

STATE OF MICHIGAN
COURT OF APPEALS

NDC OF SYLVAN, LTD.,

Plaintiff-Appellee/Cross-Appellant,

v

TOWNSHIP OF SYLVAN,

Defendant-Appellant/Cross-
Appellee.

UNPUBLISHED
May 19, 2011

No. 301397
Washtenaw Circuit Court
LC No. 07-000826-CZ

MAGELLAN PROPERTIES, L.L.C.,

Plaintiff-Appellee/Cross-Appellant,

v

TOWNSHIP OF SYLVAN,

Defendant-Appellant/Cross-
Appellee.

No. 301410
Washtenaw Circuit Court
LC No. 07-001260-CZ

Before: SHAPIRO, P.J., and HOEKSTRA and TALBOT, JJ.

SHAPIRO, J. (*concurring*).

I concur in the partial affirmance, partial vacation, partial reversal, and remand. I write separately to make clear the continued viability of the claims that were raised by plaintiffs but which we have not addressed since the trial court, in light of its ruling, did not need to reach them. For example, as to parcels C through G, we have vacated the trial court's ruling that relied upon terms in the original Magellan agreement when, in fact, it was the Amended Magellan Development Agreement that was in effect. We have also held that, under the terms of the amended Magellan agreement, the systems were deemed operational as of December 1, 2001. Plaintiffs asserted below that the inclusion of the December 1, 2001 provision was based on fraudulent statements or misrepresentations made by Sylvan as to the systems' operational status when they entered into the amended Magellan agreement. The trial court, having mistakenly relied on the original Magellan agreement, which did not contain the December 1, 2001

provision, did not reach the question whether, as plaintiffs claimed, there had been fraud in the inducement, and we, in reviewing the trial court's rulings, have not either.

We also have not addressed the trial court's equitable ruling revising the amount of payments to be made by plaintiffs. For example, as to parcels A and B, we have concluded that the change in the manner in which sewer services were to be provided was insufficient, in and of itself, to constitute a breach of contract. That change may, however, have had a substantial effect on the ultimate payments made by NDC. The contract provided for credits to the parcels' owner for tap fees from other locations, but, given the change in the scope of the project necessitated by the refusal of the county to issue a bond for the interceptor project, whether the potential for such tap fees still exists is unclear. Accordingly, upon remand, the trial court should determine the status of these tap fees and, as equity requires, recalculate the amount NDC is to pay Sylvan to account for the loss of those fees.

/s/ Douglas B. Shapiro