

STATE OF MICHIGAN
COURT OF APPEALS

GREAT NORTHERN TITLE & ABSTRACT,
INC.,

Plaintiff,

v

PEN, INC.,

Defendant/Cross-
Plaintiff/Appellant,

and

CANAL CROSSINGS, L.L.C.,

Defendant/Cross-
Defendant/Appellee.

UNPUBLISHED
May 24, 2011

No. 297329
Marquette Circuit Court
LC No. 09-046770-CH

Before: RONAYNE KRAUSE, P.J., and SERVITTO and GLEICHER, JJ.

PER CURIAM.

Interpleader defendant-appellant Pen, Inc. (“Pen”) appeals as of right from a trial court order granting summary disposition in favor of interpleader defendant, Canal Crossings, L.L.C. (“Canal Crossings”), pursuant to MCR 2.116(C)(10), in this action involving the interpretation of an addendum to a purchase agreement as it relates to \$25,000 held in escrow by plaintiff title company. Because the trial court did not err in its determination that Pen did not meet the requirements under the addendum, we affirm.

This dispute arises from a May 16, 2008, purchase agreement between Pen, as seller of a parcel of land, and Canal Crossings, as the purchaser, with respect to approval for a “driveway cut” over adjoining land owned by Lamar Company. An addendum to the purchase agreement provides:

Seller to obtain required approval from Lamar Co for driveway cut from property to Brickyard Drive. Seller shall be given 60¹ days from acceptance date of purchase agreement to meet this requirement. \$25,000 shall be withheld from the agreed upon purchase price and held by escrow company until such condition is met. If permission is not obtained within the 60² day period, buyer shall retain the \$25,000 rdeucing [sic] sales price to \$625,000.

The undisputed evidence showed that although the parties engaged in negotiations with Lamar for an access easement over Lamar's land to Brickyard Drive, and that verbal approval was granted by Lamar to allow Canal Crossings to perform certain preliminary work for a driveway shortly after the purchase agreement was executed, no written approval was obtained until March 2009, when Canal Crossings and Lamar agreed to an access easement that allowed Canal Crossings access over Lamar's property for a driveway.

The trial court held that the addendum did not require an easement, but did require "approval" by Lamar, and further reasoned that the "approval" needed to be in writing because it concerned an interest in land. Because there was no evidence that Pen had obtained such approval, the trial court granted Canal Crossings' motion for summary disposition and ordered payment of the escrowed funds to Canal Crossings.

Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law." This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The interpretation of a contract is also reviewed de novo as a question of law. *Holland v Trinity Health Care*, 287 Mich App 524, 526; 791 NW2d 724 (2010).

"A contract must be interpreted according to its plain and ordinary meaning." *Woodington v Shokoohi*, 288 Mich App 352, 373; 792 NW2d 63 (2010). Clear contractual language reflects the parties' intent as a matter of law and must be enforced as written. *Holland*, 287 Mich App at 527. Only when contract language is ambiguous does its meaning become a question of fact. *Id.* "A contract is ambiguous if it allows two or more reasonable interpretations, or if the provisions cannot be reconciled with each other." *Woodington*, 288 Mich App at 374. "If the contract, although inartfully worded or clumsily arranged, fairly admits of but one interpretation, it is not ambiguous." *Id.* A court may not impose an ambiguity on clear contract language, or rewrite clear and unambiguous language under the guise of interpretation. *Id.*; *Holland*, 287 Mich App at 527.

¹ A line is drawn across the number "60," and "90" is written above it and initialed. The change is not dated.

² See note 1.

In this case, Pen disputes the trial court's interpretation of the agreement but does not contend that the agreement is ambiguous. Pen first argues that the trial court erred in determining that an approval from Lamar was required under the statute of frauds, MCL 566.106, to be in writing. According to Pen, the approval contemplated by the agreement was permission to enter the property to accomplish tasks such as clearing trees and grading. These activities, Pen argues, involve essentially a license, which is not an interest in land subject to the statute of frauds.

However, Pen's argument is based on an interpretation that is contrary to the plain language of the addendum. The addendum provides that Pen was to obtain "required approval . . . for driveway cut[.]" not approval for preliminary work for a driveway cut. In *Jeffries v Union Trust Co*, 248 Mich 652; 227 NW 684 (1929), our Supreme Court held that "[a]s an oral agreement for or a consent to a right of driveway it was at most only an attempted grant of an interest in real estate and was void under the statute of frauds because it was not in writing." *Id.* at 654. This decision supports the trial court's ruling that a driveway cut is an interest in land subject to the statute of frauds. Pen has not cited any contrary authority. Accordingly, Pen has not shown that the trial court erred in ruling that the required approval needed to be in writing.

Pen also argues that the trial court erred in stating that there was no evidence that the approval that the parties contemplated was obtained. Pen relies on Kevin Geshel's deposition testimony about Lamar allowing Canal Crossings to work on the property by removing trees and moving topsoil, and Robert Taylor's deposition testimony that "[w]e did get him permission to work on the property, to put in cuts, to do what we needed to do verbally, yes[.]" Pen's argument is again flawed because it is premised on its position that "required approval . . . for driveway cut" is satisfied by verbal permission for preliminary work for a driveway. Although Pen is correct that there was evidence that Lamar gave verbal permission for that preliminary work, that did not satisfy Pen's obligation under the addendum. Pen did not present evidence that the required approval for a driveway cut, which the trial court correctly determined must be in writing, was obtained within the period permitted by the addendum.

Pen lastly argues that the trial court improperly resolved factual disputes when deciding Canal Crossings's motion for summary disposition. Specifically, Pen argues:

The trial court had before it material factual disputes. These disputes included whether or not the parties intended that the contract term "required approvals" meant an [sic] written easement and whether Pen, Inc.'s efforts had contributed to the granting of "approval" and "permission" by Lamar to allow Canal Crossings to do the things on the Lamar Property described in the Addendum. The trial court decided both of these obviously material, disputed facts in favor of Canal Crossings, the moving party. These are decisions not permitted the court within the context of a summary disposition motion hearing and require remand.

A trial court may not resolve factual disputes when deciding a motion for summary disposition pursuant to MCR 2.116(C)(10). *Burkhardt v Bailey*, 260 Mich App 636, 646-647; 680 NW2d 453 (2004). Here, however, Pen inaccurately describes the trial court's ruling. The trial court did not decide that "approval" meant a written easement. Indeed, it stated that the

addendum did not require an easement. Further, the trial court did not decide that Pen's efforts did not contribute to Lamar's granting of the approval, but only decided that Lamar did not provide written approval. Regardless, these alleged factual disputes are not material to whether Pen fulfilled the condition in the parties' agreement. As previously explained, the agreement requires approval for a driveway cut, not verbal approval for mere preliminary preparatory work, and Pen did not present evidence that the required approval for the driveway cut was obtained within the period permitted by the addendum. Further, regardless of whether Pen's efforts may have "contributed" to the ultimate "granting of 'approval' and 'permission' by Lamar to allow Canal Crossings to do the things on the Lamar Property described in the Addendum," the clear language of the addendum required Pen to "obtain" the required approval for the driveway cut within the specified period. Pen did not present evidence that it obtained the necessary approval.

Affirmed.

/s/ Amy Ronayne Krause

/s/ Deborah A. Servitto

/s/ Elizabeth L. Gleicher