STATE OF MICHIGAN

COURT OF APPEALS

JOSEPH JACOB and RICHARD JACOB,

Plaintiffs/Counterdefendants-Appellants,

v

ABSOLUTE MOTOR CARS, INC.,

Defendant/Counterplaintiff-Appellee,

and

NICHOLAS LAZAR and DAVID MORROW,

Defendants-Appellees.

UNPUBLISHED
September 9, 2021

No. 353651
Oakland Circuit Court
LC No. 2019-172645-CZ

Before: CAVANAGH, P.J., MURRAY, C.J. and REDFORD, J.

PER CURIAM.

Plaintiffs, Joseph Jacob and Richard Jacob, appeal as of right the trial court's judgment in favor of defendants, Absolute Motor Cars, Inc., Nicholas Lazar, and David Morrow, which awarded Absolute Motor $47,115.72 on its counterclaim for indemnification. We hold that the trial court abused its discretion by not allowing plaintiffs to conduct any discovery while opposing defendants' motion for summary disposition brought under MCR 2.116(C)(7) that challenged the validity of the release. The trial court did not err in granting summary disposition to defendants on plaintiffs' claims of statutory conversion, conspiracy, concert of action, unjust enrichment, and all claims against defendant Morrow. We therefore affirm in part, reverse in part, vacate in part, and remand for further proceedings on the breach of contract, fraudulent misrepresentation, and breach of fiduciary duty claims.

I. BASIC FACTS[1]

In October 2014, plaintiffs purchased a 1969 Mustang from an estate sale. Plaintiffs later discovered that the Mustang was a rare Mustang GT Cobra prototype. Nicholas Lazar, who held himself out as an agent and employee of Absolute Motor, later approached plaintiffs about buying the vehicle, but plaintiffs initially refused. Later, on October 16, 2014, plaintiffs and Absolute Motor entered into a consignment agreement, which provided that plaintiffs consigned the vehicle to Absolute Motor or Lazar "[f]or the sole purpose of selling the vehicle." The agreement was to be effective for 180 days, and if the consignee sold the vehicle during this time, the consignee would be entitled to "10% of the aggregate amount of consideration" paid.

Plaintiffs alleged that on or about March 5, 2015, Lazar informed them that he had an "out-of-state" buyer "from Montana" for the vehicle. Lazar then asked Richard to e-mail him a "copy of the title and the state receipt" because he had to send the documents "to the guy." Plaintiffs complied and maintained that they were never informed that the "buyer" was Absolute Motor. Instead, when they asked who the buyer was, Lazar told them that the person refused to divulge his name.

In any event, that same day, plaintiffs executed a bill of sale, which states, in pertinent part:

> This Bill of Sale ("**Bill of Sale**") is made as of March 5, 2015 by JOSEPH JACOB and RICHARD (RICK) JACOB (together, "**Sellers**"), in favor of ABSOLUTE MOTOR CARS, INC. ("**Buyer**").
>
> Seller, for the sum of One Hundred Seventy-Five Thousand dollars ($173,740),[2] divided equally between Sellers, hereby sell, transfer and assign to Buyer the . . . vehicle . . . .
>
> * * *
>
> Seller acknowledges that Buyer has fully performed and fulfilled the obligations of Buyer as set forth in the Consignment and Sales Agreement between Seller and Buyer dated October 16, 2014 ("Contract"), and that the purchase price is fair consideration for the Vehicle. Seller hereby releases and holds Buyer (its shareholders, officers, directors, and employees) harmless from, and indemnifies Buyer with regard to, any and all claims, known or unknown, related to or arising out of (i) the Contract, (ii) the sale of the Vehicle to Buyer as described herein, and (iii) any breach of this Bill of Sale by Seller.

Also, on that same day, plaintiffs endorsed their names to the certificate of title under the "sellers" portion and left the purchaser's portion blank. Absolute Motor then distributed $173,740

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[1] The following background is based upon the allegations in the complaint and the documents attached to the complaint.

[2] The ambiguity between "One Hundred Seventy-Five Thousand dollars" and $173,740 is not an issue on appeal.

to plaintiffs (with each plaintiff receiving $86,870). The following day, Absolute Motor's name was written on the certificate of title as the "purchaser" of the vehicle.

Unbeknownst to plaintiffs, a few days later, on March 11, 2015, Absolute Motor sold the vehicle to Anthony M. King, a resident of Montana, for $300,000. Plaintiffs alleged that they were not made aware of this purchase until the spring of 2017 when King contacted Joseph and asked for his assistance in clearing up an issue with the title to the car. When plaintiffs contacted Lazar regarding the sale to King, Lazar responded Absolute Motor had purchased the car and that plaintiffs were not entitled to any proceeds from the subsequent sale.

Plaintiffs thereafter filed suit against Absolute Motor, Lazar, and Morrow,[3] alleging the following counts: statutory conversion, breach of contract, fraudulent misrepresentation, breach of fiduciary duty, unjust enrichment, conspiracy, concert of action, and consequential damages. Defendant Absolute Motor filed a counterclaim, alleging claims for breach of contract and indemnification.[4]

Morrow moved for summary disposition shortly after plaintiffs filed their complaint. Morrow argued that there were no allegations implicating him individually. The trial court agreed and granted the motion, noting that Morrow was not a party to any of the contracts, and there were no allegations that he personally had engaged in any of the tortious conduct.

Absolute Motor later moved for summary disposition under MCR 2.116(C)(7) and (8), with the primary argument being that all of the claims were barred by the release contained in the bill of sale. In response, plaintiffs asserted that, procedurally, the motion was premature because discovery was still pending. And substantively, plaintiff argued, in pertinent part, that the motion should be denied because there was a question of fact whether plaintiffs were fraudulently induced into signing the bill of sale, which would make the bill of sale containing the release void or voidable.

At the same time, Absolute Motor also moved to stay discovery on the basis that the accompanying motion for summary disposition would resolve all of plaintiffs' claims, making discovery moot. The trial court agreed, ruling that if the case was not resolved by defendant's motion for summary disposition, then plaintiffs would be allowed discovery.

The trial court granted defendant's motion for summary disposition under MCR 2.116(C)(7) because the bill of sale unambiguously released any claims plaintiffs had against defendants. While the court noted that plaintiffs had asserted fraud, the court determined that the alleged fraud was related to other matters, and not the release itself. The court also ruled that many of plaintiffs' claims failed for other, independent reasons.

[3] Morrow was the president of Absolute Motor.

[4] Absolute Motor later abandoned or withdrew its claim for breach of contract.

Absolute Motor later moved for summary disposition pursuant to MCR 2.116(C)(9) and (10) on its counterclaim for indemnification, maintaining that the indemnification clause in the bill of sale was clear and required plaintiffs to pay for its attorney fees.

Plaintiffs moved to compel the taking of the depositions of Lazar and Morrow. The following day, defendants moved to stay discovery. Defendants argued that the only remaining issue (indemnification) was an issue of law, which required no further discovery. In relation to the remaining counterclaim of indemnification, the trial court agreed to allow plaintiffs to depose witnesses without them being required to produce any documents.

The deposition of Morrow was held, but plaintiffs' counsel sought information of questionable relevancy. For instance, even though the only remaining claim was Absolute Motor's indemnification claim, plaintiffs sought information pertaining to Absolute Motor's bank accounts. Plaintiffs also submitted a request for documents, including Absolute Motor's tax returns from 2014 through 2019, and monthly bank statements from 2014, 2015, and 2016, and they also issued a subpoena to CIBC Bank for Absolute Motor's bank records. While defendants moved for a protective order, arguing that these areas of discovery were irrelevant to the remaining issue of indemnification, plaintiffs moved to compel discovery.

The trial court ordered defendants to clearly "lay out" for plaintiffs what the remaining indemnification claim was and ordered plaintiffs to respond with what discovery was needed in order to defend against the claim. Then, if the parties still had any disputes, the court would reconvene. The court did reconvene and granted defendants' motion for a protective order, limiting any discovery to the attorney fees incurred in the matter. The court also quashed the subpoena to CIBC Bank.

In response to defendants' motion for summary disposition, plaintiffs argued that because the explicit terms of the contract controls and because there is no mention of attorney fees being recoverable, plaintiffs could not be liable for attorney fees under the indemnification clause. Plaintiffs also asserted, *inter alia*, that if any fees were recoverable, they were limited to those fees incurred for defending against plaintiffs' complaint, not for the prosecution of the counterclaim. The trial court granted the motion, ruling that plaintiffs were liable on the indemnification counterclaim for the attorney fees incurred by defendants.

Defendants also moved for sanctions pursuant to MCR 1.109(E), MCR 2.625(A)(2), and MCL 600.2591, arguing that plaintiffs' complaint and plaintiffs' defenses to the indemnification counterclaim were frivolous. In an opinion and order, the trial court concluded that plaintiffs' complaint was frivolous. The court further found that after it had dismissed plaintiffs' claims, plaintiffs failed to pursue any rational defense to the remaining counterclaim of indemnification, which could "only be interpreted as being for the purpose of (1) harassment and/or (2) fishing for information that allegedly supports their claims that have already been dismissed." The court consequently ruled that defendants were entitled to sanctions against plaintiffs in the form of $56,909.72 in attorney fees.

The trial court then entered a judgment in favor of defendants. The judgment recognized that the court previously found that defendants were owed $56,909.72, but for purposes of indemnification, which pertained solely to Absolute Motor, the court subtracted the amounts

incurred in pursuing the counterclaim and the amounts owed to Lazar, resulting in $47,115.72 being owed to Absolute Motor on its counterclaim. That same day, the trial court entered a separate opinion and order regarding the award of sanctions. The court allocated the $56,909.72 it previously ruled defendants were entitled to by awarding $52,691.72 in favor of Absolute Motor and Morrow, and $4,218.00 in favor of Lazar. The court noted that any amounts collected by Absolute Motor on its judgment for indemnification were to be deducted from the amounts owing as a result of this order.

II. ANALYSIS

A. PROHIBITION OF DISCOVERY

The over-arching dispositive issue contained in defendants' first motion for summary disposition was that all of plaintiffs' claims were barred by the release contained in the bill of sale. There is no doubt that if enforceable, the release would in fact bar plaintiffs' claims. But plaintiffs argued to the trial court, and continues to argue to us on appeal, that their allegations of fraud in entering the bill of sale were sufficient to allow at least limited discovery on the enforceability of the release. The trial court concluded that discovery would not be useful in deciding the issue, and it is the validity of that decision we now review.

We review a trial court's decision to grant or deny discovery for an abuse of discretion. *Arabo v Mich Gaming Control Bd*, 310 Mich App 370, 397; 872 NW2d 223 (2015). Likewise, a trial court's decision to grant a protective order is reviewed for an abuse of discretion. *Id*. A court abuses its discretion when it selects an outcome that falls outside the range of principled outcomes. *Id*. at 397-398.

Generally, summary disposition is premature if discovery is not complete, *Caron v Cranbrook Ed Community*, 298 Mich App 629, 645; 828 NW2d 99 (2012), but likewise " 'summary disposition may be proper before discovery is complete where further discovery does not stand a fair chance of uncovering factual support for the position of the party opposing the motion.' " (citation omitted).

We first recognize that because the motion was brought and decided under MCR 2.116(C)(7), plaintiffs were permitted to submit evidence to oppose the motion. MCR 2.116(G)(2)&(5). We also recognize that because defendants' motion for summary disposition relied on the effect of a release in the bill of sale, the issue presented was primarily one of law. See *Andrusz v Andrusz*, 320 Mich App 445, 452; 904 NW2d 636 (2017) (stating that the proper interpretation of a contract is a question of law). And when interpreting contracts, courts are limited to the four corners of the document. See *Rogers v Great Northern Life Ins Co*, 284 Mich 660, 667; 279 NW 906 (1938); *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 492; 579 NW2d 411 (1998).

However, plaintiffs asserted that they were fraudulently induced into signing the bill of sale, which of course contained the release.[5] "Common law has always permitted the avoidance of a contract procured by means of fraud." *Wiedmayer v Midland Mut Life Ins Co*, 414 Mich 369, 375; 324 NW2d 752 (1982); see also *Barclae v Zarb*, 300 Mich App 455, 480; 834 NW2d 100 (2013). And "[o]ne seeking to void an agreement for fraud is not limited, in proving such fraud, to the provisions of the agreement itself." *Bendford v Nat'l Life & Accident Ins Co*, 356 Mich 52, 59; 96 NW2d 113 (1959); see also *UAW-GM Human Resource Ctr*, 228 Mich App at 492-493 (stating that the prohibition of parol evidence does not apply in showing, among other things, that the contract has no effect because of fraud). Thus, in attempting to prove that the bill of sale was unenforceable because obtained by fraud, plaintiffs were permitted to introduce extrinsic evidence.

As noted, plaintiffs were not afforded the opportunity to conduct any discovery. They argue that at a minimum, Lazar, the only person plaintiffs sought to depose at the time, was a person who may have relevant, discoverable information. And that's because Lazar was the only person plaintiffs dealt with, so if there were any evidence of fraud, Lazar would have played a central role. We agree with plaintiffs that it was an abuse of discretion to not allow at least limited, tailored discovery prior to resolving the motion for summary disposition as it pertained to the release. Plaintiffs supported their allegation with admissions by Lazar that a buyer from Montana had been identified before the March 5 sale was consummated. And Lazar's text message of wanting to obtain title documents in order to send them "to the guy" suggest that the documents were for a third party, and not just Absolute Motor.

Lazar may be able to shed light on the circumstances of the sale to the individual from Montana (when was it consummated or at least preliminarily agreed to, either orally or in writing) and the reasons for not divulging that person's name to plaintiffs or on the bill of sale or title. And, whether Lazar was actually authorized to engage in the transactions. Answers to these or similar areas of inquiry would allow plaintiffs to discover whether there is any actual evidence of fraud.

Although the trial court acknowledged that plaintiff was free to challenge the validity of the bill of sale, the court's order precluding plaintiffs from pursuing discovery related to that issue was an abuse of discretion. Accordingly, we reverse the trial court's June 12, 2019 order granting defendants' motion for a protective order for a stay of discovery. And because plaintiffs were deprived of at least limited discovery while opposing defendants' motion for summary disposition brought under MCR 2.116(C)(7), we vacate the trial court's August 8, 2019 opinion and order to the extent that it granted the motion on the basis of the release.

[5] To be valid, a release must be fairly and knowingly made. *Denton v Utley*, 350 Mich 332, 342; 86 NW2d 537 (1957). A release is not fairly and knowingly made if (1) the releasor was dazed, in shock, or under the influence of drugs, (2) the nature of the instrument was misrepresented, or (3) there was other fraudulent or overreaching conduct. *Paterek v 6600 Ltd*, 186 Mich App 445, 449; 465 NW2d 342 (1990).

B. SUMMARY DISPOSITION AS TO PLAINTIFFS' CLAIMS[6]

1. DEFENDANT MORROW

Our conclusion as to the motion as it pertains to the release does not end our review. The trial court granted defendants' motion for summary disposition in part pursuant to MCR 2.116(C)(8)[7] on the ground that Morrow was not a party to any of the contracts and there were no allegations that he was personally engaged in any of the tortious conduct. The entirety of plaintiffs' argument on appeal for this issue consists of the following:

> The Complaint (¶¶ 18-25) provides a detailed summary of how Appellee Lazar used Absolute Motor to act as an instrument to defraud Appellants and how the Appellants were fraudulently induced to sign the "Certificate of Title" "in blank" and "Vehicle Bill of Sale". Moreover, paragraphs [sic] 26 explained the motivation for Mr. Lazar's furtive acts while he was the "agent" of the Appellants pursuant to the "Consignment Agreement". Lastly, paragraphs 29-32 explain what steps Appellees Lazar and Absolute Motor took to conceal their actions by not filing mandatory documents with the Secretary of State. [Some citations omitted.]

While plaintiffs mention Lazar and Absolute Motor in their argument, notably absent is any reference to Morrow. Plaintiffs' failure to explain how the trial court erred, i.e., how their complaint stated a cognizable claim against Morrow, personally, constitutes an abandonment of the issue. See *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003) ("An appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue.").

2. ALL DEFENDANTS—STATUTE OF LIMITATIONS

Plaintiffs also challenge the grant of summary disposition under MCR 2.116(C)(7) in favor of defendants on statute of limitations grounds.

A trial court's decision on a motion for summary disposition is reviewed de novo. *Spiek v Dep't of Transp*, 456 Mich 331, 337; 572 NW23d 201 (1998). A party is entitled to summary disposition under MCR 2.116(C)(7) if, among other things, the plaintiff's claims are barred because of the statute of limitations. Under this subrule, "[t]he contents of the complaint are

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[6] The trial court's opinion and order also granted summary disposition pursuant to MCR 2.116(C)(8) on some of plaintiffs' claims on alternate grounds. But because a motion brought under MCR 2.116(C)(8) focuses on the sufficiency of the complaint, a lack of discovery does not affect those rulings. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999).

[7] "A motion for summary disposition brought under MCR 2.116(C)(8) tests the legal sufficiency of the complaint on the basis of the pleadings alone. The purpose of such a motion is to determine whether the plaintiff has stated a claim upon which relief can be granted. The motion should be granted if no factual development could possibly justify recovery." *Beaudrie v Henderson*, 465 Mich 124, 129-130; 631 NW2d 308 (2001).

accepted as true unless contradicted by the evidence provided." *Odom v Wayne Co*, 482 Mich 459, 466; 760 NW2d 217 (2008) (quotation marks and citation omitted).

Plaintiffs assert that the trial court erroneously dismissed their claims for breach of contract, fraudulent misrepresentation, and conversion on the basis that the claims were barred by the statute of limitations. As we see it, however, the trial court did not dismiss the claims for breach of contract and fraudulent misrepresentation on the basis of the statute of limitations. While the court dismissed all of the claims because of the release, it only alternatively relied on the statute of limitations to dismiss the claims for conversion and breach of fiduciary duty. Thus, in light of plaintiff's argument, the only viable question is whether the trial court erroneously determined that their conversion claim was time-barred.

The trial court did not err in ruling that the statutory conversion claim was time-barred. The period of limitations to bring an action to recover damages for injury to a person or property is three years, MCL 600.5805(2), and a claim for conversion is a claim for the recovery of damages for injury to property, and is subject to a three-year limitations period. *Tillman v Great Lakes Truck Ctr, Inc*, 277 Mich App 47, 49; 742 NW2d 622 (2007); *Brennan v Edward D Jones & Co*, 245 Mich App 156, 158; 626 NW2d 917 (2001). Any alleged conversion occurred in March 2015, and plaintiffs filed their complaint in March 2019, four years later. Therefore, the trial court did not err in concluding that plaintiffs' conversion claim was time-barred.[8]

Finally, plaintiffs have not challenged the trial court's alternative reasons for dismissing the conspiracy, concert of action, and unjust enrichment claims. The trial court's reasons for separately dismissing those claims were proper, see *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 478; 666 NW2d 271 (2003) (unjust enrichment claim cannot be maintained when express contract on same subject matter exists), *Blair v Checker Cab Co*, 219 Mich App 667, 674-675; 558 NW2d 439 (1996) (corporation cannot conspire with its own employee), and *Peterson Estate v Brannigan Bros Restaurants & Taverns, LLC*, 566, 580-581; 918 NW2d 545 (2018) (concert of action not a valid cause of action), and plaintiff has not challenged them on appeal. *Walters*, 481 Mich at 387.

C. SUMMARY DISPOSITION AS TO DEFENDANTS' COUNTERCLAIMS

Plaintiffs argue that the trial court erred by granting summary disposition in favor of Absolute Motor on its counterclaim for indemnification.[9] Because the trial court in part prematurely ruled on defendants' prior motion for summary disposition, the court necessarily erred

[8] Although on appeal plaintiffs assert that the limitations period was tolled on account of defendants' fraudulent actions, plaintiffs never made this argument to the trial court. Therefore, we decline to address it. See *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008); *Soaring Pine Capital Real Estate & Debt Fund II, LLC v Park Street Group Realty Servs, LLC*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket Nos. 349909 and 350159); slip op at 5.

[9] We note that plaintiffs mischaracterize the trial court's ruling. The court denied defendants' motion with respect to MCR 2.116(C)(9), but granted it with respect to MCR 2.116(C)(10).

in prematurely granting this motion as well because both motions relate to the validity of the bill of sale, which contained the dispositive release. Nevertheless, we address the grant of summary disposition in favor of Absolute Motor on its indemnification counterclaim because it presents a question of law.

We agree with plaintiffs' argument that the trial court erred by ruling that the indemnification clause in the parties' contract allows for the recovery of attorney fees. The meaning of a contract is a question of law that this Court reviews de novo. *Andrusz*, 320 Mich App at 452.

Any contractual claim for attorney fees and costs "must be based upon the indemnity agreement in issue." *Hayes v Gen Motors Corp*, 106 Mich App 188, 201; 308 NW2d 452 (1981).

> An indemnity contract is to be construed in the same fashion as other contracts. The extent of the duty must be determined from the language of the contract, itself. All contracts, including indemnity contracts should be construed to ascertain and give effect to the intentions of the parties and should be interpreted to give a reasonable meaning to all of its provisions. This Court has generally observed that if the language of the contract is clear and unambiguous, it is to be construed according to its plain sense and meaning. Courts may not make a new contract for parties under the guise of a construction of the contract, if doing so will ignore the plain meaning of words chosen by the parties. [*Zahn v Kroger Co of Mich*, 483 Mich 34, 40-41; 764 NW2d 207 (2009) (citations omitted).]

The relevant portion of the bill of sale states:

> Seller acknowledges that Buyer has fully performed and fulfilled the obligations of Buyer as set forth in the Consignment and Sales Agreement between Seller and Buyer dated October 16, 2014 ("Contract"), and that the purchase price is fair consideration for the Vehicle. Seller hereby releases and holds Buyer (its shareholders, officers, directors, and employees) harmless from, and indemnifies Buyer with regard to, any and all claims, known or unknown, related to or arising out of (i) the Contract, (ii) the sale of the Vehicle to Buyer as described herein, and (iii) any breach of this Bill of Sale by Seller.

The question is whether the phrase "holds . . . harmless from, and indemnifies . . . with regard to, any and all claims" includes the recovery of attorney fees. In addressing the issue the parties and the trial court primarily relied on two cases: *Hayes*, 106 Mich App 188, and *Redfern v RE Daily & Co*, 146 Mich App 8; 379 NW2d 451 (1985). In *Hayes*, the indemnity provision stated, "Contractor shall indemnify, hold harmless and defend the Owner." *Hayes*, 106 Mich App at 201. The Court concluded that the phrase "hold harmless and *defend*" "strongly indicates" the existence of a contractual obligation to defend, which included payment of attorney fees. *Id*. at 202 (emphasis added). In *Redfern*, the indemnity clause provided that the third-party defendant would "indemnify and save harmless" the third-party plaintiff "against all claims, liabilities, losses, damages *and expenses of every character whatsoever*." *Redfern*, 146 Mich App at 19. This Court held that attorney fees were recoverable under the broad language of the indemnification clause. *Id*. at 19-20.

However, more on point is *Beaudin v Mich Bell Tel Co*, 157 Mich App 185; 403 NW2d 76 (1986), where this Court held that attorney fees were *not* included in an indemnification agreement that required the indemnitor to simply indemnify and hold harmless the indemnitee "against all . . . claims." *Id*. at 189. The Court reasoned that the phrase did not "expressly allow indemnification for attorney fees, costs or any other expense." *Id*.

Unlike the clause in *Hayes*, the indemnification language in the present case ("holds . . . harmless from, and indemnifies . . . with regard to, any and all claims") makes no reference to any duty to "defend." And unlike the language in *Redfern*, the present language makes no reference to "expenses," let alone "expenses of every character whatsoever." But similar to the indemnification provision in *Beaudin*, the phrase at issue also does not "expressly allow indemnification for attorney fees, costs or any other expense." Thus, because the plain language of the indemnification agreement is limited to indemnifying "claims" and not "attorney fees," the agreement does not exhibit an intent of the parties to have plaintiffs indemnify Absolute Motor's attorney fees incurred in defending any claim. The trial court erred when it concluded that plaintiffs had a duty to indemnify Absolute Motor for its attorney fees.

The trial court seemed to recognize that the plain language of the agreement did not cover attorney fees, as it noted that this was a "unique" situation, with Absolute Motor (the indemnitee) defending against claims brought by plaintiffs (the indemnitor). The court noted that in *this* situation, Absolute Motor could recover its attorney fees from plaintiffs. However, the simple language of "holds . . . harmless from, and indemnifies . . . with regard to, any and all claims" cannot be read as allowing the recovery of attorney fees in some situations (when plaintiffs brought the claims) and not in others. Therefore, consistent with the principles of *Hayes*, *Redfern*, and *Beaudin*, we reverse the trial court's ruling that the indemnification agreement included plaintiff's duty to pay Absolute Motor's attorney fees.[10]

D. SANCTIONS

Plaintiffs also argue that the trial court erred by imposing sanctions for filing frivolous claims and defenses. In the trial court, defendants sought sanctions under MCR 1.109(E), MCR 2.625(A)(2), and MCL 600.5961 on the basis that plaintiff filed frivolous claims and defenses. The trial court granted the motion.

Because we have vacated in part the trial court's grant of summary disposition under MCR 2.116(C)(7) in favor of defendants on the basis of the release, and reversed the grant of summary disposition in favor of Absolute Motor on its indemnification counterclaim, we also vacate the award of attorney fees as sanctions.

[10] Because attorney fees are not recoverable under the indemnification agreement, we need not address plaintiffs' arguments that the trial court erred by calculating the amount of attorney fees owed under that agreement.

VII. CONCLUSION

Based on the foregoing, we reverse the trial court's June 12, 2019 order denying discovery and vacate the court's grant of summary disposition in favor of defendants on the basis of the release. We reverse the order granting summary disposition in favor of Absolute Motor on its indemnification counterclaim, and we affirm the grant of summary disposition under MCR 2.116(C)(8) in favor of Morrow, and affirm the grant of summary disposition in favor of defendants on the statutory conversion, conspiracy, concert of action, and unjust enrichment claims. Regarding the various awards of attorney fees, we reverse the trial court's ruling that the indemnification agreement required plaintiffs to pay Absolute Motor's attorney fees and vacate the award of sanctions.

Affirmed in part, reversed in part, vacated in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Christopher M. Murray
/s/ James Robert Redford