

STATE OF MICHIGAN
COURT OF APPEALS

MONA SHORES BOARD OF EDUCATION and
MONA SHORES PUBLIC SCHOOLS,

UNPUBLISHED
May 24, 2007

Plaintiffs/Counter Defendants-
Appellees/Cross-Appellants,

v

MONA SHORES TEACHERS EDUCATION
ASSOCIATION, MEA/NEA,

No. 271592
Muskegon Circuit Court
LC No. 05-043998-CL

Defendant/Counter Plaintiff-
Appellant/Cross-Appellee.

Before: O’Connell, P.J., and Murray and Davis, JJ.

PER CURIAM

Defendant appeals as of right the trial court’s decision to invalidate a portion of the parties’ Collective Bargaining Agreement (CBA). We conclude that there is no actual case in controversy regarding a violation of the CBA, and therefore, plaintiffs lack standing to challenge its agreed to contract provision. We vacate the judgment of the circuit court and confirm the arbitrator’s award.

The CBA required all disputes to be resolved by arbitration. In the present case, the parties submitted this controversy to arbitration, and the arbitrator determined that David Rodriquez, a tenured teacher in the school system, was eligible for retirement. The arbitrator also declined to address plaintiff Mona Shores Public Schools’ argument that certain provisions of the CBA were unlawful because they could have hypothetically¹ discriminated against teachers on the basis of age. Instead, the arbitrator concluded that application of the CBA’s plain language did not require him to decide the issue and decided the grievance in Rodriquez’s favor.

Plaintiffs then sought declaratory relief in circuit court, and defendant sought to enforce the arbitrator’s award. The trial court concluded that plaintiffs’ complaints about the CBA

¹ Whether this contract provision did or did not discriminate is best left for a day when there is an actual case in controversy.

warranted injunctive relief and it vacated the arbitrator's award. We disagree. In our opinion, plaintiffs lacked standing to challenge this contract provision. Plaintiffs, with the help of the courts, may not *ipse dixit* declare that their own alleged discriminatory conduct rendered the relevant retirement provision null and void.

It is not necessary for this Court to resolve plaintiffs' issue regarding the Michigan Civil Rights Act (CRA), MCL 37.2101 *et seq.*,² because nobody has claimed any injury or prejudice from a violation of that act. The only injury alleged is plaintiffs' anguish at being held liable to its contractual obligations under the CBA. "The rule is general that when contracts are legal except as against persons in adverse interest, courts will not listen to complaints of persons not injured." *Richardson v Welch*, 47 Mich 309, 312; 11 NW 172 (1882). Therefore, plaintiffs may not use a contract's potentially unjust and abusive provisions to shield it from the obligations it owes to those individuals whom the provisions threaten to injure and abuse. See *id.* In this case, plaintiffs sought equitable relief in a declaratory judgment action. See *Coffee-Rich, Inc v Michigan Dep't of Agriculture*, 1 Mich App 225; 135 NW2d 594 (1965). The equities should have led the trial court to consider how plaintiffs sought to use their self-described discriminatory practice to avoid their contractual obligations to those who did not suffer from the discrimination. Instead, the trial court entertained plaintiffs' arguments and relieved them from their contractual duties, essentially employing equity to reward their allegedly illegal conduct.

Under the circumstances, we see no reason to alter the rule from *Richardson* merely because the particular contract provision at issue may technically violate statutory provisions rather than the common law. The general rule is designed to protect individuals who enter a contract in good faith, provide consideration for the contract, and then are refused their reciprocal consideration on the pretext that the contract was never legal or valid in the first place. "Even in cases where public and not merely private interests were involved, courts have refused to relieve parties who had the money of other people in their hands, against accounting, when there was no question of public policy to be involved in that transaction The defense is not well founded and cannot be sustained." *Richardson, supra* (citation omitted). The rule applies precisely to situations like the one at hand, so we apply it to bar plaintiffs from seeking equitable relief from the arbitrator's award.

The Supreme Court's decision in *Leland v Ford*, 245 Mich 599; 223 NW 218 (1929), is not to the contrary. In *Leland*, the Court held that when parties are equally to blame for a fraudulent or otherwise malicious provision in an executory, or future, contract, the trial court should not hear a plaintiff's plea for equitable enforcement. *Id.* at 609-611. In this case, plaintiffs' only argue that their actions as employers threatened to violate other employees' rights to nondiscriminatory treatment, and nothing indicates that any of the parties believed that the provision was discriminatory when they incorporated it into the CBA. Moreover, the CBA is no longer executory as to Rodriguez's performance, and plaintiffs were the parties that sought

² There is no actual case or controversy regarding a violation of the CRA: a thorough consideration of this issue would set us adrift from our constitutional moorings of focusing our decisions on justiciable issues. *Nat'l Wildlife Federation v Cleveland Cliffs Iron Co*, 471 Mich. 608, 615; 684 NW2d 800 (2004); Const 1963, art 6, § 1.

equitable relief. Under the circumstances, the equities of this case foreclosed plaintiffs' complaint of illegality and injunction, so the trial court erred by addressing the issue and then compounded that error by neglecting to apply equitable principles to the case.

Plaintiffs have already received in full whatever consideration Rodriquez validly provided for his contractual expectation of early retirement, so to absolve them from their obligations leaves them to reap the benefits of potentially discriminatory action without compensating defendant's members for their sacrifice and service.³ This approach opens the door to the dubious practice of intentionally injecting arguably illegal language into expensive portions of a contract, so that later obligations can be thwarted by simply avoiding the provisions that generated them. This does a dual disservice. It rewards inequity in the parties' dealings and encourages chicanery and lawlessness in the contract's formation. A declaratory action is equitable in nature, *Coffee-Rich, Inc, supra*, and the equities in this case should have led the trial court to adhere to the contractual obligations of the relevant parties rather than inventing parties and situations that could justify plaintiffs' challenge to its own misconduct. The trial court also inequitably allowed plaintiffs to use the procedural device of declaratory relief to make an end run around the contract's arbitration provisions and award an inequitable windfall to plaintiffs. Because the trial court erred in its application of the relevant law, we vacate its decision and confirm the arbitrator's award. MCR 3.602(I).

With all due respect, the dissenting opinion struggles with issues that simply do not arise when this case is viewed in the proper light. We do not hold that the trial court completely lacked subject-matter jurisdiction over plaintiffs' declaratory judgment action, but instead, we hold that the trial court erred by entertaining in the first place plaintiffs' backhanded complaint about the provision's legality. It then exacerbated the error by declaring that the relevant contract provision was void and entitled to equitable injunction against the uninjured parties to this grievance.

Although the dissenting opinion circuitously arrives at the conclusion that the trial court could have reached the issue of the provision's legality, nowhere does it explain why the trial court, in its pursuit of an equitable result, *should* have reached the issue, or that plaintiffs were the appropriate parties to raise such a complaint. Moreover, the dissent does not identify which question the trial court was seeking equitably to answer so that it could guide the future conduct of the parties to this grievance. Instead, the dissent acknowledges that neither defendant nor Rodriquez ever sought to avoid the contract as discriminatory, and it is unmistakable that

³ We note that plaintiffs are not offering to remedy the potential age discrimination by volunteering to pay the maximum benefit to all retirees regardless of their age. Instead, they are predictably claiming that they have no obligation to anyone on the basis of the potentially invalid and illegal contract language. This approach hardly provides defendant or Rodriquez with the benefit of the bargain after they have fully performed their part of the contract. The dissent fails to adopt any remedy, even one sounding in equity, that could supplant the lost benefit. We find it hard to harmonize such a stark forfeiture with the equitable principles that are supposed to guide this case.

plaintiffs alone stand to benefit from the trial court's requirement that plaintiffs must equally deprive all their employees of the provision's promises.

If plaintiffs truly sought to undo their allegedly illegal misconduct, they should have included a party who actually felt injured by the arguably discriminatory provision. Even then, holding that the retirement provision was discriminatory would not resolve the deeper issues: namely, whether defendant, or Rodriguez individually, could equitably enforce the provision on behalf of retirement-eligible members and whether, instead of enjoining its enforcement, the provision should be equitably extended to benefit all employees equally, regardless of their age. Because the parties to the grievance at hand, when restricted to appropriate issues, had no actual case, controversy, or complaint in equity or in law regarding the validity of the retirement provision, the trial court erred by delving into the issue rather than simply ordering plaintiffs to comply with the arbitrator's award. See MCR 3.602(I) and (J).

We vacate the judgment of the circuit court and confirm the arbitrator's award.

/s/ Peter D. O'Connell

/s/ Alton T. Davis