

STATE OF MICHIGAN
COURT OF APPEALS

G.K. ENTERPRISES, INC.,

Plaintiff-Appellant,

v

CARRIER CREEK DRAIN DRAINAGE
DISTRICT and EATON COUNTY DRAIN
COMMISSIONER,

Defendants-Appellees.

UNPUBLISHED
April 26, 2012

No. 303185
Eaton Circuit Court
LC No. 10-000205-CK

Before: HOEKSTRA, P.J., and SAWYER and SAAD, JJ.

PER CURIAM.

In this contract dispute, plaintiff appeals the trial court's order that granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). For the reasons set forth below, we affirm.

I. FACTS

Defendant Eaton County Drain Commission sent plaintiff a letter to advise him that the county needed 7.01 acres of his 56-acre parcel for a drain maintenance and improvement project. Plaintiff did not accept an offer of \$56,100 for the property and a condemnation action followed. Eventually, plaintiff conveyed approximately 3.04 acres to defendants for the sum of \$30,000 by signing a quitclaim deed. The same day, plaintiff granted a temporary construction easement to defendant Carrier Creek Drain Drainage District. The document recited that the easement was "[f]or and in consideration of prospective benefits to be derived by reason of the construction of the Carrier Creek Drain project . . . and other valuable considerations." Also on that date, the drain commissioner sent a letter to plaintiff that stated in relevant part:

Pursuant to our October 29, 2001 meeting, the Carrier Creek Drain Drainage District #326 ("District") agrees to complete the following items, at their expense prior to the completion of the referenced project, specific to the above parcel of land only:

- All low lying areas to be filled shall be stripped of topsoil/poor soil, and then filled with good sandy soil compacted to at least 1 foot above the 100-year flood plain elevation. By providing positive, effective drainage

of storm water from remaining lands will not be subject to water ponding/entrapment [sic].

The drain commission later determined that the floodplain and wetlands on the site could not be filled under the permit issued. Plaintiff took the position that these areas had to be filled pursuant to the parties' agreement.

II. DISCUSSION

Plaintiff argues that the trial court erred by holding that, as a matter of law, the parties had no contractual agreement regarding the filling of the floodplain and wetlands. "This court reviews de novo a trial court's decision on a motion for summary disposition." *Allen v Bloomfield Hills Sch Dist*, 281 Mich App 49, 52; 760 NW2d 811 (2008). "In evaluating a motion for summary disposition brought under [MCR 2.116(C)(10)], a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion." *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Summary disposition should be granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). Further, we review a lower court's interpretation of a contract de novo. *Alpha Capital Management, Inc. v Rentenbach*, 287 Mich App 589, 611; 792 NW2d 344 (2010).

To form a binding contract, there must be an offer, acceptance, consideration, and a "meeting of the minds." *Kloian v Domino's Pizza LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006). An offer is "the manifestation of willingness to enter into a bargain, so made as to justify the other person in understanding that his assent to that bargain is invited and will conclude it." *DaimlerChrysler Corp v Wesco Distribution, Inc*, 281 Mich App 240, 246; 760 NW2d 828 (2008), quoting *Kloian*, 273 Mich App at 453. "[A]n acceptance sufficient to create a contract arises where the individual to whom an offer is extended manifests an intent to be bound by the offer, and all legal consequences flowing from the offer, through voluntarily undertaking some unequivocal act sufficient for that purpose." *Blackburne & Brown Mortgage Co v Ziomek*, 264 Mich App 615, 626-627; 692 NW2d 388 (2004) (internal citations omitted). Consideration requires a bargained-for exchange that results in "a benefit on one side, or a detriment suffered, or service done on the other." *Gen Motors Corp v Dept of Treasury*, 466 Mich 231, 238-239; 644 NW2d 734 (2002) (internal quotation marks and citations omitted). Finally, "[a] meeting of the minds is judged by an objective standard, looking to the express words of the parties and their visible acts, not their subjective state of mind." *Kloian*, 273 Mich App at 454. Without a meeting of the minds, or mutual assent of the parties as to all essential terms, a contract is invalid and unenforceable. *Sanchez v Eagle Alloy Inc*, 254 Mich App 651, 665; 658 NW2d 510 (2003).

Here, the purported letter agreement failed to create contractual obligations, whether viewed individually or with the other documents also executed on November 9, 2001. Upon close reading, the November 9, 2001 letter recites no consideration on its face for the improvements offered to the property. Further, the drain commissioner testified at his deposition that the letter was intended to show remediation measures that would be taken in exchange for

being allowed to dump fill on plaintiff's property. Importantly, he further testified that the letter agreement was unrelated to the quitclaim deed executed the same day.

Plaintiff offered no evidence to counter the drain commissioner's testimony or the letter itself. An affidavit from Jiya Lal Gupta, plaintiff's sole shareholder, simply states that there was never any indication that the land purchase and letter agreement were separate, and that there was no discussion that the letter agreement was executed solely to give defendants a place to dump excess soil. However, plaintiff presented no evidence that the land purchase and letter agreement were even related, much less contingent on one another. Plaintiff points to a December 15, 2006 letter from the drain commissioner to plaintiff's attorney, which stated:

This letter agreement was part of an agreement by Mr. Gupta to allow for fill to be place [sic] upon his property. As Mr. Gupta rejected the proposed grading plan, no fill has been placed on his property, so some of the items [set forth in the letter] have become irrelevant.

Plaintiff asserts that this is an acknowledgment that the letter did not stand alone. However, it does not establish that the letter was part of an agreement encompassing the sale of the 3.04-acre parcel and the easement. As succinctly stated by the trial court,

The Plaintiff has failed to provide any evidence that the commitments in the letter were in addition to the \$30,000 consideration specifically stated in the deed. The fact that the letter was dated the same day as the quit claim deed is not evidence that the letter content was additional consideration. The only mention of the 3.04-acre parcel in the letter was in the first bullet point which referred to the location of [a] buffer. . . . On its face it does not meet the criteria for a contract and is not enforceable.

Plaintiff also argues that the recitations in the letter represent consideration as part of the conveyance of the temporary construction easement, which stated that it was “[f]or and in consideration of prospective benefits to be derived by reason of the construction of the Carrier Creek Drain project . . . and other valuable considerations.” However, were we to assume that the letter recitations represent the “other valuable considerations” referenced in the temporary construction easement, the letter agreement would still be unenforceable. As the trial court noted, the letter “does not say that Defendant will fill in all low-lying areas, only that ‘all low lying areas *to be filled* shall be stripped of topsoil/poor soil, and then filled with good sandy soil compacted to at least 1 foot above the 100-year flood plain elevation.’” (Emphasis added.)

Thus, this paragraph does not, on its face, support plaintiff's position that defendants were required by the letter to fill all low-lying areas and wetlands. Instead, it bolsters defendants' argument that it simply governs the treatment of any soil that defendants might place on plaintiff's property. The trial court correctly concluded that this showed there had been no meeting of the minds:

If the intent was, as Plaintiff argues, that the Drain Commission fill all the low-lying areas, it could have easily said that. In addition the letter is woefully lacking in detail. “Low lying areas” is not defined, there is no mention of

floodplains or wetlands, and there is no agreement as to where the soil will be placed or what happens if wetland is incurred [sic].

In sum, the letter which plaintiff says is an agreement is not an enforceable contract. There is no consideration recited for the listed improvements to be made to plaintiff's property by defendants, and if there were consideration, the letter's ambiguity shows that there was no mutual assent as to the essential term regarding which areas of appellant's property were to be filled. Accordingly, the trial court correctly granted summary disposition to defendants and correctly denied plaintiff's cross-motion for summary disposition.

Affirmed.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Henry William Saad