

STATE OF MICHIGAN
COURT OF APPEALS

A CHANGE OF SEASONS HOME HEALTH
CARE, LLC,

UNPUBLISHED
October 27, 2022

Plaintiff-Appellee,

v

No. 358324
Huron Circuit Court
LC No. 20-105668-CK

ARCHIE TALASKI,

Defendant,

and

SUSAN METZ,

Defendant-Appellant.

Before: RONAYNE KRAUSE, P.J., and JANSEN and MURRAY, JJ.

PER CURIAM.

Defendant, Susan Metz, appeals by leave granted¹ the trial court’s order granting partial summary disposition in favor of plaintiff. We reverse and remand.

I. FACTUAL BACKGROUND

This matter arises out of a contractual dispute regarding plaintiff’s management of home health care for defendant Archie Talaski. Metz was Talaski’s daughter. Talaski passed away during the proceedings below, and Metz passed away during the pendency of this appeal.² Plaintiff

¹ *A Change of Seasons Home Health Care LLC v Talaski*, unpublished order of the Court of Appeals, entered January 18, 2022 (Docket No. 358324).

² Because plaintiff expressed an intention of proceeding against the estate of Talaski and presumably would also proceed against the estate of Metz, we do not regard this appeal as moot.

and Talaski signed a contract on October 18, 2018, outlining the services that would be provided by plaintiff. In relevant part, the contract included a non-solicitation provision:

4. Non-Solicitation: Client understands and agrees that he/she and/or his/her legal representative and family members shall not directly or indirectly solicit or encourage any of Provider's employees to terminate their employment with Provider. Furthermore, Client agrees that he/she shall not directly or indirectly employ any of Provider's current or former employees for a period of (1) year (365 calendar days) prior to the Client's last day of services received from Provider or any of Provider's employees, agents, affiliates, or contractors. Client agrees to honor any terms and conditions of employment pursuant to contract and/or policy that the Provider has with its employees. The Client understands and acknowledges that should he/she violate this provision, actual damages will be difficult to calculate; thus, the Client will pay the Provider liquidated damages in an amount equal to one year of fees for services that would have been rendered to the Client, but for the breach, or \$15,000, whichever is greater. Alternatively, the Provider may waive, in its sole discretion, liquidated damages and accept a three thousand (\$3,000.00) dollar scouting fee.

Plaintiff discontinued services for Talaski in late 2019. In early 2020, plaintiff commenced this action against both Metz and Talaski, both of whom were alive at the time. In relevant part, plaintiff alleged that they breached the non-solicitation clause by soliciting several of plaintiff's employees to work for them on a personal basis and by hiring those employees less than a year after those employees separated from plaintiff.

There is no dispute that Metz was not actually a signatory to the contract. Furthermore, there is no evidence that Metz was involved in negotiating the contract. Plaintiff nevertheless moved for summary disposition pursuant to MCR 2.116(C)(8) and MCR 2.116(C)(10), arguing, in relevant part, that Metz was subject to the contract. First, the contract refers to Talaski's family members. Secondly, Metz was aware of the contract because she paid Talaski's bills to plaintiff and acted as plaintiff's "contact person" for arranging details of Talaski's care. Defendants argued in response that plaintiff had a contract with Talaski only and not with Metz, and they asked for summary disposition to be granted in their favor. The trial court granted summary disposition in plaintiff's favor as to Metz pursuant to MCR 2.116(C)(10), and we granted defendant Metz's application for leave to appeal.³

II. STANDARD OF REVIEW AND PRINCIPLES OF LAW

A grant or denial of summary disposition is reviewed de novo on the basis of the entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). When reviewing a motion under MCR 2.116(C)(10), which tests the factual sufficiency of the complaint, this Court considers all evidence

³ The trial court denied plaintiff's motion as to Talaski, and it ordered that plaintiff may amend its complaint to include Talaski's estate or trust. Any claims against Talaski, his estate, or his trust are not before us.

submitted by the parties in the light most favorable to the non-moving party and grants summary disposition only where the evidence fails to establish a genuine issue regarding any material fact. *Id.* at 120. The trial court does not appear to have expressly addressed plaintiff's motion under MCR 2.116(C)(8), and, because the trial court considered evidence (or the lack thereof) beyond the pleadings, we would treat the motion as having been granted pursuant to MCR 2.116(C)(10) in any event. *Cary Investments LLC v City of Mount Pleasant*, ___ Mich App ___, ___; ___ NW2d ___ (2022) (Docket No. 356707), slip op at pp 3-4. "A circuit court properly grants summary disposition to the opposing party under MCR 2.116(I)(2) if the court determines that the opposing party, rather than the moving party, is entitled to judgment as a matter of law." *Connell v Lima Twp*, 336 Mich App 263, 281; 970 NW2d 354 (2021).

"The proper interpretation of a contract is also a question of law that this Court reviews de novo." *Titan Ins Co v Hyten*, 491 Mich 547, 553; 817 NW2d 562 (2012). "[A] contract is an agreement between parties for the doing or not doing of some particular thing and derives its binding force from the meeting of the minds of the parties." *In re Mardigian Estate*, 312 Mich App 553, 562; 879 NW2d 313 (2015) (quotation omitted). Five elements are required for a valid contract: "(1) parties competent to contract, (2) a proper subject matter, (3) legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation." *AFT Mich v State of Michigan*, 497 Mich 197, 235; 866 NW2d 782 (2015). "The party seeking to enforce a contract bears the burden of proving that the contract exists." *Id.* If the language of a contract is unambiguous, a court must interpret and enforce the contract as written. *In re Egbert R Smith Trust*, 480 Mich 19, 24; 745 NW2d 754 (2008). "'It goes without saying that a contract cannot bind a nonparty.'" *American Federation of State, Co & Municipal Employees, Council 25 v Wayne Co*, 292 Mich App 68, 80; 811 NW2d 4 (2011), quoting *EEOC v Waffle House, Inc*, 534 US 279, 294; 122 S Ct 754; 151 L Ed 2d 755 (2002).

III. ANALYSIS

The simple fact is that, as plaintiff acknowledges, Metz was not a party to the contract. Even supposing she had been present at the signing of the contract, Metz still would not be considered a party to the contract because she does not fulfill the requirements for a valid contract. Specifically, she did not receive legal consideration and there was no mutuality of obligation or agreement between Metz and plaintiff. *AFT Mich*, 497 Mich at 235-236. As noted above, a nonparty cannot be bound by a contract. *American Federation*, 292 Mich App at 80. Therefore, Metz cannot be held liable for violating the nonsolicitation clause of the contract, and plaintiff's arguments to the effect that Metz may be bound by the contract because she was aware of the contract or was plaintiff's "contact person" are utterly irrelevant, if not frivolous. The trial court erred in granting summary disposition in plaintiff's favor.

Metz argues that the trial court also erred by failing to grant summary disposition in her favor. We agree. "Summary disposition may be granted in favor of an opposing party under MCR 2.116(I)(2) if there is no genuine issue of material fact and the opposing party is entitled to judgment as a matter of law." *1300 LaFayette East Coop, Inc v Savoy*, 284 Mich App 522, 525; 773 NW2d 57 (2009). As discussed, Metz was not a party to the contract, so she cannot have violated the contract. Plaintiff raises a meritless procedural argument that Metz was required to have provided a written motion and brief in support of summary disposition in her favor. Plaintiff's argument is contrary to the plain language of MCR 2.116(I)(2), under which "a trial

court has authority to grant summary disposition sua sponte.” *Al-Maliki v LaGrant*, 286 Mich App 483, 485; 781 NW2d 853 (2009). “Indeed, the rule mandates that if one of two conditions is met, then the court ‘shall render judgment without delay,’ ” without any need for a motion. *Boulton v Fenton Twp*, 272 Mich App 456, 462-463; 726 NW2d 733 (2006). Under the circumstances, the trial court should have done so.

We reverse the trial court’s order granting summary disposition in favor of plaintiff as to plaintiff’s claims against Metz, and we remand for entry of an order granting summary disposition in favor of Metz. We do not retain jurisdiction. Metz, being the prevailing party, may tax costs. MCR 7.219(A).

/s/ Amy Ronayne Krause

/s/ Kathleen Jansen

/s/ Christopher M. Murray