

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

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MEADOWS-ELMWOOD, LLC,

Plaintiff-Appellant,

v

CHARTER TOWNSHIP OF ELMWOOD,

Defendant,

and

ELMWOOD CITIZENS FOR SENSIBLE  
GROWTH, INC.,

Intervening Defendant-Appellee.

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UNPUBLISHED

March 23, 2006

No. 258469

Leelanau Circuit Court

LC No. 04-006560-CE

Before: Smolenski, P.J., Whitbeck, C.J., and O'Connell, J.

PER CURIAM.

Plaintiff appeals as of right from an order awarding intervening defendant attorney fees and costs. We affirm. Litigation between Elmwood Township and intervening defendant regarding plaintiff's proposed condominium project has been going on for quite some time. The underlying proceedings at issue here commenced when plaintiff filed for a writ of mandamus,<sup>1</sup> arguing that Elmwood Township had already approved its land use application, so the court should order it to issue plaintiff a land use permit.

On or about May 1, 2003, plaintiff submitted an application to the Elmwood Township Planning Commission for a land use permit for the condominium project. On November 4, 2003, the planning commission recommended to the township board that the permit be approved

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<sup>1</sup> We note that plaintiff should have sought an order for superintending control under MCR 3.302(C), because "a municipal zoning authority is subject to the circuit court's superintending control, not its power of mandamus." *Choe v Flint Charter Twp*, 240 Mich App 662, 666; 615 NW2d 739 (2000).

with certain conditions. However, Elmwood Township's counsel informed the planning commission chair that he did not think that the commission should apply article XIII B of the township zoning ordinance. Counsel suspected that article XIII B, which contained special requirements for condominiums, violated the prohibition in MCL 559.241(1) of the condominium act, MCL 559.101 *et seq.*, that generally forbids a township's special regulation of condominiums. The next day, having concluded that the article did indeed violate the condominium act, Elmwood Township's attorney advised the planning commission and the township board to refrain from reviewing plaintiff's project pursuant to article XIII B. He further directed the township board to remove consideration of plaintiff's project from its November 2003 meeting agenda, but he did not direct the township not to review the project if review was required under another applicable portion of the zoning ordinance.

Two individuals affiliated with plaintiff averred that, after the planning commission meeting, the commission told them that its November 4 conditional approval was a final approval because the project's submission to the full township board was not required. However, neither person identified the individual who told them that final approval by the township board was unnecessary, and the legal conclusion conveyed is inconsistent with article XIII B, even if it were a valid ordinance. At its November 10, 2003 meeting, the township board removed consideration of plaintiff's project from its agenda.

On March 29, 2004, plaintiff filed a complaint for a writ of mandamus, alleging that Elmwood Township and the planning commission had refused to issue a land use permit despite their prior approval of the application. Plaintiff asserted that because its application had been approved, it had a clear legal right to a land use permit and that the township's refusal to issue a permit was unlawful. Plaintiff also alleged that its proposed plan met the relevant housing density provision. In its answer, Elmwood Township asserted that only the planning commission had approved the project. Intervening defendant then filed its motion to intervene. In its order regarding the motion, the trial court stated that it had *sua sponte* questioned whether it had jurisdiction to hear plaintiff's case because township board approval was a prerequisite to the issuance of a permit, and plaintiff had yet to produce documentation of the alleged board approval. The court gave plaintiff seven days from the date of the hearing to produce documentation, but plaintiff only produced the November 4 planning commission minutes, which the court noted did not substantiate plaintiff's pleadings. The court concluded that because it appeared that the township was "not taking any action on either the site plan or the decision whether to issue a special land use permit," the matter was not properly pleaded. Rather than dismiss the action, however, the court gave plaintiff 14 days to amend its complaint.

On June 6, 2004, plaintiff amended its complaint, clarifying that it was told that the planning commission's approval was a final approval because the plan did not have to be submitted to the township board. However, plaintiff failed to identify the township officials that allegedly indicated that the project was approved. Plaintiff and intervening defendant filed cross motions for summary disposition. Intervening defendant asserted that the zoning ordinance's article XIII C, which generally deals with the submission of new site plans that are not condominiums, applied in the absence of XIII B. Article XIII C required site plan approval by both the planning commission and the township board for a land use permit to be issued. In response, plaintiff argued that case law supported its position that it was still entitled to mandamus relief regardless of whether article XIII C or XIII B applied. The trial court granted

intervening defendant's motion for summary disposition, reasoning that article XIII C required the township board to review plaintiff's proposal, conduct a public hearing, and then render a decision regarding plaintiff's proposal.<sup>2</sup>

On August 25, 2004, intervening defendant filed a motion under MCR 2.114 and MCL 600.2591 for costs and fees against plaintiff and defendant. Intervening defendant reasoned that despite the fact that plaintiff was made aware on May 10, 2004, that the township board had yet to approve plaintiff's site plan as required by the ordinance, it continued to litigate. In granting the motion against plaintiff, the trial court reasoned that plaintiff never submitted documentation of the alleged approval and that approval was always required. The court noted that it was "bizarre" that plaintiff would rely on the opinions of the township's attorney over the plain language of the zoning ordinance. Therefore, because it concluded that there was no factual or legal basis for plaintiff's requested mandamus action, the court ordered plaintiff to pay intervening defendant's costs and attorney fees.

Plaintiff argues on appeal that the trial court's imposition of sanctions against it was clearly erroneous. We disagree. A trial court's determination that a pleading was frivolous is subject to review for clear error. *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002). "A decision is clearly erroneous where, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." *Id.* at 661-662.

If a pleading was signed in violation of the court rule pertaining to frivolous claims, the imposition of sanctions is required. MCR 2.625(A)(2); MCL 600.2591; *FMB-First Michigan Bank v Bailey*, 232 Mich App 711, 720-721; 591 NW2d 676 (1998). "The determination whether a claim or defense is frivolous must be based on the circumstances at the time it was asserted." *Jerico Construction, Inc v Quadrants, Inc*, 257 Mich App 22, 36; 666 NW2d 310 (2003). A claim is frivolous if the party "had no reasonable basis to believe that the facts underlying the party's legal position were in fact true," or if its legal theories were "devoid of arguable legal merit." MCL 600.2591(3).

Plaintiff claims that the trial court clearly erred in essentially disregarding the arguable validity of its equitable estoppel claim.<sup>3</sup> Equitable estoppel arises where "(1) a party by representation, admissions, or silence, intentionally or negligently induces another party to believe facts; (2) the other party justifiably relies and acts on this belief; and (3) the other party will be prejudiced if the first party is permitted to deny the existence of the facts." *Cook v Grand River Hydroelectric Power Co, Inc*, 131 Mich App 821, 828; 346 NW2d 881 (1984). Generally, zoning authorities will not be estopped from enforcing their ordinances unless there are exceptional circumstances. *Howard Twp Bd of Trustees v Waldo*, 168 Mich App 565, 575-576; 425 NW2d 180 (1988). Casual private advice or assurance of success from a township official

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<sup>2</sup> In an advisory footnote, the trial court opined on the density requirement dispute, which the court characterized as the real issue between the parties.

<sup>3</sup> Both parties refer to the doctrine of promissory estoppel in their briefs on appeal. We assume they mean equitable estoppel.

does not qualify as an exceptional circumstance. *White Lake Twp v Amos*, 371 Mich 693, 698-699; 124 NW2d 803 (1963).

Plaintiff argues that the facts of its case present exceptional circumstances, noting that it expended time and money filing its mandamus action and also delayed development for another year because of alleged assurances regarding approval of the land use permit. However, merely filing for relief and having its development delayed are not exceptional circumstances. Plaintiff had not actually received a permit and had not made significant expenditures in reliance on it. See *Pittsfield Twp v Malcolm*, 375 Mich 135, 147-148; 134 NW2d 166 (1965). In addition, plaintiff's reliance on casual private advice from the township's attorney clearly did not create an exceptional circumstance. *Amos, supra*.

Plaintiff further cites *Bills v Grand Blanc Township*, 59 Mich App 619; 229 NW2d 871 (1975), and *Souter v Bd of Zoning Appeals of Grand Rapids*, 63 Mich App 451; 234 NW2d 562 (1975), for the proposition that even though there was a procedural irregularity (the township board failed to approve its application), the trial court still could have granted its requested relief. However, because plaintiff had not complied with the clear language of the substantive provisions of the ordinance, these cases are inapposite.

Plaintiff next argues that the trial court clearly erred in finding that plaintiff did not conduct a reasonable inquiry regarding the factual basis for its complaint. We disagree. Before signing a pleading, an attorney has an affirmative duty to conduct a reasonable inquiry into the factual and legal viability of the alleged claim. *Attorney General v Harkins*, 257 Mich App 564, 576; 669 NW2d 296 (2003). Whether the inquiry was reasonable is determined by an objective review of the effort taken to investigate the claim before filing suit. *Id.*

After reviewing plaintiff's pleadings, the trial court allowed it on two separate occasions to present evidence of the alleged approval and on another occasion to amend its complaint to clarify the nature of the underlying facts. However, plaintiff amended its complaint merely by clarifying that it was told that the planning commission's approval was a final approval because the plan did not have to be submitted to the township board. Significantly, plaintiff never identified the township officials that allegedly indicated that the project was approved. It is also clear that the trial court questioned plaintiff's alleged reliance on the township attorney, who initially stated that board approval was unnecessary despite the plain language of article XIII C. We also note that plaintiff's complaint was premature because of the ongoing housing density dispute. Under these circumstances, the trial court did not clearly err in concluding that plaintiff had no reasonable belief that it was entitled to the requested relief.

Affirmed.

/s/ Michael R. Smolenski  
/s/ William C. Whitbeck  
/s/ Peter D. O'Connell