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STATE OF MICHIGAN

COURT OF APPEALS

HALEY SANDULA,

Plaintiff-Appellant,

v

EASTWOOD CUSTOM HOMES, INC.,

Defendant-Appellee.

UNPUBLISHED
August 19, 2026
11:47 AM

No. 375509
Grand Traverse Circuit Court
LC No. 2025-037385-CK

Before: ACKERMAN, P.J., and REDFORD and FEENEY, JJ.

FEENEY, J. (*concurring*).

I respectfully concur with the majority's opinion, but I write separately to discuss my concern with granting summary disposition under MCR 2.116(C)(7) based on a nonbinding mediation provision.

MCR 2.116(C)(7) provides that the trial court may grant summary disposition in favor of the moving party when, "[e]ntry of judgment, dismissal of the action, or other relief is appropriate because of . . . an agreement to arbitrate or to litigate in a different forum . . . ." "The existence of an arbitration agreement and the enforceability of its terms are judicial questions for the court, not the arbitrators." *Fromm v Meemic Ins Co*, 264 Mich App 302, 305; 690 NW2d 528 (2004). "To ascertain the arbitrability of an issue, a court must consider whether there is an arbitration provision in the parties' contract, whether the disputed issue is arguably within the arbitration clause, and whether the dispute is expressly exempt from arbitration by the terms of the contract." *Id*. at 305-306 (quotation marks and citation omitted).

In this case, the plain language of the purchase agreement did not include an arbitration agreement or requirement to litigate in a different forum; instead, it included an agreement to participate in "non-binding mediation . . . ." Nonbinding mediation would not preclude plaintiff from otherwise seeking redress in the trial court; therefore, nonbinding mediation could not "dispos[e] of the claim before commencement of the action" like the other avenues listed under MCR 2.116(C)(7). Defendant has not cited any jurisprudence in which summary disposition under MCR 2.116(C)(7) was the appropriate remedy for a party's failure to undergo a contract's nonbinding mediation clause, nor can I find any jurisprudence demanding such a result.

In any event, because the trial court failed to address the threshold issue of plaintiff's challenge to the purchase agreement's enforceability, I agree with the majority opinion that remand for further proceedings is appropriate.

/s/ Kathleen A. Feeney