

STATE OF MICHIGAN
COURT OF APPEALS

HCB PROPERTIES, LLC,

Plaintiff/Counterdefendant-Appellee,

v

ISLAND INVESTMENTS INCORPORATED,

Defendant/Counterplaintiff-Appellant.

UNPUBLISHED

October 19, 2026

11:48 AM

No. 371730

Allegan Circuit Court

LC No. 2023-067268-CH

Before: SWARTZLE, P.J., and ACKERMAN and TREBILCOCK, JJ.

PER CURIAM.

Plaintiff HCB Properties, LLC sued defendant Island Investments Incorporated for the return of escrow deposits after the parties did not close on the sale of certain property. For its theory of relief, plaintiff relies on a financing-contingency provision in the agreement, whereby the purchase was to be canceled and deposits returned if plaintiff did not obtain financing. Defendant counterclaimed, arguing that it could keep the deposits because plaintiff received financing, even though the amount authorized was less than the amount sought. Both parties moved for summary disposition, and the trial court granted plaintiff’s motion. We affirm.

I. BACKGROUND

Plaintiff entered into an agreement to purchase property from defendant for a total amount of \$2,600,000. Paragraph 2, “Purchase Price and Payment; Financing Contingency,” provides as follows:

The purchase price (“Purchase Price”) for the Property shall be Two Million Three Hundred Sixty Three Thousand Six Hundred Thirty Six and 00/100 Dollars (\$2,363,636.00), with Six Hundred Thousand and 00/100 Dollars (\$600,000.00) of the purchase price assigned to personal property and contents of cottages, pool maintenance equipment, and all other appurtenances of the property. The Purchase Price shall be paid by Buyer to Seller at the Closing by certified check, wire transfer, or other immediately available funds. In addition, the Buyer shall at the Closing pay a “Buyer’s Premium” of Two Hundred Thirty Six Thousand Three Hundred Sixty Four and 00/100 Dollars (\$236,364.00) by certified check, wire

transfer, or other immediately available funds to LASTBIDrealestate.com Inc., a Miedema Company. This agreement is contingent upon financing approval for Buyer, at an interest rate not to exceed 8%, which Buyer will obtain by February 20, 2023.

In the third paragraph, under the subheading “Deposit,” plaintiff was required to deposit two sums in escrow with the title company, specifically \$50,000 within three days of the effective date of the agreement and \$200,000 within 10 days of “financing preapproval.” The deposit provision states, “If financing cannot be obtained by Buyer, all deposits made to Title Company shall be returned to Buyer.”

Plaintiff paid both deposits to the title company. Three weeks after paying the second deposit, plaintiff asked defendant to sign a proposed mutual release on the basis that “4 Banks will not finance the value at 2.6 million.” Defendant refused to sign the release because it claimed that plaintiff waived the financing contingency by submitting the second \$200,000 deposit.

Plaintiff sued defendant to recover the escrow deposits, and defendant counterclaimed, as already noted. Plaintiff produced letters from financial institutions that denied plaintiff’s loan requests for \$2,600,000. Plaintiff clarified that it told the financial institutions that it needed to finance at least \$2,000,000, given that it had \$600,000 of its own funds to use as part of the purchase price. Defendant learned that one financial institution approved plaintiff for a loan of \$1,622,727 at 7.45% interest.

Both parties moved for summary disposition under MCR 2.116(C)(8) and (10). Defendant argued that the \$200,000 deposit signified that plaintiff either received financial approval or waived the financing contingency. Defendant also argued that the financing-contingency provision did not specify a certain amount for the loan, and so plaintiff could not terminate the agreement because it did, in fact, receive approval for a loan of \$1,622,727. The trial court granted plaintiff’s motion for summary disposition and denied defendant’s motion.

Defendant now appeals.

II. ANALYSIS

Defendant argues on appeal that the trial court erred in granting summary disposition to plaintiff because plaintiff did, in fact, receive financing approval. Moreover, the payment of the \$200,000 deposit effectively waived plaintiff’s right to request its return, according to defendant. The trial court’s order does not indicate whether it ruled under MCR 2.116(C)(8) or (C)(10), though its reasoning at the hearing on the motions confirms that it relied on the latter provision.

We review de novo a trial court’s decision on summary disposition. *Sherman v City of St Joseph*, 332 Mich App 626, 632; 957 NW2d 838 (2020). When deciding a motion for summary disposition under MCR 2.116(C)(10), we consider the evidence submitted in a light most favorable to the nonmoving party. *Payne v Payne*, 338 Mich App 265, 274; 979 NW2d 706 (2021). “Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.” *Sherman*, 332 Mich App at 632. The

Court also reviews de novo the interpretation of a contract. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003).

This Court gives contractual terms their plain-and-ordinary meanings, and if unambiguous, we enforce the contract as-written. *Coates v Bastian Bros, Inc*, 276 Mich App 498, 503; 741 NW2d 539 (2007). If the contract is ambiguous, then the finder of fact must resolve the matter. *Klapp*, 468 Mich at 469.

There is no material dispute among the parties on the meaning of the phrase “financing approval” in the context of this purchase agreement. Plaintiff understands “financing” to mean the “known amount of principle,” while defendant asserts that it means the “principle or amount financed,” as well as the period for payment and the interest rate. As for “approval,” the term clearly suggests that some entity or entities must agree to participate in the paying of funds. Even if there might be some subtle distinction that one could draw between the parties’ understandings of the phrase, we need not get into a war of dictionary definitions, as the real dispute depends on whether the purchase agreement identifies a specific *amount* that must be approved for financing. Plaintiff maintains that it does, and the amount is \$2,000,000 (i.e., \$2,600,000 less \$600,000); for its part, defendant argues that no amount is identified, and the only specific quantity tied to “financing approval” is the interest rate (i.e., no more than 8%). Neither party is correct, though plaintiff is closer to the mark.

When interpreting a contract, this Court considers not just a particular term or provision in isolation; rather, the Court reads that term or provision in context within the four corners of the agreement as a whole. See *Tenneco Inc v Amerisure Mut Ins Co*, 281 Mich App 429, 462; 761 NW2d 846 (2008). The phrase “financing approval” in the last sentence of the “Purchase Price and Payment; Financing Contingency” paragraph must be read in the context of the entire paragraph. Although the actual amount to be financed is not set forth explicitly in that last sentence, the first and third sentences of that paragraph do explicitly set forth the total amount to be paid by the purchaser, i.e., $\$2,363,636 + \$236,364 = \$2,600,000$. This is the amount of funds needed to be obtained by plaintiff to complete the transaction—in other words, the amount that one or more entity must agree to provide in satisfaction of the purchase price. Whether plaintiff was planning to self-finance a portion is irrelevant to the plain meaning of this agreement, which is silent as to *how* the purchase price would be financed with the exception that any interest charged could not exceed 8%.

Defendant insists that the only quantity tied to the “financing approval” is the interest rate. This is a myopic reading of the purchase agreement, however, as it implies that the Court must read the last sentence of the “Purchase Price and Payment; Financing Contingency” paragraph with seeming ignorance of the preceding sentences in that very same paragraph. Similarly, defendant misreads the provision governing the second deposit, as the “financing preapproval” that triggered plaintiff’s requirement to pay that deposit does not equate with the “financing approval” of the “Purchase Price and Payment; Financing Contingency” paragraph. Had plaintiff obtained “financing approval” and not completed the transaction, defendant would be entitled to keep the deposits; but there is nothing in the purchase agreement to suggest that plaintiff forfeited the second deposit when it obtained “financing preapproval” but then did not subsequently receive “financing approval” and therefore could not complete the transaction.

Plaintiff provided evidence that it could not obtain financing sufficient to complete the transaction, and defendant did not rebut this with material evidence of its own. Thus, under the plain meaning of the purchase agreement, defendant should have returned the deposits to plaintiff. The trial court properly granted plaintiff's motion for summary disposition and denied defendant's motion.

Affirmed. As the prevailing party, plaintiff may tax costs under MCR 7.219.

/s/ Brock A. Swartzle
/s/ Matthew S. Ackerman
/s/ Christopher M. Trebilcock