

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

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RONALD W. LEITGEB,

Plaintiff-Appellant,

v

TROY S. FARAH,

Defendant-Appellee.

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UNPUBLISHED  
December 2, 2003

No. 242111  
Genesee Circuit Court  
LC No. 00-068737-CK

Before: Sawyer, P.J., and Griffin and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. The court concluded that certain language in a purchasing agreement between plaintiff and defendant could not be interpreted as protecting plaintiff's interest in certain escrow monies. We affirm the trial court's order, but for different reasons.

In 1990, plaintiff owned an apartment building in the City of Flint ("City") that was destroyed by a fire. Pursuant to MCL 500.2834, twenty-five percent of the insurance proceeds were placed in an escrow fund with the City to ensure the repair or demolition of the building. If plaintiff completed the work, then the funds would be returned to him. In the event that plaintiff failed to repair or demolish the building, these funds would become available to the City to cover the cost of having the work completed. In 1994, plaintiff sold the building, still in its state of disrepair, to defendant. One of the provisions in the purchasing agreement provided:

11. Purchaser acknowledges that it is receiving no interest whatsoever in the "fire" related funds held by the City of Flint and Allied Adjusters and Appraisers, that it is purchasing the property for the purpose of demolishing the building and creating parking space and that it will obtain permits immediately after closing.

Unbeknownst to plaintiff, defendant was acting as the agent for an undisclosed principal, and, within an hour of the closing, defendant had sold the building to the undisclosed principal for a \$10,000 profit.

In 1995, the building was demolished and the City remitted the escrow funds to the demolition contractor. Even though the escrow funds were given directly to the demolition contractor, plaintiff asserted that the undisclosed principal benefited by not having to expend the

demolition cost. In October 2000, plaintiff sued defendant alleging that, according to the terms of the purchase agreement, defendant was responsible for the cost and completion of the demolition and plaintiff was to receive the escrow funds once the work had been completed. Plaintiff argued that, as the agent for the undisclosed principal, defendant was liable for the undisclosed principal's failure to abide by these terms. The trial court disagreed with plaintiff's interpretation of paragraph 11 of the purchasing agreement, concluding that the language did not state that defendant agreed to pay for the demolition, and thus, granted defendant's motion for summary disposition.

Decisions on summary disposition motions and questions of statutory interpretation are reviewed de novo by this Court. *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 62; 642 NW2d 663 (2002). Plaintiff argues that the contractual language clearly evinces his intent to protect his interest in the escrow funds by having defendant demolish the building. Defendant agrees that the language is unambiguous, but argues that it clearly does not state that defendant was agreeing to pay for the demolition. Defendant further argues that, even if the contract was read as such, plaintiff still would not be entitled to the escrow funds because a 1992 circuit court order and MCL 500.2845 clearly indicate that plaintiff's rights to the escrow funds were conditional. We agree with defendant's alternative argument, which renders the issue of purchase agreement's interpretation irrelevant.

MCL 500.2845 provides, in pertinent part:

(7) If with respect to a loss, reasonable proof is not received by or shown to an authorized representative of the city, village, or township designated by the governing body of the city, village, or township within 120 days after the policy proceeds portion was received by the treasurer, the city, village, or township shall use the retained proceeds to secure, repair, or demolish the damaged or destroyed structure and clear the property in question, so that the structure and property are in compliance with local code requirements and applicable ordinances of the city, village, or township. Any unused portion of the retained proceeds shall be returned to the insured. The city, village, or township may extend the 120-day time period listed in this subsection.

By March 1992, the building had not been repaired. To effectuate this statute's provision, the Genesee Circuit Court issued an order that provided, in pertinent part:

It is further order of the Court that the City of Flint may, if repair or demolition is not accomplished by March 27, 1993, apply said sums [\$30,274.20] to the cost of demolition thereafter returning to the Defendant, Ronald Leitgeb, any unused portion of same, less interest earned and costs.

It is undisputed that plaintiff did not repair or demolish the building by this deadline, rather sold the building to defendant for demolition. The property was then to be used for parking space. Plaintiff believed as long as he caused the building to be demolished before the City contracted to do so, his rights in the escrow funds were still protected, focusing on the purchase agreement provision and the discretionary word "may" in the court order.

Although the order stated that after the deadline the City “may” apply the escrow funds to the cost of demolition, the statute uses the mandatory language of “shall.” *Roberts, supra* at 65. The primary goal of statutory interpretation is to effect the Legislature’s intent. *Id.* at 63. The purpose of MCL 500.2845 is to protect the public from the health and safety hazards damaged buildings pose by encouraging prompt action by the insured, and, if the local government is forced to act, to provide it with an alternative source of funds so that public funds need not be used to cover the repair or demolition cost. See *Detroit v Presti*, 240 Mich App 208, 210 ; 610 NW2d 261 (2000). Thus, we read MCL 500.2845(7) to mean that if the insured does not satisfactorily complete the necessary work within the established timeframe, the local government *must* use the escrow funds to pay for the necessary work and return any surplus to the insured or to whomever holds the insured’s interest. The court order was issued in accordance with MCL 500.2834(7), and, therefore, despite the court’s use of discretionary language in the order, the mandatory language of the statute controls.

In this case, the 1992 court order gave plaintiff 445 days, until March 27, 1993, to complete the repair or demolition of the building. But plaintiff took no action until he sold the building to defendant nearly 18 months after this deadline. We conclude that, as a result of plaintiff’s failure to ensure the completion of the demolition by March 27, 1993, plaintiff forfeited any right to collect the escrow funds. After March 27, 1993, the City was statutorily required to use the escrow funds to complete the demolition.<sup>1</sup> Therefore, paragraph 11 of the purchase agreement between plaintiff and defendant is a nullity. Regardless of the provision’s interpretation, it cannot protect an interest that plaintiff has already lost. Because the contract provision has no legal effect, the trial court properly granted defendant’s motion for summary disposition. MCR 2.116(C)(8). Given this conclusion, it is unnecessary to address defendant’s laches defense. Accordingly, we affirm the trial court’s ruling, albeit for a different reason. *Lavey v Mills*, 248 Mich App 244, 250; 639 NW2d 261 (2001).

Affirmed.

/s/ David H. Sawyer  
/s/ Richard Allen Griffin  
/s/ Michael R. Smolenski

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<sup>1</sup> There appears to be a question as to whether the City or the undisclosed principal contracted with the demolition contractor. But we need not address this issue because such a determination is not necessary to the proper resolution of this case.