

STATE OF MICHIGAN
COURT OF APPEALS

SAMI TAKI and SHOWBIZ VIDEO
CORPORATION,

UNPUBLISHED
May 4, 2001

Plaintiffs-Appellees,

v

No. 219307
Wayne Circuit Court
LC No. 97-723927-CB

GHASSAN HAMI and TAKI-HAMI
PARTNERSHIP,

Defendants-Appellants.

Before: Murphy, P.J. and Hood and Cooper, JJ.

PER CURIAM.

Defendants appeal as of right from a final order of dismissal¹ and raise an issue pertaining to the trial court's earlier order granting partial summary disposition in favor of plaintiffs. We affirm.

Defendants argue that the trial court erred by granting summary disposition in favor of plaintiffs, thereby ordering dissolution of the partnership. We disagree. We review a trial court's grant or denial of a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When reviewing a motion for summary disposition under MCR 2.116(C)(10), this Court considers the affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties in the light most favorable to the nonmoving party. *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (1998). A motion for summary disposition under MCR 2.116(C)(10) is properly granted if there is no genuine issue of material fact, entitling the moving party to judgment as a matter of law. *Id.*

The Uniform Partnership Act ("UPA"), MCL 449.1 *et seq.*; MSA 20.1 *et seq.*, allows a trial court to dissolve a partnership, on application by a partner, for specific, enumerated reasons. MCL 449.32(1); MSA 20.32(1) provides, in pertinent part:

¹ Defendant's earlier claim of appeal and motion for stay pending appeal were dismissed for lack of jurisdiction because the November 13, 1997 order of which defendant complains was not a final order (No. 208252, August 12, 1998.)

(1) On application by or for a partner the court shall decree a dissolution whenever:

* * *

(b) A partner becomes in any other way incapable of performing his part of the partnership contract,

(c) A partner has been guilty of such conduct as tends to effect prejudicially the carrying on of the business,

(d) A partner wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him,

* * *

(f) Other circumstances render a dissolution equitable;

Plaintiffs moved for summary disposition pursuant to the above subsections of MCL 449.32(1); MSA 20.32(1), however, the trial court failed to specify the basis for its grant of plaintiffs' motion.

As stated above, dissolution under MCL 449.32(1)(b); MSA 20.32(1)(b) requires that a partner be incapable of performing his duties under the partnership contract. There was no evidence that Ghassan Hami was incapable of performing his duties under the contract. While there was some disagreement as to whether Sami Taki or Hami was acting as the managing partner of the Taki-Hami Partnership ("partnership"), no evidence was presented that Hami was *incapable* of acting as the managing partner as specified in the partnership agreement. Therefore, dissolution under subsection (b) would have been inappropriate.

Plaintiffs also moved for summary disposition under MCL 449.32(1)(c); MSA 20.32(1)(c), on the basis that Hami had been guilty of conduct which prejudicially affected the carrying on of the business. Plaintiffs presented evidence that, on one occasion, Hami planned to meet with Taki and was carrying a firearm to the meeting, and that such conduct made Taki fearful of potential violence on behalf of Hami. Plaintiffs also presented evidence that such acrimony and dissension developed between Taki and Hami that they were unable to continue operating Showbiz Video Corporation ("Showbiz") together, they had filed three lawsuits against each other within a two-year period, and they were unable to communicate with each other, except through their attorneys. Plaintiffs presented further evidence that Hami attempted to evict both Showbiz and Hungry Stallion Pizzeria ("Stallion") from the partnership's premises for failure to pay rent directly to the partnership, despite the fact that the tenants had paid one-half of the rent to Hami and one-half to Taki for approximately two years without objection. In his affidavit, Taki stated that Hami's attempt to evict the tenants was unjustified from a business perspective and that Hami had not discussed the matter with Taki before taking such action.

Once plaintiffs supported their motion for summary disposition with documentary evidence, defendants had the duty to rebut plaintiffs' evidence with documentary evidence of their own, creating a genuine issue of material fact for trial. *Quinto v Cross & Peters*, 451 Mich 358, 371; 547 NW2d 314 (1996). Defendants failed to present any evidence rebutting the documentary evidence produced by plaintiffs. Although Hami's affidavit contended that no agreement had been entered into altering the requirement that Showbiz and Stallion pay monthly rent directly to the partnership, Hami failed to rebut plaintiffs' contention that the tenants had paid him individually one-half of the monthly rent for approximately two years without his objection. In fact, plaintiffs produced evidence that Hami cashed each rent check for Stallion without objection. Therefore, because plaintiffs presented sufficient evidence that Hami's conduct prejudicially affected the carrying on of the business, and defendants failed to rebut plaintiffs' evidence, dissolution under MCL 449.32(1)(c); MSA 20.32(1)(c) was proper.

Plaintiffs also moved for summary disposition on the basis of MCL 449.32(1)(d); MSA 20.32(1)(d), requiring that a partner willfully or persistently commit a breach of the partnership agreement, or otherwise conduct himself in matters pertaining to the partnership such that it is not reasonably practicable to carry on the business in partnership with that partner. While the partnership agreement specified that Hami was the managing partner, some disagreement existed as to whether Hami or Taki had actually performed the duties of the managing partner. Because defendants presented evidence rebutting plaintiffs' contention that Hami had breached the above provision of the partnership agreement, summary disposition on this basis was inappropriate.

While a genuine issue of material fact existed as to whether Hami willfully or persistently breached the partnership agreement, dissolution under MCL 449.32(1)(d); MSA 20.32(1)(d) was also proper if Taki was able to show that, as a result of Hami's conduct, it was not reasonably practicable to carry on the business of the partnership. Although numerous courts, including this Court, have addressed the issue of "reasonable practicability" with respect to the dissolution of partnerships, that term has yet to be defined.² Unless a term is defined by the statute, it is to be given its plain and ordinary meaning, taking into account the context in which the words are used. MCL 8.3a; MSA 2.212(1); *Western Michigan University Bd of Control v Michigan*, 455 Mich 531, 539; 565 NW2d 828 (1997); *Ryant v Cleveland Twp*, 239 Mich App 430, 434; 608 NW2d 101 (2000). If the statute provides its own glossary, the term in question must be applied as expressly defined. *Ryant, supra* at 434. Otherwise, a court may consult dictionary definitions to ascertain the meaning of the particular term. *Id.*

The UPA does not define "reasonably practicable," therefore, the term is to be given its plain and ordinary meaning and dictionary definitions may be consulted. *Western Michigan University, supra* at 539; *Ryant, supra* at 434. "Reasonable" is defined as, "agreeable to or in accord with reason," "logical," and "not excessive." Random House Webster's College Dictionary (1997). In addition, "practicable" is defined as "capable of being done or put into practice with the available means," "feasible," and "capable of being used." Random House

² See *Band v Livonia Associates*, 176 Mich App 95, 114; 439 NW2d 285 (1989); *Sriram v Preferred Income Fund III Limited Partnership*, 22 F3d 498, 501-502 (CA 2, 1994); *Cobin v Rice*, 823 F Supp 1419, 1426 (ND IN, 1993).

Webster's College Dictionary (1997). Therefore, in accordance with the above definitions, "reasonably practicable" may properly be defined as capable of being done logically and in a reasonable, feasible manner. Accordingly, to overcome plaintiffs' motion for summary disposition on the basis of MCL 449.32(1)(d); MSA 20.32(1)(d), defendants had to prove that the business of the partnership was capable of being completed logically and in a reasonable, feasible manner despite Hami's conduct.

The evidence showed that it was not possible to complete the business of the partnership in a logical, reasonable and feasible manner. Taki and Hami had not spoken to each other since 1995, except through their attorneys, and had filed three lawsuits against each other. Because of their inability to operate Showbiz together, and pursuant to the settlement of one of the lawsuits, Hami sold all of his interest in the corporation to Taki. Thereafter, Hami, on behalf of the partnership, attempted to evict Showbiz and Stallion from the partnership's premises without any notice or consultation with Taki and despite the fact that both tenants were paying the fair market rental value for the property. In addition, Taki was fearful of violence because Hami was carrying a firearm when he was planning on meeting with Taki. The above unrebutted evidence clearly established that it was not possible to carry out the business of the partnership logically and in a reasonable, feasible manner. Therefore, the trial court's order granting dissolution of the partnership on the basis of subsection (d) was appropriate.

Finally, plaintiffs also moved for summary disposition pursuant to MCL 449.32(1)(f); MSA 20.32(1)(f), involving other circumstances which make dissolution equitable. Given the acrimonious relationship and dissension between Hami and Taki, equitable dissolution of the partnership was appropriate. See *Cobin v Rice*, 823 F Supp 1419, 1426 (ND IN, 1993). Because plaintiffs' presented sufficient evidence to justify dissolution of the partnership under MCL 449.32(1)(c), (d), and (f); MSA 20.32(1)(c), (d), and (f), the trial court's grant of plaintiffs' motion for summary disposition was proper. If, and to the extent that, the trial court granted dissolution under MCL 449.32(1)(b); MSA 20.32(1)(b), this Court will not reverse a trial court's order if it reached the correct result for the wrong reason. *City of Detroit v Presti*, 240 Mich App 208, 214; 610 NW2d 261 (2000).

Affirmed.

/s/ William B. Murphy

/s/ Harold Hood

/s/ Jessica R. Cooper