

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MEYER CONSTRUCTION COMPANY,

Plaintiff-Appellee,

v

JOHN R. MEYER and THOMAS B. MEYER,

Defendants-Appellants.

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UNPUBLISHED

March 22, 2005

No. 250313

Wexford Circuit Court

LC No. 99-015004-CK

Before: Saad, P.J., and Smolenski and Cooper, JJ.

PER CURIAM.

Defendants appeal from the trial court's order to enforce a settlement agreement, and we affirm.

I

Robert Meyer is the principal owner and president of plaintiff corporation Meyer Construction Company ("MCC"). Defendants John Meyer and Thomas Meyer are Robert Meyer's brothers. Concerned that the United States Environmental Protection Agency (EPA) and the Michigan Department of Natural Resources (DNR) might seek fines for environmental problems on a piece of property owned jointly by companies owned by the Meyer brothers, the three brothers entered into an agreement in 1986 ("the 1986 agreement") that any liability arising out of the property would be borne equally by the three brothers individually as well as by their respective "businesses and/or corporate entities." Robert Meyer and plaintiff<sup>1</sup> settled EPA and DNR claims for \$675,000. Robert Meyer then sought reimbursement from defendants as provided for by their agreement, but the brothers refused to pay their shares.

Robert Meyer then brought suit against his brothers for an alleged breach of the 1986 agreement. Defendants filed a motion for summary disposition, and argued that (1) Robert Meyer had no standing to sue because Robert Meyer's company, plaintiff, had paid most of the monies, and (2) the 1986 agreement did not require them to contribute to the EPA/DNR

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<sup>1</sup> MCC is the company that Robert Meyer owned and operated.

settlement. Because of defendants' assertion that Robert Meyer lacked standing, Robert Meyer's business entity, plaintiff, filed the instant suit against defendants.

In the first suit, the trial court denied defendants' motion for summary disposition. In January 2001, the parties reached a settlement agreement ("the 2001 settlement") that provided, in relevant part, that (1) defendants would pay \$250,000, (2) Robert Meyer would dismiss the first lawsuit, and (3) defendants would file a motion for summary disposition in the instant case, the outcome of which would determine whether defendants would be required to pay an additional \$275,000. With respect to the summary disposition provision, the 2001 settlement agreement provided that (1) if the trial court granted summary disposition in favor of defendants, and this Court did not reverse the trial court, defendants would not be required to pay any further amount, and this case would be dismissed with prejudice; (2) if defendants did not prevail in their motion for summary disposition, and did not prevail in a subsequent appeal to this Court, then defendants would pay an additional \$275,000 (inclusive of costs, interest, and attorney fees), and the case would be dismissed with prejudice; and, (3) if the trial court did not grant summary disposition in favor of defendants, but this Court reversed the trial court on appeal, defendants would not be required to pay the additional \$275,000, and the suit would be dismissed with prejudice.

Pursuant to the 2001 settlement, defendants filed a motion for summary disposition in the instant case. The trial court granted summary disposition in favor of defendants. In *Meyer Construction Co v Meyer*, unpublished opinion per curiam of the Court of Appeals, issued February 7, 2003 (Docket No. 236437) (*Meyer I*), another panel of this Court reversed the trial court's order granting defendants' motion for summary disposition and remanded the case to the trial court.

After this Court issued its opinion in *Meyer I*, defendants refused to pay the \$275,000 despite the fact that, ultimately, they were denied summary disposition. Defendants argued that because the 2001 settlement agreement did not provide for the specific scenario that occurred here—defendants prevail in their motion, but summary disposition is reversed on appeal—defendants were not required to pay \$275,000. The trial court disagreed with defendants, and ruled that if defendants were correct, it would make the appeal provision of the first scenario nugatory, because defendants would prevail no matter the outcome of the appeal. The trial court entered judgment in favor of plaintiff, and ordered defendants to pay plaintiff \$275,000 plus postjudgment interest.

The parties' 2001 settlement provided, in relevant part:

NOW COMES the Plaintiff Meyer Construction Inc. and Defendants John R. Meyer and Thomas B. Meyer in the above entitled cause by and through their respective counsel and by express agreement of the parties all of whom represent that they have the requisite authority and have executed their signatures to the agreement accordingly hereby agree and stipulate that should Defendants prevail on Summary Disposition in the above entitled matter and the same is not reversed at the Michigan Court of Appeals by Appeal as of Right under the Michigan Court Rules, the Plaintiff's claim is held for naught and the above entitled matter is Dismissed on the Merits with Prejudice and Without Costs. Defendants may submit such an order in such event.

IT IS FURTHER ORDERED AND ADJUDGED that should Defendants not prevail in a Motion for Summary Disposition in the above entitled matter and they do not prevail on appeal, then Defendants shall pay a total (not to exceed) of two hundred seventy-five thousand dollars (\$275,000.00) (this figure includes attorney fees, interests, costs, fees, expenses of any kind and the like) to Plaintiff in total satisfaction of any claim in the above entitled matter and an Order of Dismissal with Prejudice on the Merits Without Costs may be entered accordingly. The two hundred seventy-five thousand dollars (275,000.00) would be due and payable within fifteen days after acceptance and the rejection of appeal on the merits of such appeal.

IT IS UNDERSTOOD AND AGREED that the two hundred seventy-five thousand dollars (\$275,000.00) is to include interest, attorney fees, costs, fees, expenses and the like and in no event shall Defendants be obligated to pay more than two hundred seventy-five thousand dollars (\$275,000.00) total.

IT IS FURTHER ORDERED AND ADJUDGED that should Defendants not prevail in their Motion for Summary Disposition but prevail on appeal that the Defendants shall have the right to enter an Order of Dismissal with Prejudice on the Merits Without Costs and have no obligation to pay any sums whatsoever for any reason whatsoever to the Plaintiff in the above entitled matter accordingly.

It is agreed this is a mutually drafted document.

When fifteen days had elapsed after this Court's reversal of the circuit court, plaintiff filed a motion for enforcement of the settlement agreement. The circuit court ordered defendants to pay \$275,000 as provided for in the settlement agreement.

## II

On appeal, defendants argue that the trial court erred by interjecting a term not contained in the original agreement.

Contract interpretation is an issue of law which we review de novo. *Old Kent Bank v Sobczak*, 243 Mich App 57, 61; 620 NW2d 663 (2000). "The primary goal in interpreting contracts is to determine and enforce the parties' intent." *Id.* at 63. This entails a reading of the contract as a whole and an application of its clear language. *Id.* "[I]f the provision is clear and unambiguous, the terms are to be taken and understood in their plain, ordinary, and popular sense." *Michigan Mut Ins Co v Dowell*, 204 Mich App 81, 87; 514 NW2d 185 (1994). A contract is ambiguous when it may reasonably be understood in different ways. *Id.* "[C]ourts must also give effect to every word, phrase, and clause in a contract and avoid an interpretation that would render any part of the contract surplusage or nugatory." *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 468; 663 NW2d 447 (2003).

Defendants argue that the settlement agreement does not expressly require payment in the scenario that occurred, i.e., that defendants prevailed below, yet were reversed on appeal. However, the plain meaning of the settlement agreement is that defendants must pay \$275,000 if they did not prevail on appeal to this Court:

“[S]hould Defendants prevail on Summary Disposition in the above entitled matter and the same is not reversed at the Michigan Court of Appeals by Appeal as of Right under the Michigan Court Rules, the Plaintiff’s claim is held for naught and the above entitled matter is Dismissed on the Merits with Prejudice and Without Costs.”

As plaintiff and the trial court correctly point out, defendants’ interpretation of the settlement agreement would render the phrase “and the same is not reversed at the Michigan Court of Appeals” surplusage and nugatory. Were we to agree with defendants’ interpretation, there would have been no need for an appeal as defendants would be excused from paying regardless of the outcome of any appeal so long as the trial court granted summary disposition in their favor. Therefore, we conclude that the settlement agreement is not reasonably susceptible to the interpretation advanced by defendants. *Klapp, supra* at 468-469; *Michigan Mut Ins Co, supra* at 87.

The following language also supports the trial court's ruling: "The two hundred seventy-five thousand dollars (275,000.00) [sic] would be due and payable within fifteen days after acceptance and the rejection of appeal on the merits of such appeal." This language clearly contemplates at least three things: (1) an appeal, (2) the payment of \$275,000 upon rejection on the merits, and (3) that the \$275,000 would be due and payable within fifteen days of the appeal. The clear and unambiguous language of the settlement agreement supports the trial court's interpretation of the settlement agreement and thus, the trial court's ruling.

### III

Defendants argue that the trial court also improperly interjected a term into the settlement agreement when it required that the defendants pay statutory postjudgment interest. This Court reviews a trial court’s decision regarding an award of interest for an abuse of discretion. *Reigle v Reigle*, 189 Mich App 386, 393; 474 NW2d 297 (1991).

After this Court’s opinion in *Meyers I*, plaintiff submitted to the trial court a proposed order of judgment in favor of plaintiff in the amount of \$275,000, together with interest beginning on February 22, 2003, which was the end of the fifteen-day grace period provided for in the 2001 settlement agreement. Plaintiff’s proposed order was entered May 28, 2003. Defendants filed an untimely objection to the order. Plaintiff waived its objection to the untimeliness of defendants' objection, and also waived any claim to interest between February 22, 2003, and the time the final judgment would be entered by the trial court. The trial court then entered a new judgment in favor of plaintiff on June 27, 2003, which provided for the payment of \$275,000 plus postjudgment interest from that date forward.

Defendants argue that the following provision provides that they would not be required to pay postjudgment interest: “IT IS UNDERSTOOD AND AGREED that the two hundred seventy-five thousand dollars (\$275,000.00) is to include interest, attorney fees, costs, fees, expenses and the like and in no event shall Defendants be obligated to pay more than two hundred seventy-five thousand dollars (\$275,000.00) total.” However, MCL 600.6013(1) plainly requires the imposition of postjudgment interest, and, accordingly, “[A]n award of interest is mandatory in all cases to which the statute applies.” *Farmers Ins Exchange v Titan Ins Co*, 251 Mich App 454, 460; 651 NW2d 428 (2002), quoting *Everett v Nickola*, 234 Mich App 632, 639;

599 NW2d 732 (1999). A party may waive statutory rights where the statute in question does not expressly forbid waiver, and where the parties specifically agree to forgo the statutory right. *Staple v Staple*, 241 Mich App 562, 574-575, 578; 616 NW2d 219 (2000).

Here, the parties' agreement clearly intends the \$275,000 payment to include all expenses, interest, costs, and attorney fees incurred from the time of the filing of the complaint to the time of the resolution of the matter by the trial court and by this Court. However, the agreement further provides that payment is to be made within fifteen days of the resolution of the matter by this Court. Here, this was not done. The agreement does not clearly contemplate what has occurred here—that plaintiff would prevail, but defendants would nonetheless withhold payment and force plaintiff to undertake efforts to enforce the agreement. Accordingly, the agreement cannot have contemplated a waiver of interest imposed after the entry of such an order. Therefore, we hold that the circuit court did not abuse its discretion when it imposed postjudgment interest.

Affirmed.

/s/ Henry William Saad  
/s/ Michael R. Smolenski  
/s/ Jessica R. Cooper