

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

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EUG, LLC,

Plaintiff-Appellant/Cross Appellee,

v

RPL OF MICHIGAN, INC and RAYMOND  
LEDUC,

Defendants-Appellees/Cross  
Appellants.

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UNPUBLISHED

August 15, 2006

No. 268337

Oakland Circuit Court

LC No. 2004-062161-CH

Before: Davis, P.J., and Cooper and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) on plaintiff's claim for common law and statutory slander of title. Specifically, plaintiff contends it demonstrated that defendant acted with malice in filing an affidavit of interest. Defendant<sup>1</sup> cross-appeals as of right an order granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(9) and (10) on plaintiff's claims to quiet title in favor of plaintiff and remove defendant's affidavit of interest. Specifically, defendant contends a purchase agreement between defendant and the seller was still valid, and therefore defendant had an interest in the relevant property. For the reasons set forth in this opinion, we affirm the rulings of the trial court.

On October 17, 2002, defendant and Salem Creek, L.L.C. (Salem) entered into a purchase agreement whereby Salem agreed to sell approximately 40 acres of real property to defendant for a purchase price of \$725,000. The purchase agreement contained a myriad of conditions, foremost among them is found in paragraph fourteen which provided for an eighteen month due diligence period, during which time defendant could inspect the property and inform

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<sup>1</sup> RPL of Michigan, Inc. (RPL) is the sole defendant in this matter. The trial court dismissed Raymond Leduc, the president of RPL in its final order.

Salem of its intent to purchase the property or of its desire to terminate the purchase agreement. Paragraph fourteen stated, in relevant part, as follows:

14. Purchaser shall have eighteen (18) months (the “Due Diligence Period”) after the effective date of this Agreement within which to inspect and become satisfied with all elements of the property . . . . If for any reason Purchaser is dissatisfied with any of the foregoing, Purchaser may, by notice to Seller within the Due Diligence Period, terminate this Agreement, in which event Purchaser’s deposit shall be returned to Purchaser immediately.

There is no dispute that the first due diligence period between defendant and Salem expired on April 17, 2004. On April 16, 2004, defendant’s attorney sent a letter to Salem informing them that his client was still interested in the property but was “dissatisfied with its due diligence results.” Following receipt of the letter, Salem and defendant agreed to amend the purchase agreement to allow an extension of 180 days for the second due diligence period. There is no dispute that the second due diligence period expired on October 25, 2005. On October 18, 2004, Raymond Leduc, defendant’s president, sent Salem a letter which stated in relevant part:

...Unfortunately due to expiration of the due diligence period we have to provide you notice of our dissatisfaction with our due diligence results and termination of the purchase agreement. However we are still very much interested in purchasing the property with additional due diligence time. Therefore we are requesting a one hundred and eighty day extension of the due diligence period in order to acquire the necessary MDEQ permit. Should this meet with your acceptance I will prepare the extension...

The parties dispute what occurred next. Defendant contends that on October 21, 2004, Salem’s representative left a voicemail with Leduc stating, in relevant part, “I talked with my partner and...we are OK to do another extension if you want to send one along to me... and...hopefully you will get your approvals soon so forward that on and you can proceed with your permitting...” According to defendant, a few days after the message was left, Salem contacted defendant and asked defendant to increase the sales price by \$200,000, as evidenced by an alleged second conversation between Leduc and Salem’s representative, indicating that another interested purchaser was willing to pay an additional \$175,000 for the land.

It is undisputed that on October 29, 2004, defendant filed an affidavit of interest claiming it had an interest in the property. Also on October 29, 2004, Salem entered into a land contract with plaintiff for the property in question for the purchase price of \$900,000.

On November 4, 2004, plaintiff filed a complaint alleging that plaintiff had entered into a purchase agreement to sell 3.5 acres of the 40 acres to Real Blocks, L.L.C. for \$1,050,000 which was terminated because of the affidavit of interest filed by defendant. Plaintiff included in their complaint a claim to quiet title as well as claims for common law and statutory slander of title. Following oral argument on a second motion for summary disposition brought by plaintiff, the trial court found that the October 18, 2004 letter terminated the purchase agreement between defendant and the seller, and therefore quieted title in favor of plaintiff. The trial court also found that plaintiff failed to demonstrate that defendant acted with malice in filing the affidavit of interest.

We first consider defendant's contention on cross-appeal that the trial court erred in granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(9) and (10) with regard to plaintiff's claim of quiet title. This Court reviews a trial court's ruling on a motion for summary disposition de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). "A motion for summary disposition brought pursuant to MCR 2.116(C)(9) tests the sufficiency of the defendant's pleadings by accepting all well-pleaded allegations as true. . . . If the defenses asserted are so clearly untenable as a matter of law that no factual development could possible [sic] deny the plaintiff's right to recovery, then summary disposition under this rule is proper." *Wheeler v Shelby Charter Twp*, 265 Mich App 657, 663; 697 NW2d 180 (2005) (internal quotations omitted).

Issues of contract interpretation are questions of law that this Court reviews de novo. *Sweebe v Sweebe*, 474 Mich 151, 154; 712 NW2d 708 (2006). In *Burkhardt v Bailey*, 260 Mich App 636, 656-657; 680 NW2d 453, lv den 471 Mich 920 (2004), this Court set forth the following principles of contract interpretation:

The main goal of contract interpretation generally is to enforce the parties' intent. *Mahnick v Bell Co*, 256 Mich App 154, 158-159; 662 NW2d 830 (2003). But when the language of a document is clear and unambiguous, interpretation is limited to the actual words used, *Universal Underwriters Ins Co v Kneeland*, 464 Mich 491, 496; 628 NW2d 491 (2001), and parole evidence is inadmissible to prove a different intent, *Meagher v Wayne State Univ*, 222 Mich App 700, 722; 565 NW2d 401 (1997). An unambiguous contract must be enforced according to its terms. *Mahnick, supra* at 159. The judiciary may not rewrite contracts on the basis of discerned "reasonable expectations" of the parties because to do so "is contrary to the bedrock principle of American contract law that parties are free to contract as they see fit, and the courts are to enforce the agreement as written absent some highly unusual circumstance, such as a contract in violation of law or public policy." [*Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 51; 664 NW2d 776 (2003)].

Neither party contends paragraph fourteen of the purchase agreement is ambiguous. Paragraph fourteen expressly states that defendant may terminate the purchase agreement by notice to the seller. In accordance with this provision, Leduc, on behalf of defendant, in his October 18, 2004 letter, provided Salem its notice of dissatisfaction with the due diligence results and expressly and unambiguously terminated the purchase agreement. However, defendant contends the October 18, 2004 letter did not terminate the agreement because the letter was almost identical in form and substance to his prior correspondence requesting an extension of the due diligence period. Defendant's argument that the October 18, 2004 letter did not terminate the agreement fails for at least two reasons. First, defendant cites no supporting authority for the proposition that defendant was simply following the parties' past practice and course of dealing. Rather, defendant simply makes the conclusory statement that the October 18, 2004 letter was a request for an extension of the due diligence period as a result of the parties' past practice. "An appellant may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim." *Amb's v Kalamazoo Co Rd Comm*, 255 Mich App 637, 650; 662 NW2d 424 (2003).

Secondly, case law states that “Although “[t]he main goal of contract interpretation generally is to enforce the parties’ intent . . . when the language of a document is clear and unambiguous, interpretation is limited to the actual words used[.]” *Burkhardt, supra*. The purchase agreement unambiguously provided that the purchaser could terminate the agreement by notifying the seller of the purchaser’s dissatisfaction with the due diligence results, and the October 18, 2004 letter expressly and unambiguously provided the seller notice of the purchaser’s termination of the agreement. Because the language of the documents was clear and unambiguous, Leduc’s intent should not be considered. *Burkhardt, supra*, 260 Mich App 656-657. Furthermore, “[A] party to a written contract that is clear and unambiguous may not vary its terms with parol evidence.” *Reed v Reed*, 265 Mich App 131, 148; 693 NW2d 825 (2005). Only where the contract is ambiguous is it proper to consider relevant extrinsic evidence such as the parties’ conduct and past practices. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 469-470; 663 NW2d 447 (2003). As noted above, the purchase agreement was unambiguous, and therefore extrinsic evidence such as the parties’ past conduct may not be considered. *Id*. Consequently, we affirm the decision of the trial court to quiet title in favor of plaintiff.

Because we hold that the October 18, 2004 letter terminated the purchase agreement, and thus that the trial court properly granted plaintiff’s motion for summary disposition as to the quiet title claim, we need not address defendant’s remaining issues.

We next turn to plaintiff’s cross-appeal of the trial court’s dismissal of its claims for common law and statutory slander of title pursuant to MCR 2.116(C)(10). Again, we review a trial court’s ruling on a motion for summary disposition de novo. *Dressel, supra* at 561. “To establish slander of title under common law, a plaintiff must show falsity, malice, and special damages . . . .” *B & B Investment Group v Gitler*, 229 Mich App 1, 8; 581 NW2d 17 (1998). The elements for claims of slander of title brought under common law or under MCL 565.108 are the same. *Id*. “Malice may not be inferred merely from the filing of an invalid lien; the plaintiff must show that the defendant knowingly filed an invalid lien with the intent to cause the plaintiff injury.” *Stanton v Dacheille*, 186 Mich App 247, 262; 463 NW2d 479 (1990). In this case, although we hold that the October 18, 2004 letter terminated the purchase agreement between defendant and Salem, defendant affirmatively averred and presented evidence that demonstrated a good faith belief that it possessed a valid interest in the property. Accordingly, plaintiff could not establish the necessary element of malice for a slander of title claim. From the record before us, a trier of fact could only speculate that defendant acted with malice. Such speculation is insufficient to create a genuine issue of material fact. *Karbel v Comerica Bank*, 247 Mich App 90, 97-98; 635 NW2d 69 (2001). Accordingly, we find that the trial court did not err in granting defendant’s motion for summary disposition regarding plaintiff’s claims of slander of title.

Affirmed.

/s/ Alton T. Davis  
/s/ Jessica R. Cooper  
/s/ Stephen L. Borrello