

STATE OF MICHIGAN
COURT OF APPEALS

990 INVESTORS, LLC,

Plaintiff-Appellant,

v

DAVID LEE COMMUNICATIONS, INC., and
DAVID LEE SCHUEHRER,

Defendants-Appellees.

UNPUBLISHED

April 5, 2002

No. 227284

Genesee Circuit Court

LC No. 99-066553-CK

Before: Jansen, P.J., and Zahra and Meter, JJ.

METER, J. (*dissenting.*)

I respectfully dissent.

Plaintiff’s complaint requested that the court “enter an order of specific performance compelling [d]efendants to honor [their] contract with [p]laintiff and to convey title to the license, and all assets including the realty and towers, in accordance with the purchase documents. . . .” Plaintiffs sought to acquire assets held individually by defendant Schuehrer under the terms of the right of first refusal (RFR). Under a plain reading of the document, however, assets held individually by Schuehrer are not subject to the terms of the RFR. Therefore, in my opinion, the trial court did not err in granting summary disposition to defendants.

The fifth recital in the RFR states that “[David Lee Communications, Inc.] desires to provide to SBBC, and SBBC desires to receive, a right of first refusal with respect to the sale or transfer of the Station. . . .” Moreover, Schuehrer is referred to in the RFR merely as a “stockholder.” No reference is made to Schuehrer’s personal assets, and no recital indicates that Schuehrer, as an individual, desired to provide a right of first refusal to SBBC. Under these circumstances, I find no ambiguity in the contract that should be submitted for resolution by a trier of fact. See *D’Avanzo v Wise & Marsac, PC*, 223 Mich App 314, 319; 565 NW2d 915 (1997) (indicating that ambiguities in contracts are to be resolved by a trier of fact). The RFR simply did not apply to Scheuhrer’s individually-held property, and therefore the trial court correctly dismissed plaintiff’s request for specific performance.¹

¹ My opinion does not change in light of the evidence, revealed in plaintiff’s motion for
(continued...)

I would affirm.

/s/ Patrick M. Meter

(...continued)

reconsideration, that the corporation owns the towers that are located on Schuehrer's land. Indeed, this evidence does not change the fact that the RFR does not apply to Schuehrer's individually-held property and that plaintiff's complaint therefore did not warrant specific performance. Moreover, I conclude that plaintiff's arguments regarding potential amendments to the complaint have not been preserved properly for appellate review and I therefore do not address them.