

STATE OF MICHIGAN
COURT OF APPEALS

VERNOR INVESTMENTS, INC.,

Plaintiff-Appellant,

v

MANUEL L. REYES, MARISELA REYES,
MICHAEL REYES, and CATALINA REYES,

Defendants-Appellees.

UNPUBLISHED

July 3, 2001

No. 220847

Wayne Circuit Court

LC No. 98-816317-CK

Before: Gage, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Plaintiff appeals by right from a judgment of no cause of action entered in favor of defendants following a bench trial. We affirm.

Plaintiff argues that the trial court's findings of fact were insufficient and clearly erroneous and that its legal conclusions were in error. We disagree. We review a trial court's findings of fact for clear error. MCR 2.613(C); *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). A finding is clearly erroneous when, although evidence may exist to support the finding, this Court is left with a definite and firm conviction that a mistake has been made. *Walters, supra*. In applying the clearly erroneous standard, regard is given to the special opportunity of the trial court to judge the credibility of witnesses. MCR 2.613(C); *In re Forfeiture of \$19,250*, 209 Mich App 20, 29; 530 NW2d 759 (1995). "Findings of fact are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law." *LaFond v Rumler*, 226 Mich App 447, 458; 574 NW2d 40 (1997); see, also, *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995). Moreover, we review a trial court's conclusions of law de novo, *Walters, supra*, and the interpretation of contractual language is a question of law that this Court also reviews de novo, *Morinelli v Provident Life & Accident Ins Co*, 242 Mich App 255, 261; 617 NW2d 777 (2000).

In actions tried without a jury, a trial court must make specific findings of fact, state separately its conclusions of law, and direct entry of the appropriate judgment. MCR 2.517(A)(1); *Triple E, supra*. Brief, definite, and pertinent findings and conclusions regarding contested matters are sufficient without overelaboration of detail or particularization of facts. MCR 2.517(A)(2); *Fletcher v Fletcher*, 447 Mich 871, 883 (Brickley, J); 526 NW2d 889 (1994); *Triple E, supra*.

The trial court's findings of fact were sufficient because the court was aware of the issues involved and correctly applied the law, and its findings were not clearly erroneous. *LaFond, supra; Triple E, supra*. The trial court agreed with plaintiff's attorney that the central issue of the case involved the enforceability of the buyout agreement. The court found that the language of the agreement created a contingency, or a condition precedent, in that plaintiff was required to make payment before the agreement became binding. A condition precedent is an event that the parties intend to occur before a right to performance arises. *Yeo v State Farm Ins Co*, 219 Mich App 254, 257; 555 NW2d 893 (1996). Courts are reluctant to construe contractual provisions as conditions precedent unless compelled to do so by the language of the contract. *Id.* When interpreting a contract, the primary goal is to enforce the parties' intent. *Old Kent Bank v Sobczak*, 243 Mich App 57, 63; 620 NW2d 663 (2000). In doing so, this Court reads the contract as a whole and attempts to apply the plain language of the contract itself. *Id.* When a contract is ambiguous, however, this Court may construe the agreement in an effort to find and enforce the parties' intent. *Id.* A contract is ambiguous only if the language used is reasonably susceptible to more than one interpretation. *Cole v Ladbrooke Racing Michigan, Inc*, 241 Mich App 1, 13; 614 NW2d 169 (2000).

The trial court's determination that the contract was unambiguous was not in error. The pertinent language of the buyout agreement was capable of only one interpretation. The contract clearly stated that, "*once this amount is paid,*" the buyout agreement would override the previous land contract. The above language is not susceptible to more than one interpretation, and, as such, the agreement was not ambiguous. *Cole, supra*. Therefore, applying the plain language of the buyout agreement itself, payment was required prior to the agreement becoming binding on the parties. *Sobczak, supra*. Consequently, the trial court's conclusion that plaintiff was required to make payment under the buyout agreement was not error, and the court correctly determined that the language in the agreement created a contingency, or a condition precedent.¹

Because the trial court correctly determined that payment was a condition precedent to defendants' obligation to proceed with the transaction, it likewise concluded that plaintiff could not maintain a cause of action against defendants for nonperformance. The failure to satisfy a condition precedent prevents a cause of action based upon the failure of performance. *Berkel & Co Contractors v Christman Co*, 210 Mich App 416, 420; 533 NW2d 838 (1995). Therefore, the trial court properly found that, because plaintiff failed to tender payment in accordance with the buyout agreement, plaintiff could not maintain its cause of action against defendants.

Furthermore, the court's finding that defendants were not required to contact Sam Yono, plaintiff's president, to inform him that they were ready to accept payment was not clearly erroneous. The buyout agreement did not require defendants to contact Yono, and it provided that closing was to occur within thirty days, or the agreement was void. In addition, Yono's \$1,450 down payment check bounced. Under the circumstances, if Yono wanted to proceed with

¹ Although plaintiff challenges as a finding of fact the trial court's determination that the agreement contained a condition precedent and that plaintiff was required to make payment under the agreement prior to it becoming binding, the court's determination constituted a legal conclusion rather than a finding of fact.

the buyout, he was responsible for ensuring that payment was tendered and that the closing occurred within thirty days of the making of the agreement. As the trial court found, defendants had nothing to do but wait for Yono's payment in accordance with the agreement. Because the trial court's findings of fact indicated that it was aware of the issues involved in the case, and it correctly applied the law, appellate review would not be facilitated by remanding the case for further explanation. *LaFond, supra; Triple E, supra.* Furthermore, the trial court's legal conclusions were not in error, and its findings were not clearly erroneous. *Walters, supra.*

We affirm.

/s/ Hilda R. Gage
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey