STATE OF MICHIGAN

COURT OF APPEALS

PATCO SALES & SERVICE, INC.,

Plaintiff/Counter-Defendant-Appellee/Cross-Appellant,

v

DESMER G. WALCH,

Defendant/Counter-Plaintiff-Appellant/Cross-Appellee,

v

PAT BROWN and KIM BROWN, jointly and severally,

Third-Party Defendants-Appellees/Cross-Appellants.

UNPUBLISHED
November 21, 1997

No. 196323
Newaygo Circuit Court
LC No. 92-013107 CK

Before: Smolenski, P.J., and MacKenzie and Neff, JJ.

PER CURIAM.

Defendant Desmer Walch appeals as of right from an order allowing him to set off a prior judgment against him by $11,405 plus interest. We affirm.

The facts of this case were set out in this Court's previous opinion, *Patco Sales & Service, Inc v Walch,* unpublished opinion per curiam of the Court of Appeals, issued May 23, 1995 (Docket Nos. 160350 and 166563):

> This action arises out of various transactions between family members and a family-owned corporation. Plaintiff Patco is owned by third-party defendant Pat Brown, whose wife, Kim Brown, is defendant Walch's daughter. Pat Brown, with the

help of Walch, formed Patco to manufacture a lubrication product. Brown sold the product, Walch oversaw its manufacture, and the corporation's bookkeeper, Sandra Kilbourne, oversaw the business transactions for the corporation. Brown, Walch, and Kilbourne were Patco's first officers. These officers were provided with company-paid health insurance. Additionally, from 1985 until 1989, Patco paid Walch a total of $135,320 in advisory fees.

In 1984, Walch desired to raise some cash so he decided to sell a 160-acre piece of property with a 25-acre lake on it, referred to as the Brandt Lake property. The Browns desired to purchase Brandt Lake and offered Walch $100,000 for it. Ultimately, however, in 1984, Walch gave the Browns a $25,000 promissory note, upon which Walch was the promisor, which note was secured by a mortgage on the Brandt Lake property. The Browns never personally paid Walch the $25,000, but Patco did pay Walch $25,000 at approximately the same time for his advisory services for the previous four years because Walch had not taken any compensation since Patco had been formed in July 1980. The $25,000 payment by Patco was duly reported to the Internal Revenue Service as income and Patco did claim it as a deduction for the payment of salaries or wages.

In 1986, Walch delivered a deed for Brandt Lake to the Browns. The deed showed the Browns paid $40,000 for Brandt Lake and the deed was duly recorded. In 1987, Patco loaned $76,500 to Walch, which debt was subsequently reduced to $66,995, but Walch failed to make the required payment on March 10, 1990.

In January 1991, Patco stopped paying Walch's health insurance premiums and required Walch to pay a $2,900 premium. Later that year, Patco canceled Walch's group coverage altogether.

On January 29, 1992, Patco instituted the present suit, seeking payment of the 1990 and 1991 installments on the promissory note plus accumulated interest. Walch answered, denying liability and claiming setoff for the $100,000 he claimed was owed for the Brandt Lake property. An amended complaint was thereafter filed, adding additional counts for various other sums which plaintiff claims were owed it by defendant.

The trial court determined that Walch was liable to Patco for a total of $28,863.30 ($15,000 on the 1987 note plus $11,702.60 interest, and $2,160.70 for 1991 insurance premiums), and that Walch was not entitled to a setoff. In our previous opinion, this Court affirmed the determination that Walch was liable on the 1987 note. Regarding Walch's setoff claim, this Court held that the claim was enforceable, but that the setoff could not exceed the $40,000 purchase price reflected in the deed granting the Brandt Lake property to the Browns.

On remand, the trial court concluded that the amount of setoff should be $11,405 plus interest. In reaching this figure, the court began with the $40,000 purchase price recited in the deed conveying the Brandt Lake property. The court then deducted $25,000, the unpaid amount of the 1984 promissory note to the Browns, leaving a remainder of $15,000. From this amount, the court further deducted interest due on the 1984 promissory note up to February 26, 1986 – $2,528 – and the 1985 real estate tax bill in the amount of $1,067.

On appeal, Walch essentially argues that the trial court erroneously reduced his setoff by $25,000, the amount of the November 29, 1984 promissory note payable to the Browns, because the evidence showed that the Browns never loaned him the $25,000. The trial court ruled that equity required that Walch be bound by the terms of the promissory note. We agree with the trial court.

A party seeking the aid of equity must come in with clean hands. *Stachnik v Winkel*, 394 Mich 375, 382; 230 NW2d 529 (1975). This means that a court will not grant equitable relief to a party who has acted inequitably or in bad faith with respect to the matter at issue. *Id*. Moreover, a court will not adjust the equities between wrongdoers. See *Gage v Gage*, 36 Mich 229, 230 (1877) (observing that "[c]ourts cannot occupy themselves with adjusting equities between wrongdoers"). When the parties engaged in acts for an unlawful purpose, "[t]hey will be left by the Court in the situation in which they have placed themselves." *Weller v Weller*, 344 Mich 614, 623; 75 NW2d 34 (1956).

The trial court found that because the parties had used the 1984 promissory note in an attempt to evade taxes, they had unclean hands and should be liable according to the written provisions of the documents. We agree. Accordingly, guided by principles of equity, we conclude that the trial court did not err when it found that Walch was obligated by the November 29, 1984 promissory note, and therefore affirm the reduction of Walch's setoff by a corresponding amount.

Walch next contends that the court erred in ordering him to pay interest on the $25,000 debt. Under MCL 600.6013; MSA 27A.6013, interest on money judgments accrues from the date that the complaint was filed, and imposition of interest is mandatory. *Hadfield v Oakland Co Drain Comm'r*, 218 Mich App 351, 357; 554 NW2d 43 (1996). Having properly found Walch liable on the $25,000 promissory note, the court was obligated by MCL 600.6013; MSA 27A.6013 to impose interest on the judgment. *Hadfield*, *supra* at 357.

Patco and the Browns contend that the court erred in refusing to reduce the setoff by $42,000 that they had previously loaned to Walch. They arrive at the $42,000 figure by adding two loans made to Walch in 1981 and 1982, as well as advisory fees paid to Walch by Patco in 1985 and 1986. We find no error. Any claims related to the 1981 and 1982 loans were time-barred. As for the 1985 and 1986 advisory fees, we agree with the trial court's equity-based decision not to recast these payments as loans. Thus, we conclude that the trial court did not err when refusing to reduce Walch's setoff by $42,000.

Finally, Patco and the Browns claim that the ceiling on Walch's setoff should have been $20,000, not $40,000, due to the fact that he only owned a one-half interest in the property. Patco and

the Browns assert that the other one-half interest is owned by Walch's wife, and that he should not be given credit for an amount that is not legally due him. We conclude that any attempt to adjust the set-off in this manner would make equitable relief cumbersome and unworkable. Given all the competing equities in this case, we find that the remedy fashioned by the trial court was fair and just.

Affirmed.

/s/ Michael R. Smolenski
/s/ Barbara B. MacKenzie
/s/ Janet T. Neff