

STATE OF MICHIGAN
COURT OF APPEALS

MARY C. BAHN and MICHAEL M. BAHN, on
his own behalf and as Representative of
MICHAEL J. BAHN, MARISA R. BAHN,
MICHAEL M. BAHN REVOCABLE TRUST,
MARY C. BAHN REVOCABLE TRUST,
RENEE C. PHILLIPS 1999 REVOCABLE
ANNUITY TRUST and MARY C. BAHN 1999
REVOCABLE ANNUITY TRUST,

Plaintiffs-Appellants/Cross-
Appellees,

v

COMPUWARE CORP,

Defendant-Appellee/Cross-
Appellant,

and

EQUISERVE and BANK ONE,

Defendants.

UNPUBLISHED
March 9, 2006

No. 258502
Oakland Circuit Court
LC No. 2002-040293-CK

Before: O'Connell, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting summary disposition in favor of defendant Compuware Corporation¹ pursuant to MCR 2.116(C)(10). Plaintiffs also appeal the trial court's denial of their June 30, 2003 motion for declaratory relief and the denial of their

¹ Defendants EquiServe and Bank One settled with plaintiffs and are not parties to this appeal. Therefore, we shall use defendant to refer solely to defendant Compuware.

September 3, 2004 motion asking the trial court to compel Bank One to release stock held in escrow to defendant. We affirm.

I. Facts and Procedural History

Plaintiffs collectively owned M.I.S. International, Inc. and two affiliated corporations, Simco International, Inc., and Autoflex, Inc. (MIS). In February of 1999, plaintiffs entered into a Merger Agreement with defendant whereby plaintiffs agreed to transfer their interests in MIS to defendant in exchange for \$31,100,000 in defendant's stock. Plaintiffs received 90% of the shares owed under the agreement at closing, but the remaining 10% of the shares were placed in escrow with Bank One² to meet plaintiffs' potential indemnity obligations under the Merger Agreement.³ As required by the Merger Agreement, defendant placed a certificate evidencing 51,092 shares of its stock in escrow with Bank One. Defendant deposited a second certificate for an additional 51,092 shares after a 2-for-1 stock split in March 1999.

In addition to MIS, plaintiffs Michael M. Bahn and Mary C. Bahn were the sole shareholders of Global Electronics, Limited (Global), which owed MIS more than 1 million dollars at the time of the merger. In order to ensure the payment of this obligation after the merger, Global executed a promissory note payable to the order of MIS for \$1,045,829.87. In addition, the Bahns executed an unconditional guaranty of the Global note for the benefit of MIS.

In February 2000, defendant submitted three claims against the escrowed shares. Two of the claims were based on alleged breaches of the Merger Agreement and one claim was based on the unconditional guaranty executed by the Bahns. Pursuant to the indemnification provisions of the Merger Agreement, defendant gave notice to Bank One that it had claims against 51,092 shares of stock held in escrow and asked that the shares remain in escrow pending resolution of the claims.

On March 9, 2000, as permitted by the Merger Agreement, plaintiffs objected to defendant's claims. On March 10, 2000, plaintiffs gave Bank One notice of their objections and requested the release of the 51,092 shares not subject to defendant's claims. On March 11, 2000, Bank One began the process of releasing the 51,092 shares to plaintiffs. Bank One sent the released stock certificate and related documents to EquiServe, defendant's transfer agent, on March 17, 2000. EquiServe signed for the packages containing the certificate and related documents on March 20, 2000. However, EquiServe was unable to account for the packages until April 24, 2000. As a result, the certificate was not reissued to plaintiffs until May 10, 2000.

² Bank One is the successor in interest to NBD Bank, which was the original escrow agent. For ease of reference, we shall use Bank One to refer to both Bank One and NBD.

³ Pursuant to the Merger Agreement, plaintiffs agreed to indemnify defendant for any losses incurred as a result of plaintiffs' breach of the Merger Agreement or any related agreement. The procedures for pursuing indemnification were governed by the Merger Agreement and a separate Escrow Agreement.

During that time, the price of the stock dropped from \$25.44 per share on March 20, 2000 to \$10.38 on May 10, 2000.

On April 3, 2002, defendant filed an action against the Bahns in the United States District Court for the Eastern District of Michigan seeking to recover over 1 million dollars under the Bahns' guaranty of the Global note. On December 5, 2002, the Federal District Court entered judgment in favor of defendant. After posting a bond, the Bahns appealed to the Sixth Circuit Court of Appeals, which affirmed the District Court's judgment on August 17, 2004. *Compuware Corp v Bahn*, 107 Fed Appx 528 (CA 6, 2004). Because defendant intended to obtain satisfaction of its judgment from the appeal bond, defendant unconditionally released its claims against the remaining escrowed shares on September 1, 2004.

On April 26, 2002, plaintiffs filed the present lawsuit against defendant, Bank One and EquiServe. In Count I of their complaint, plaintiffs alleged that defendant breached the Merger Agreement by improperly filing claims against the escrowed shares of stock. In Count II of their complaint, plaintiffs alleged that defendant breached the Merger Agreement and Escrow Agreement. Plaintiffs also claimed that Bank One and EquiServe were liable for failing to promptly transfer the escrowed shares against which no claim had been asserted. In Count III, plaintiffs claimed defendant tortiously interfered with the transfer of the escrowed shares. Finally, in Count IV of their complaint, plaintiffs alleged that defendant engaged in a series of misconduct for which they claimed they were entitled to declaratory relief. Plaintiffs asked the trial court to declare that (1) defendant may take no further steps to collect on the Global debt, (2) as a result of the wrongful conduct, defendant is not entitled to payment from the Bahns on the guaranty note, (3) defendant has elected its remedy and is precluded from attempting to collect from the Bahns, and (4) defendant wrongfully seized the escrowed shares for indemnification of the Global debt.

On May 28, 2002, defendant filed a motion for summary disposition. In its motion, defendant argued that, because the declaratory relief requested under Count IV of plaintiffs' state complaint involved the same factual and legal issues as defendant's previously filed federal complaint, summary disposition of Count IV was appropriate under MCR 2.116(C)(6). The trial court agreed and, on August 22, 2002, entered an order dismissing Count IV.

On September 26, 2002, defendant filed motions for summary disposition of plaintiffs' Counts I and III. Defendant argued that Count I should be dismissed because the act of filing a claim against the shares held in escrow could not constitute a breach of the Merger Agreement. Defendant further argued that the Merger Agreement limited plaintiffs' remedy to receipt of the stock placed in escrow, and, therefore, plaintiffs could not seek monetary damages. Defendant also argued that Count III should be dismissed because it could not tortiously interfere with a contract to which it was a party. The trial court agreed and granted summary disposition in favor of defendant as to Counts I and III.

On November 13, 2002, plaintiffs filed a motion to amend their complaint. Count I of the proposed amended complaint alleged that defendant breached the Merger Agreement by wrongfully filing claims against the stock held in escrow. Plaintiffs further alleged that, because the claims were wrongful, they were entitled to various forms of declaratory relief. Specifically, plaintiffs asked the trial court to (1) declare that defendant elected its remedies and is precluded from pursuing claims against the Bahns, (2) declare that defendant had no right to seize or

interfere with the escrowed stock, (3) release all the escrowed stock to plaintiffs, and (4) award damages for the diminution in value of the stock wrongfully held in escrow. In Count II of the amended complaint, plaintiffs alleged that defendant (1) had a duty under the Escrow Agreement to ensure that the stock was promptly reissued by its agent, and (2) was liable as an issuer for losses caused by its transfer agents unreasonable delay in reregistering the stock. In addition, plaintiffs alleged that Bank One breached the Escrow Agreement by failing to promptly transfer the stock. Under Count III of the amended complaint, plaintiffs alleged that EquiServe was statutorily liable for failing to promptly transfer the stock.

On November 27, 2002, the trial court held a hearing on plaintiffs' motion to amend the complaint. At the hearing, defendant argued that plaintiffs' proposed amended Count I still sought relief beyond the limitations imposed by the Merger Agreement and the trial court's earlier ruling. The trial court agreed, noting that it had earlier limited plaintiffs' relief under Count I to release of the stock still held in escrow. Nevertheless, the trial court issued an order permitting plaintiffs to file an amended complaint. On December 26, 2002, plaintiffs filed their amended complaint, which conformed to the proposed amended complaint except that under Count I, which was still framed as a breach of contract claim, plaintiffs limited the requested relief to release of the stock held in escrow.

On June 30, 2003, plaintiffs filed a motion for declaratory relief wherein they asked the trial court to declare that, by asserting a claim against the escrowed shares, defendant had elected its remedy with respect to amounts owed under the Global note, which was guaranteed by the Bahns, and, therefore, its sole remedy is to seek a court order releasing the escrowed shares. On October 15, 2003, the trial court held a hearing on plaintiffs' motion for declaratory relief. At the hearing, the trial court noted that defendant had not asserted a monetary claim. Hence, the trial court concluded, the requested declaratory relief was not relevant to the claims before the court. The trial court further noted that plaintiffs' obligation under the Guaranty note had been resolved by the federal court. For these reasons, the trial court denied plaintiffs' motion for declaratory relief.

On March 24, 2004, defendant filed another motion for summary disposition. On June 2, 2004, the trial court held a hearing on defendant's motion for summary disposition. The trial court determined that there was no basis on which to hold defendant liable for the breach of statutory duties imposed on EquiServe and that there was no evidence that defendant either knew of or could have discovered the delays in the transfer of the stock and, therefore, could not be held liable for the delay under the agreement. For these reasons, the trial court granted defendant's motion.

After accepting a July 26, 2004 case evaluation, plaintiffs settled with EquiServe and Bank One. EquiServe and Bank One were subsequently dismissed by stipulation of the parties on August 19 and August 25, 2004, respectively.

On September 3, 2004, plaintiffs filed a motion requesting that the trial court compel Bank One to release the stock held in escrow to defendant in full satisfaction of the federal judgment against the Bahns. At a hearing held on September 22, 2004, the trial court denied the motion, but took the matter of the disposition of the stock under advisement. On September 24, 2004, the trial court dismissed the matter pursuant to the June 2, 2004 grant of summary

disposition in favor of defendant and the subsequent dismissal of the remaining parties by stipulation. The trial court also refused to order release of the stock in escrow.

Plaintiffs then appealed as of right.

II. Jurisdiction

We shall first address defendant's argument that this Court lacks jurisdiction to review plaintiffs' claims of error, because plaintiffs failed to file their appeal within 21 days of the trial court's final order.

Whether this Court has jurisdiction to hear an appeal is always within the scope of this Court's review. *Walsh v Taylor*, 263 Mich App 618, 622; 689 NW2d 506 (2004); MCR 7.216(A)(10). This Court "has jurisdiction of an appeal of right filed by an aggrieved party from . . . [a] final judgment or final order of the circuit court" MCR 7.203(A)(1). A final judgment or final order means "the first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties" MCR 7.202(6)(a)(i).

At the June 2, 2004 hearing, the trial court granted summary disposition as to all claims against defendant, but denied the summary disposition motions filed by Bank One and EquiServe. After this hearing, Bank One and EquiServe settled with plaintiffs. Consequently, all of the claims against the various defendants had been settled or dismissed. However, as of the August 25, 2004, the trial court still had not explicitly addressed plaintiffs request for declaratory relief under Count I of their amended complaint. Furthermore, the orders dismissing Bank One and EquiServe, which were issued after the June 2, 2004 grant of summary disposition, stated that they were not final orders. Therefore, the trial court had not yet entered a final judgment or a final order that disposed of all the claims and adjudicated the rights and liabilities of all the parties. MCR 7.202(6)(a)(i). The order of September 24, 2004, is the first order that clearly and unequivocally stated that it was a final order. Because plaintiffs filed their claim of appeal on October 14, 2004, which was less than 21 days from the order of September 24, 2004, the claim of appeal was timely filed. MCR 7.204(A)(1).

III. Plaintiffs' Declaratory Motions

Plaintiffs first contend that the trial court erred when it denied their motion for declaratory relief and motion to compel the release of stock to defendant. We disagree.

This Court reviews the trial court's decision to decline to declare the rights of the parties for an abuse of discretion.⁴ *Allstate Ins Co v Hayes*, 442 Mich 56, 74; 499 NW2d 743 (1993).

⁴ Plaintiffs' argue that this motion should be reviewed de novo, citing *Taylor v Blue Cross & Blue Shield of Michigan*, 205 Mich App 644, 649; 517 NW2d 864 (1994). However, in *Taylor* this Court reviewed de novo the trial court's grant of declaratory relief. The Court did not address whether the trial court properly exercised its discretion when it elected to address the merits of the declaratory claim. See *Id.* at 646, 649. In the present case, the trial court declined to make any declarations regarding the rights and duties of the parties with regard to the
(continued...)

“The determination that a trial court abused its discretion ‘involves far more than a difference in judicial opinion.’” *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 761; 685 NW2d 391 (2004), quoting *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227; 600 NW2d 638 (1999). An abuse of discretion will only be found when an unprejudiced person considering the facts upon which the trial court based its opinion, would say that there was no justification or excuse for the ruling made. *Gilbert, supra* at 761-762.

We shall first address plaintiffs’ claim that the trial court erred when it declined to grant their June 30, 2003, motion for declaratory relief.

Throughout the proceedings before the trial court, plaintiffs repeatedly attempted to get the trial court to grant declaratory relief that would collaterally attack defendant’s attempt to enforce the guaranty entered into by the Bahns. As noted above, plaintiffs initially attempted to assert their claim for declaratory relief under Count IV of their original complaint. However, the trial court determined that Count IV involved the same claim that was the subject of the federal lawsuit initiated by defendant and, for that reason, granted summary disposition in favor of defendant pursuant to MCR 2.116(C)(6). Plaintiffs also asked the trial court to permit them to amend their complaint to restate Count I with requests for declaratory relief similar to those requested previously under Count IV. However, the trial court denied the request and specifically limited the relief under Count I to release of the escrowed shares.⁵

Having failed to assert their claims for declaratory relief other than the release of the stock in their original and amended complaints, on June 30, 2003, plaintiffs moved the trial court for declaratory relief similar to that, which the trial court had previously dismissed under Count IV and refused to permit in the amended complaint under Count I. At the October 15, 2003 hearing on the motion, the trial court denied plaintiffs’ request. In denying the motion, the trial court stated,

The Plaintiffs seek a declaration from this Court that Defendant’s sole remedy in pursuing collection of the [Global] note is the release of the escrowed stock. However, the Court would note that Count IV of Plaintiffs’ Complaint seeking declaratory relief was dismissed on August 22, 2002.

On review of the Complaint, this Court finds the Defendant does not have a claim for monetary damages in this case. And, thus, the requested declaratory relief is not relevant to the issues before the Court.

The issue of Plaintiffs’ obligation on the note and Guaranty was resolved by the federal court. . . .

(...continued)

remedies available under the Guaranty. Hence, the relevant inquiry is whether the trial court abused its discretion by refusing to grant the requested relief.

⁵ Plaintiffs have not appealed the trial court’s dismissal of Count IV pursuant to MCR 2.116(C)(6) or the trial court’s decision to limit the relief requested under amended Count I.

On appeal, plaintiffs failed to address the underlying basis for the trial court's decision not to grant plaintiffs' motion for declaratory relief (i.e. that the motion for declaratory relief was not relevant to the claims asserted by plaintiffs and was properly an issue for the federal court). When an appellant fails to dispute the basis of the trial court's ruling on a matter committed to its discretion, this Court need not consider the merits of the claim of error. *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 381; 689 NW2d 145 (2004); *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 175; 568 NW2d 365 (1997). Although plaintiffs abandoned this issue by failing to directly address the basis of the trial court's decision, we shall nevertheless address whether the trial court properly exercised its discretion.

In exercising its discretion to grant declaratory relief,

the court must keep in mind the purposes to be served by a declaration of rights. *Flint v Consumers Power Co*, 290 Mich 305; 287 NW 475 (1939). "At least one of the tests of right to resort to declaratory proceeding is the 'necessity for present declaratory judgment as a guide to plaintiff's future conduct in order to preserve its legal rights.'" *Id.* at 310, quoting *Wolverine Mutual Motor Ins Co v Clark*, 277 Mich 633, 637; 270 NW 167 (1936). Moreover, the declaratory action is appropriate where it "will 'serve some practical end in quieting or stabilizing an uncertain or disputed jural relation . . .'" 290 Mich 310, quoting *James v Alderton Dock Yards*, 256 NY 298, 305; 176 NE 401 (1931). [*Hayes, supra* at 74.]

By the time of plaintiffs' June 30, 2004 motion for declaratory relief, the only issue before the trial court concerning the stock still held in escrow was plaintiffs' claim under Count I that defendant's failed to assert a valid claim against the escrowed stock and, therefore, the trial court should order the release of the stock to plaintiffs. Although the ultimate disposition of the stock held in escrow was properly before the trial court, plaintiffs did not ask the trial court for declaratory relief directly related to the release of the stock. Instead, plaintiffs asked the trial court to declare that defendant,

having sought to pursue collection of the [Global] Note as an indemnifiable claim under the Merger Agreement and having seized Stock from Escrow in payment of the Note, has elected its remedies, and that [defendant's] sole remedy in pursuing collection of the Note is to seek a declaration from this Court that the Stock be released to [defendant,] or in the alternative, that Stock valued at \$22.1003 per share be applied in satisfaction of the Note.

As the trial court correctly noted, defendant had not asserted any claims in the action before the court and the rights and remedies of the parties to the Global note and guaranty had already been decided by the federal court. The only issue related to the Global note that was properly before the trial court was whether defendant asserted valid claims for indemnification against the stock held in escrow. Hence, in order to grant the requested relief, the trial court would have had to go beyond declaring the rights of the parties with regard to the stock held in

escrow and make declarations regarding rights and remedies already decided by a different court on a different claim. Given that the requested declarations were not necessary to guide plaintiffs' future conduct in order to preserve its legal rights and did not involve an unresolved jural relation, the trial court's decision to deny the motion did not constitute an abuse of discretion.⁶

We shall next address plaintiffs' claim that the trial court erred when it refused to grant their motion to compel the release of the stock held in escrow to defendant in full satisfaction of the Global note. Plaintiffs and defendant contend that this motion should be reviewed de novo. We do not agree. In order to clarify the applicable standard, we shall examine the nature of the motion.

As already noted, the trial court permitted plaintiffs to file an amended complaint, which restated their dismissed breach of contract claim under Count I, but limited the requested relief to a declaration that the stock still held in escrow should be released to plaintiffs. Thus, although still framed as a breach of contract claim, Count I was in reality a claim for declaratory relief premised on defendant's alleged breach of the Merger Agreement.

In March 2004, defendant filed a motion for summary disposition of all plaintiffs' claims. As to Count I, defendant argued that summary disposition was appropriate because it made a proper claim for indemnification against the stock held in escrow and, therefore, the stock should remain in escrow pending release to defendant in partial satisfaction of its federal judgment. At the June 2, 2004 hearing on this motion, the trial court did not address defendant's arguments concerning Count I, but instead concentrated solely on the portion of defendant's motion that dealt with plaintiffs' Count II. After the trial court granted summary disposition to defendant on the claims found under Count II, the following discussion occurred.

MR. VANDUSEN: You've addressed only the count dealing with [defendant's] liability for their failure to release the – timely reissue the 51,000 shares of stock, but there is a claim with respect to the shares of stock that were still in escrow[.] You have not addressed that in your ruling.

MR. WILHELM: It's the issue about whether Compuware is entitled to get all the stock out of escrow, because the value of the claim on the Guaranty exceeds the value of the stock in escrow. And, our position, we should get that in partial satisfaction of our claim on the note, which is now over a million – or the Guaranty, which is now over a million three, and their position is we're only entitled to 49,000 shares in full satisfaction of our claim.

And there's no found – their only basis for making that argument is that the contract said that when you determined the number of shares in making a

⁶ Plaintiffs might have been entitled to a declaration as to how the stock would be valued upon release to defendant for indemnification. However, at the June 2, 2004 hearing the trial court indicated that it agreed with defendant's position that the stock value was not fixed by contract and the issue eventually became moot when defendant withdrew its claims against the stock.

claim against in the first instance, you base it on a ten day average of the stock price at that time, and that's how you figure out how many shares to make a claim. They're saying that's a Guaranty that that's – that that stock will forever be deemed to have that value, on in – in finitum, don't have to worry about market declines. This Court's ruled on that issue about four times I think in this case, saying we're not liable for market declines and we're not limited in our claim.

MR. VANDUSEN: I don't know that you have, Your Honor, and that's the issue. The issue is do they get 49,000 shares, do they get 51, and if they do, how is it valued? Do we value it the date it's turned over to them? They've decline[d] the opportunity to take the stock up to this point, and so it's an ever fluctuating measure or is it, as the agreement says, you value it based on this ten day averages in the date of the claim.

THE COURT: I'm inclined to agree with Compuware on that issue.

Thereafter, the trial court held a bench conference, but did not return to the record to explain how the stock still held in escrow would be handled. On the same day, the trial court entered an order granting defendant's motion for summary disposition.

After the dismissal of Bank One and EquiServe, plaintiffs filed the present motion. In the motion, plaintiffs alleged that the parties had agreed "that implicit in the Court's order was that Bank One would release the 51,092 shares of stock held in Escrow by Bank One to [defendant]." Plaintiffs further alleged that defendant refused the court's order and would only consent to the release when the June 2, 2004 order had become a final order. In their brief in support of the motion, plaintiffs argued that, because "all the claims of the Plaintiffs against Defendants in this matter ha[ve] been resolved by Court Order or by case evaluation," the trial court should order Bank One to release the escrowed shares to defendant in full satisfaction of the Bahns' obligations under the Global note.

On September 22, 2004, the trial court held a hearing on this motion. At the hearing, the trial court summarized plaintiffs' request and noted that defendant had since informed the court that it had withdrawn its claims to the stock and intended to satisfy its federal judgment by collecting on the federal appeal bond. After hearing the parties' arguments, the trial court stated,

Let me address – let me close off this, and I understand your respective arguments. I think there are two points here. The first point is that I do not see the nexus between the State Court action and the Federal Court action in regards to the remedy which the individual successful in the Federal Court action should be imposed by this Court to accept a piece of paper in settlement of that Court of Appeals action rendered. I think, therefore, that the Plaintiff – correction – the Plaintiff in that action has the right – Compuware has the right to determine where they wish to get their resolution of that – of that case. And, therefore, I'll deny the motion. Thank you.

After this statement, the parties began to discuss the disposition of the stock.

MR. WILHELM: Your Honor, we need some clarification on that because the requested relief here is an order from Your Honor saying that Compuware gets the case in full satisfaction of the guaranty, the obligation of the guaranty, and that's exactly what Your Honor previously said you would not do to interfere with our collection on the bond on the Federal Court action.

THE COURT: I'm not – I'm not interfering, whatever you want to do on that Federal Court action, I have nothing to do with that Federal Court action. You settle whatever you want to settle. I'm just saying, someone's got to get the shares, they're in escrow. The Bank wants the relief of that burden, correct?

MR. DUNN: The bank, as escrow agent, doesn't have any direction consistent with the agreement and the agreement of the parties and –

THE COURT: So you do need that direction from me.

MR. DUNN: Yes.

THE COURT: And I'm telling you the person that won that June 2nd motion, they get the stock.

MR. WILHELM: We don't want to satisfy the Judgment you granted.

THE COURT: I don't know what – I don't know whether that stock satisfies the Judgment or not, but I know in this case I have control of the stock, I know that I've got to determine who [h]as the right to that stock. My June 2nd order made that determination that it would be Compuware.

After this exchange, defendant again pointed out that it had withdrawn its claim to the stock and asked the trial court to declare that plaintiffs were entitled to the stock still held in escrow. Finally, the trial court decided to take the arguments under advisement and issue a written order.

On September 24, 2004, the trial court issued its written order. The trial court stated that the case was dismissed in its entirety pursuant to the June 2, 2004, order granting summary disposition to defendant and the subsequent dismissals of Bank One and EquiServe. The trial court further declined to order the immediate release of the stock held in escrow, because the order was not a final non-appealable order, judgment, or award, as required by the Escrow Agreement. Finally, the trial court stated that the order resolved the last pending claim and closed the case.

Based on the trial court's statements at the September 22, 2004 hearing, it is clear that the trial court considered its June 2, 2004, order granting summary disposition in favor of defendant to have determined the rights and duties of the parties with regard to the stock still held in escrow. Understood in this light, plaintiffs' September 2, 2004 motion is actually an attempt to get the trial court to grant further relief beyond that contemplated in its June 2, 2004 order. Hence, the September 2, 2004, motion is properly considered a motion for "further necessary or proper relief based on a declaratory judgment," as contemplated by MCR 2.605(F). Because the trial court simply declined to make the requested declarations, the proper standard of review is

for an abuse of discretion. *Hayes, supra* at 74. Because plaintiffs failed to address the basis of the trial court's decision not to grant the requested relief, plaintiffs abandoned this claim of error on appeal. *Derderian, supra* at 381.

Even if plaintiffs had not abandoned this claim of error, we would find no abuse of discretion. At the hearing on the motion, the trial court made it clear that he had no intention of compelling defendant to accept the stock held in escrow as satisfaction of the federal judgment against the Bahns. The trial court also determined that, pursuant to the terms of the Escrow Agreement, it could not order the immediate release of the stock still held in escrow. Given the prior rulings on the limitation of remedies issue and the clear terms of the contract, it does not appear that the trial court abused its discretion by refusing to make further declarations concerning the rights and duties of the parties.

The trial court did not abuse its discretion when it declined to grant the relief requested in plaintiffs' motions.

IV. Contractual and Vicarious Liability Claims

Plaintiffs next contend that the trial court erred when it granted defendant's motion for summary disposition of their claims under Count II. Specifically, plaintiffs argue that the trial court failed to properly apply common law principles of vicarious liability, failed to recognize that defendant was statutorily liable as an issuer of stock, and improperly determined that defendant did not, as a matter of law, breach the duties imposed by the Escrow Agreement.

This Court reviews de novo the trial court's decision whether to grant summary disposition. *Moore v Cregeur*, 266 Mich App 515, 517; 702 NW2d 648 (2005). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Summary disposition is appropriate under MCR 2.116(C)(10) if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." When determining whether there is a genuine issue as to any material fact, the trial court must consider the evidence presented by the parties in the light most favorable to the party opposing the motion. *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003), citing *Shallal v Catholic Social Services of Wayne Co*, 455 Mich 604, 609; 566 NW2d 571 (1997); *Quinto v Cross & Peters Co*, 451 Mich 358, 369; 547 NW2d 314 (1996). "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

We shall first address defendant's argument that the only properly pleaded claim under Count II of plaintiffs' amended complaint was for breach of contract.

Under MCR 2.111(B)(1), "[t]he only requirements for stating a cause of action is a presentation of factual allegations that would reasonably inform defendants of the 'nature of the claims' against which defendants are called on to defend." *Smith v Stolberg*, 231 Mich App 256,

260-261; 586 NW2d 103 (1998); see also *Iron Co v Sundberg, Carolson & Assoc, Inc*, 222 Mich App 120, 124; 564 NW2d 78 (1997).

Under Count II of plaintiffs' amended complaint, which was titled "BREACH OF CONTRACT – COMPUWARE AND BANK ONE", plaintiffs alleged that:

47. COMPUWARE, pursuant to paragraph 4(d) of the Escrow Agreement was obligated to insure that the stock certificates would be promptly reissued to the Shareholders. Despite repeated demand, COMPUWARE's agent Equiserve delayed the share transfer until May 10, 2000 without justification or excuse.

48. COMPUWARE, as issuer, by statute, is liable for loss resulting from unreasonable delays by its transfer agent in reregistering the securities.

49. COMPUWARE sought to interfere with the orderly transfer by its acts, errors and omissions including, but not limited to, asserting that BANK ONE had no authority to transfer shares, failing to direct its transfer agent to proceed in expeditious fashion, and its failure to timely remove restrictive legends from the shares.

50. As a result of . . . COMPUWARE's failure to ensure that its transfer agent promptly reissued the stock certificates to the Shareholders, and COMPUWARE's breach of its obligations under the agreements, the Shareholders suffered substantial damages.

Although Count II is mislabeled and could be more clearly stated, the above allegations were sufficient to meet the fact-based pleading requirements imposed by MCR 2.111(B)(1). Plaintiffs adequately alleged at least two bases for imposing liability on defendant for the delayed transfer of the stock in question. First, plaintiffs alleged that defendant breached its duty under paragraph 4(d) of the Escrow Agreement. Second, plaintiffs alleged that defendant, as an issuer, could be statutorily liable for unreasonable delays in the transfer of stock by its transfer agent. Under Michigan's pleading requirements, plaintiffs were not required to cite the specific statutory provisions that imposed liability on defendant as an issuer. *Rymal v Baergen*, 262 Mich App 274, 301 n 6; 686 NW2d 241 (2004).

Although the record is not entirely clear, we also disagree with defendant's contention that the trial court only recognized the breach of contract claim. At the June 2, 2004 hearing on defendant's motion for summary disposition, the trial court initially summarized Count II as only containing a breach of contract claim, but later noted that plaintiffs also alleged that defendant "was liable for its own statutory duties as well as those of its agent, Equiserve." Therefore, these claims are properly before this Court.

Under the common law, a corporation had a duty to make formal transfers of stock upon its books at the request of a transferee entitled to the shares. *Leff v N Kaufman's, Inc*, 342 Pa 342, 347; 20 A2d 786 (1941); 18A Am Jur 2d, Corporations, § 407, p 281. "Further, upon the refusal of the corporation, upon demand, to issue a certificate of stock to the person entitled thereto, the latter may at his or her election bring an action at law against the corporation for damages, treating the wrongful refusal to so issue the certificate as a conversion, or a suit in

equity to compel the corporate officers to execute and deliver a proper certificate.” 18A Am Jur 2d, Corporations, § 407, p 281. In order to ensure that the transfer of stock is properly safeguarded, corporations have long employed the services of registrars or transfer agents to handle their stock transfers. *Muffat v Detroit-Macomb Land Co*, 252 Mich 692, 696; 234 NW 148 (1931). However, under the common law, a transfer agent could not be directly liable to the transferee for delay in transferring or refusal to transfer the stock, even if wrongful, *Mears v Crocker First Nat’l Bank of San Francisco*, 97 Cal App 2d 482, 485; 218 P2d 91 (1950), because the transfer agent served only as agent for the corporation. *Faro v Corporate Stock Transfer, Inc*, 883 So 2d 896, 898 (Fla App, 2004); *Kenler v Canal Nat’l Bank*, 489 F2d 482, 485 n 3 (CA 1, 1973). Instead, for a wrongful refusal to transfer shares, the corporation would be liable to the transferee and the transfer agent would be liable to the corporation. *Kenler, supra* at 485 n 3; 12 Fletcher, Encyclopedia of Corporations (2004 Rev’d Ed), § 5525, p 349.

In Michigan, the duty of corporations to transfer stock was codified with the adoption of the Uniform Commercial Code. See MCL 440.8401. Under the UCC, an issuer has a duty to register a transfer of a certificated or uncertificated security if each of several conditions are satisfied. See MCL 440.8401(1). Furthermore, “[i]f an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration or to the person’s principal for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer.” MCL 440.8401(2). In addition, with the adoption of the UCC, the legislature abrogated the common law immunity of transfer agents. Instead, “[a] person acting as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of a transfer of its securities, in the issue of new security certificates or uncertificated securities, or in the cancellation of surrendered security certificates has the same obligation to the holder or owner of a certificated or uncertificated security with regard to the particular functions performed as the issuer has in regard to those functions.” MCL 440.8407. Hence, where a corporation has delegated its responsibilities with regard to stock transfers to a transfer agent, the transfer agent’s liability to the transferee for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer is coextensive with that of the issuer. *Faro, supra* at 898; see also MCL 440.8407, comment 1.

As already noted above, plaintiffs adequately alleged that defendant, as an issuer, was statutorily liable for the unreasonable delay in the transfer of stock by its transfer agent, EquiServe. Likewise, under Count III of their complaint, plaintiffs adequately alleged that EquiServe, as defendant’s transfer agent, was also liable for the delayed transfer of the stock under MCL 440.8407. Notwithstanding the interrelated nature of these claims, the trial court determined that plaintiffs had created a fact question with regards to EquiServe’s liability under MCL 440.8407, but granted defendant’s motion for summary disposition on plaintiffs’ claim that defendant was liable as an issuer for EquiServe’s failure to timely register the transfer. In reaching this conclusion, the trial court explained,

Plaintiff[s] allege[] that Compuware was liable for its own statutory duties as well as those of its agent, Equiserve. The only cause of action against Equiserve, which is Count III, is for a violation of the statutory duties. However, the Court finds no basis on which to hold Compuware liable for this. Thus, the Court is satisfied that Plaintiffs’ claim against Compuware must be dismissed, to the extent that it is based under liability as Equiserve’s principal.

This conclusion was erroneous. As already noted above, corporations have traditionally been subject to liability for the wrongful failure of their designated agents to transfer securities. This liability was not altered by the enactment of MCL 440.8401. Indeed, given that a transfer agent's duties toward the holder or owner of a certificated or uncertificated security are defined by reference to the obligations of the issuer, MCL 440.8407, it is unlikely that a transfer agent would be liable for an unreasonable delay or refusal to transfer a security for which the issuer could not also be held liable. Hence, the trial court erred when it concluded that defendant could not be vicariously liable for its transfer agent's unreasonable delay in transferring the stock under the duty imposed by MCL 440.8401.⁷

Although the trial court erred when it determined that defendant could not be vicariously liable for the delay in the transfer of the stock caused by its transfer agent, because of the unique facts of this case, this error does not warrant reversal. It is undisputed that plaintiffs and EquiServe accepted the case evaluation made after the June 2, 2004 hearing where the trial court granted defendant's motion for summary disposition. Thereafter, plaintiffs and EquiServe stipulated to EquiServe's dismissal from the case. Acceptance of a case evaluation is the equivalent of a consent judgment, which operates as a release. *Felsner v McDonald Rent-A-Car*, 193 Mich App 565, 570; 484 NW2d 408 (1992); see also MCR 2.403(M). Further, release of an agent from liability discharges the principal from vicarious liability. *Felsner, supra* at 568-569, citing *Theophilis v Lansing General Hosp*, 430 Mich 473, 485-491; 424 NW2d 478 (1988). Hence, by accepting the case evaluation and settling with defendant's transfer agent, plaintiffs discharged defendant from any liability it may have had. Consequently, defendant is still entitled to summary disposition of plaintiffs' vicarious liability claim.

Plaintiffs next argue that the trial court erred when it granted defendant's motion for summary disposition on its claim that defendant breached its duty under the Escrow Agreement to ensure that its transfer agent promptly transferred the stock in question. We disagree.

As already noted, this Court reviews de novo the trial court's decision whether to grant summary disposition. *Moore, supra* at 517. In addition, where contract terms are not ambiguous, their construction is a matter of law for the courts, *Meagher v Wayne State Univ*, 222 Mich App 700, 721; 565 NW2d 401 (1997), which must enforce the terms according to their plain meaning. *DaimlerChrysler Corp v G-Tech Pro Staffing, Inc*, 260 Mich App 183, 185; 678 NW2d 647 (2003).

Paragraph 4(d) of the Escrow Agreement states:

⁷ We disagree with defendant's argument that, even if it had duties under MCL 440.8401, plaintiffs waived those duties by expressly limiting defendant's responsibilities under paragraph 4(d) of the Escrow Agreement. According to the plain language of that paragraph, defendant assumed the duty to take reasonable efforts to cause its transfer agent to promptly fulfill its duties and to promptly effect the transfers contemplated by the Escrow Agreement. Nothing within this language suggests that the parties intended to limit the duties imposed on defendant as an issuer.

Compuware shall use reasonable efforts to cause the Transfer Agent to promptly fulfill all duties and responsibilities assigned to it under this Escrow Agreement and to promptly effect all transfers of Escrow Shares contemplated in this Escrow Agreement.

Under the plain language of this clause, defendant was obligated to use reasonable efforts “to cause” its transfer agent to promptly fulfill its duties and “to promptly effect all transfers.” The clause did not impose “major oversight and effectual duties with respect to the transfer” on defendant, as plaintiffs now argue on appeal.

In its motion for summary disposition, defendant presented evidence that its conduct met the requirements of paragraph 4(d). Defendant presented the affidavit of its senior counsel, Barbara J. Kovach, who averred that, “from 1994 through 2001, EquiServe has performed in excess of 54,000 transfers of Compuware stock. In carrying out these transfers, EquiServe has routinely demonstrated the expertise to perform this service accurately and promptly and without ongoing supervision by Compuware.” Further, defendant presented evidence that it was not informed of the problem with the transfer in time to take steps to rectify the problem. This evidence was sufficient to establish that, under the circumstances of this case, defendant used reasonable efforts to cause its transfer agent to promptly fulfill its duties and promptly effect all transfers. Once defendant made a properly supported motion for summary disposition under MCR 2.116(C)(10), plaintiffs “had the duty to rebut with documentary evidence defendant’s contention that no genuine issue of material fact existed.” *Quinto, supra* at 371. Plaintiffs did not present any evidence that defendant could not reasonably rely on EquiServe to carry out the transfer, once authorized, and presented no evidence that defendant knew or should have known of the problems with the transfer. Therefore, summary disposition on this claim was appropriately granted under MCR 2.116(C)(10).

V. Conclusion

Plaintiff has failed to demonstrate that the trial court abused its discretion when it declined to grant the relief requested in their declaratory motions. Further, the trial court properly determined that summary disposition of plaintiffs’ breach of contract claim was appropriate. Finally, although the trial court erroneously determined that defendant could not be vicariously liable for its transfer agent’s unreasonable delay, because plaintiffs effectively released their claims of vicarious liability, defendant is still entitled to summary disposition of this claim.

Affirmed.

/s/ Peter D. O’Connell
/s/ Michael R. Smolenski
/s/ Michael J. Talbot