because the court found the evidence at trial to be insufficient to determine the value of the property. When the parties could not arrive at a settlement, an evidentiary hearing was held to resolve the issue. The court subsequently determined that the value of the portion of the property adjoining plaintiff's lot was \$7,370 and ordered plaintiff to pay defendants that amount plus her proportionate share of stipulated amounts for taxes, closing costs and interest, for a total of \$8,467.23. We affirm.

Defendants argue that that trial court clearly erred when it found that a joint venture had been formed because the parties to the venture failed to have a meeting of the minds with regard to the scope and duration of the venture. Defendants also claim that, if a joint venture was formed at all, the evidence

at trial showed that Beitler was only authorized to represent the joint venturers with regard to their first offer on the property and that the joint venture ended when that offer was rejected. We disagree.

Whether the adjacent property owners entered into a joint venture is a question of fact that is reviewed for clear error. *Schmude Oil Co v Omar Operating Co*, 184 Mich App 574, 580; 458 NW2d 659 (1990). A finding is clearly erroneous if the reviewing court is left with the definite and firm conviction that a mistake has been made. *Id.* Whether there has been a meeting of the minds is judged by an objective standard that looks to the words and visible conduct of the parties at the time the agreement is made. *Kamalnath v Mercy Memorial Hospital Corp*, 194 Mich App 543, 548; 487 NW2d 499 (1992). Similarly, an individual's acts and conduct in relation to the enterprise determine whether that individual is a party to a joint venture and the scope of his involvement. *Van Stee v Ransford*, 346 Mich 116, 133; 77 NW2d 346 (1956).

The trial court's conclusion with regard to the scope and duration of the joint venture is supported by Beitler's testimony that the initial offer was a "starting point" and by his letters to the group indicating that Beitler continued negotiating on behalf of the group after the initial offer had been rejected. As the trial court noted, Beitler's letters repeatedly asked the group to maintain the "code of silence" by refusing to deal individually with the seller. Although on October 12, 1987, both offers had been rejected, Beitler wrote that he felt obliged, as spokesperson for the group, to reject an offer to sell him a 150 foot portion of the property. Beitler's letter of November 6, 1987 suggests that the group continue to wait out the seller and that their joint venture would be continuing at least until further notice or until July of 1988, when the group would again meet at Beitler's invitation. Beitler's last communication to the group in December 1987 gave no indication that he was discontinuing his efforts on behalf of the joint venture.

All the parties to the joint venture other than Beitler honored their agreement to avoid dealing with the seller until after Beitler signed the purchase agreement for part of the property in July of 1988. Defendants do not challenge the court's finding that each member of the group maintained the "code of silence" as requested by Beitler, in effect contributing their individual negotiating power to the group. Each of the parties to the joint venture expected to profit from the venture by acquiring the property for a lower price. In addition, had Beitler been able to negotiate an agreeable price, each member of the group agreed to contribute the cost of their share of the purchase price of the property and expenses incurred in the purchase. Consequently, the trial court's finding that the members of the group had entered into a joint venture was not clearly erroneous.

Defendants also argue that there was no joint venture formed because Beitler did not expect to profit from the venture. However, as Beitler admitted at trial, a successful purchase of the property by the adjoining landowners would have allowed Beitler to resolve the former owners' claim to an easement across his property to provide access to the landlocked parcel without resort to litigation and without purchasing the property himself. Therefore, this argument is without merit.

Moreover, we do not find that Beitler's offer to the group to personally make up the \$30,000 difference between the first and second offers requires reversal of the court's decision. Although some witnesses were equivocal with regard to the extent of Beitler's authority to negotiate, issues of credibility are for the trier of fact to resolve. *McCart v J Walter Thompson Co*, 437 Mich 109, 126; 469

NW2d 284 (1991). Consequently, we are not left with a definite and firm conviction that the trial court made a mistake when it determined that the purpose of the joint venture was to purchase the property at the best possible price. *Schmude Oil Co, supra* at 580.

Defendants argue that the trial court clearly erred when it determined that Beitler breached his fiduciary duty to plaintiff when he purchased the property on behalf of the trust without first notifying plaintiff that his efforts on behalf of the joint venture had ended. We disagree. While membership in a joint venture requires the highest degree of loyalty from all participants, the heaviest burden falls on the manager of the enterprise. *Schmude Oil Co, supra* at 584. The trial court's conclusion that Beitler breached his fiduciary duty to plaintiff was supported by the record. Beitler's bad faith is evidenced by his rejection of plaintiff's subsequent offer to purchase the portion of the property adjoining her lot, despite his original statement to the group that he did not want to acquire any property. Furthermore, another member of the group stated that Beitler told him in July of 1988 that negotiations were still ongoing, even though Beitler had at that time attempted to purchase the property himself. Consequently, this issue does not provide grounds for reversal.

Defendants next claim that the trial court erred in imposing a constructive trust on the property in favor of plaintiff. However, a constructive trust is the traditional equitable remedy for property that has been wrongly acquired. *Kent v Kline*, 352 Mich 652, 656; 91 NW2d 11 (1958); *In re Swantek Estate*, 172 Mich App 509, 517; 432 NW2d 307 (1988). We conclude that, under the circumstances presented in this case, the trial court's imposition of a constructive trust was justified.

Defendants also assert that the trial court's valuation of the property was unreasonable. The trial court found defendants' appraisal irrelevant because the estimate was based on "preliminary research" and valued the property as of July 1996 rather than the date of the wrongful acquisition of the property by defendants in 1988. This determination was not error because a constructive trust relates back to the date of the wrong. 76 Am Jur 2d, Trusts, § 204, p 232. The court found plaintiff's appraiser's valuation to be more persuasive because it used the 1988 sales of the adjoining portions of the property as comparables and took into account differences such as depth, size and accessibility. As noted previously, issues of credibility are for the trier of fact to resolve. *McCart, supra* at 127. Consequently, the court's decision with regard to the value of the property was not clearly erroneous.

Finally, defendants challenge the trial court's decision not to require plaintiff to contribute to the cost of title insurance because the insurance policy was of no benefit to plaintiff. Because defendants have not shown that plaintiff was one of the named insureds on the title insurance policy taken out by defendants, there is no basis for a finding of error.

Affirmed.

/s/ Richard Allen Griffin  
/s/ Myron H. Wahls  
/s/ Roman S. Gribbs