

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

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STEPHEN JOHANDES and DIANN E.  
JOHANDES, Individually and as Trustee of the  
DIANN E. JOHANDES REVOCABLE TRUST,

UNPUBLISHED  
April 27, 2010

Plaintiffs-Appellants,

v

TIMOTHY E. CROWELL and ELIZABETH A.  
CROWELL,

No. 288619  
Ottawa Circuit Court  
LC No. 08-061426-CK

Defendants-Appellees.

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Before: Beckering, P.J., and Markey and Borrello, JJ.

PER CURIAM.

In this contract case, plaintiffs appeal by right the circuit court's order granting summary disposition to defendants. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On October 31, 2007, the parties executed a contract according to which plaintiffs were to sell, and defendants were to buy, certain real property. Two days later, the parties executed a separate contract for sale of related personal property which also bears the October 31, 2007, date. The latter includes the statement, "Sale to close simultaneous with the close of the sale of real property" that was the subject of the separate contract.

In time, however, defendants announced that, for personal reasons, they would not be going through with the purchase. Plaintiffs filed suit, seeking liquidated damages in the form of retention of prepaid earnest money as provided for in the contract for real property and also damages and injunctive relief for defendants' failure to complete the purchase of the personal property.

The trial court awarded plaintiffs their contracted for liquidated damages for the breached sale of real property, but otherwise granted summary disposition to defendants. The court explained:

This is a single transaction which was broken out for the purpose of financing into two separate documents.

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The agreement relating to the purchase of personal property specifically provides that it must close at the time of the closing of the real estate. The real estate never closed, and, therefore, there is no obligation to close the personal property sale.

The court further noted that “the agreement provides that the personal property must remain on the real property, and, therefore, it is clear that the parties intended that the real and personal property were all part of the same transaction,” adding, “[c]ommon sense and everyday experience would support that conclusion.”

Plaintiffs argue that the trial court erred in treating the two contracts as parts of a single agreement, and in holding that the lack of closing on the sale of the real property obviated defendants’ duty to complete the purchase of the personal property.

We review a trial court’s decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). Contract interpretation likewise presents a question of law, calling for review de novo. *Sands Appliance Services, Inc v Wilson*, 463 Mich 231, 238; 615 NW2d 241 (2000). The primary goal in contract interpretation is to ascertain and effectuate the intent of the parties. *Old Kent Bank v Sobczak*, 243 Mich App 57, 63; 620 NW2d 663 (2000). Where the contractual language is not ambiguous, its construction is a question of law for the court. *Meagher v Wayne State University*, 222 Mich App 700, 721; 565 NW2d 401 (1997).

There are clear and persuasive indications that the two contracts in question were complementary parts of a single agreement beyond the fact that one of them called for its closing simultaneously with the other. The dates of each contract indicate that they were prepared simultaneously. More compelling is that the list of so-called personal property<sup>1</sup> set forth in the contract covering personalty is dominated by fixtures or other large equipment obviously belonging with the household: e.g., golf cart, aquarium contents, refrigerator, lighting system, washer, and dryer. An addendum to that agreement adds, among other things, a stove, dishwasher, combination convection/microwave oven, trash compactor, and hot tub. A provision covering collateralization of the property states that it applies “whether or not the same is purchased pursuant to the Personal Property Purchase Agreement or as a fixture appurtenant to the real estate,” thus indicating the intertwining of the agreements for real and personal property. The amendment further includes the requirement, as the trial court noted, that the personal property remain on the real property that was the subject of the companion contract.

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<sup>1</sup> Fixtures are technically a subset of the real property, not wholly separate personal property. See Black’s Law Dictionary (6th ed, 1990), p 638 (defining “fixture”). Because no issue has arisen from placing fixtures under the rubric of “personal property,” that imperfect labeling is of no consequence to how this case was argued or decided.

Plaintiffs point out that one of the defendants composed an e-mail in which she stated, “These two contracts MUST be viewed separately.” But, plaintiffs do not dispute the trial court’s observation that defendants wanted two contracts for the purpose of financing. Separate for purposes of financing does not necessarily mean separate for all purposes. The structuring of the transaction into separate contracts for the sale of certain real property and related personal property resulted in a single agreement composed of two complementary components.

For these reasons, the trial court correctly concluded that the evidence could not be interpreted other than to indicate that “the parties intended that the real and personal property were all part of the same transaction.”

Because the two contracts were intended to operate together to spell out a single transaction, the trial court did not err in concluding that the provision in the one for personal property tying its closing to the closing on the contract for real property indicated that there was no requirement to close on the former if there were no closing of the latter.

The trial court thus properly awarded plaintiffs only their liquidated damages stemming from the breached buy/sell agreement for the real property.

We affirm. As the prevailing party, defendants may tax costs pursuant to MCR 7.219.

/s/ Jane E. Beckering

/s/ Jane E. Markey

/s/ Stephen L. Borrello