

STATE OF MICHIGAN
COURT OF APPEALS

WABEEK ON THE LAKE CONDOMINIUM
ASSOCIATION,

UNPUBLISHED
July 14, 2005

Plaintiff/Counterdefendant-
Appellant,

v

No. 252274
Oakland Circuit Court
LC No. 02-043737-CH

ALAN SUSSMAN,

Defendant/Counterplaintiff-
Appellee,

and

OLD KENT BANK and WORLDWIDE
FINANCIAL SERVICES, INC.,

Defendants.

Before: Fitzgerald, P.J., and Meter and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from an entry of final judgment in favor of defendant. We reverse and remand.

Plaintiff filed a complaint against defendant, asserting that it levied assessments against defendant's condominium pursuant to its master deed and the Condominium Act, and defendant neglected to pay condominium assessments for his unit as they became due and was in default. Defendant counterclaimed that plaintiff breached its fiduciary duties, and the contract between the parties, when it failed to repair the roof and external surfaces of defendant's condominium unit.

Plaintiff moved for summary disposition arguing that defendant failed to refute specific allegations of an account rendered by plaintiff, and failed to plead a valid defense. Specifically, plaintiff argued that defendant was statutorily proscribed from presenting the defense that plaintiff failed to render him services. Defendant's response asserted among other things that plaintiff's pleadings were deficient because the complaint failed to attach any evidentiary proof

of defendant's indebtedness to plaintiff. The trial court found that plaintiff failed to attach copies of its master deed and bylaws as well as other pertinent documentary evidence to its motion for summary disposition and denied plaintiff's motion.

The case was submitted to case evaluation. The case evaluation included an award to plaintiff on its complaint and an award to defendant on his counter-claim. Defendant filed an acceptance of the award. However, plaintiff accepted the award in its favor and rejected the award defendant received on his counter-claim. Both parties were notified that plaintiff filed a partial acceptance.

Afterward, plaintiff cured its defects from the previous motion and renewed its motion for summary disposition on the same grounds. In addition, plaintiff argued that summary disposition should be granted regarding defendant's counter-claim. Specifically, plaintiff argued that defendant's counterclaim failed to state a claim for breach of plaintiff's fiduciary duty and breach of contract. The trial court granted plaintiff's motion for summary disposition on its complaint but denied plaintiff's motion for summary disposition on defendant's counterclaim. The trial court found that defendant's documentary evidence established a genuine issue of fact regarding plaintiff's maintenance, repair, and replacement of defendant's roof.

Defendant moved for determination of acceptance of the case evaluation. Defendant argued that plaintiff's partial acceptance of the case evaluation amounted to an acceptance of the case evaluation in its entirety. In response, plaintiff argued that its partial acceptance of the case evaluation constituted a rejection of the entire award. The trial court determined that plaintiff's partial acceptance was an acceptance of the entire award. Plaintiff's subsequent motion for reconsideration was denied.

Plaintiff's sole issue on appeal is that the trial court erred in ruling that a partial acceptance of a case evaluation award constituted an acceptance of the entire award. We agree.

Issues of court rule interpretation present questions of law subject to de novo review. *CAM Constr v Lake Edgewood Condo Ass'n*, 465 Mich 549, 553; 640 NW2d 256 (2002). When construing a court rule, a court must apply the rules of statutory interpretation. *Id.*, p 554. The first criterion is the language of the rule itself, and if that language is clear, it must be enforced without further construction. *Id.*

MCR 2.403 is intended to expedite and simplify the final settlement of a case. *Minority Earth Movers, Inc v Walter Toebe Constr Co*, 251 Mich App 87, 98; 649 NW2d 397 (2002). MCR 2.403(L)(1) provides that "each party shall file a written acceptance or rejection of [a case evaluation] with the [ADR] clerk within 28 days after service of the [case evaluation]. The failure to file a written acceptance or rejection within 28 days constitutes a rejection." *Bush v Mobil Oil Corp*, 223 Mich App 222, 226; 565 NW2d 921 (1997), overruled in part on other grounds *CAM Constr, supra*, p 556-557, citing MCR 2.403(L)(1). In addition, the rule requires that the parties must "either accept or reject the evaluation in its entirety as to a particular opposing party." MCR 2.403(L)(1); *Minority Earth Movers, Inc, supra*, p 92. A party may not

accept an award on its claim and reject an award on a counterclaim with respect to the same opposing party. *Bush, supra*, p 226-227, citing *Henderson v Sprout Bros, Inc*, 176 Mich App 661, 667; 440 NW2d 629 (1989). A response that does not comport with court rules is considered a rejection. *Bush, supra*, p 227.¹

Plaintiff's attempt to effect a partial acceptance frustrated the purpose of the court rule, *Minority Earth Movers, Inc, supra*, p 98, and the goal of Michigan courts to "avoid bifurcation of civil actions submitted to case evaluation," *CAM, Constr, supra*, p 557. Plaintiff's response did not comport with court rules and must be considered a rejection of the case evaluation. Therefore, the trial court erred when it determined that plaintiff's partial acceptance and partial rejection of the case evaluation constituted an acceptance of the entire case evaluation.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald

/s/ Patrick M. Meter

/s/ Donald S. Owens

¹ See also *Dane Constr, Inc v Royal's Wine & Deli, Inc*, 192 Mich App 287, 290; 480 NW2d 343 (1991), in which this Court, citing *Henderson, supra*, p 668-669, noted that a bifurcated response is treated as a nonresponse. At the time *Henderson* was decided, a nonresponse was treated as an acceptance, *Minority Earth Movers, Inc, supra*, p 92; however, MCR 2.403(L)(1) now provides that a nonresponse is a rejection.