STATE OF MICHIGAN

COURT OF APPEALS

CITY OF SOUTH LYON,

Plaintiff/Counterdefendant-Appellee,

v

DEMARIA BUILDING COMPANY, ST. PAUL TRAVELERS COMPANY, INC., and UNITED STATES FIDELITY & GUARANTY COMPANY,

Defendants,

and

DEMARIA INVESTMENTS,

Defendant/Counterplaintiff/Third-Party Plaintiff/Third-Party Counterdefendant-Appellant,

and

TROTTERS' POINTE HOMEOWNERS ASSOCIATION,

Third-Party Defendant/Third-Party Counterplaintiff-Appellee.

UNPUBLISHED
January 28, 2010

No. 287703
Oakland Circuit Court
LC No. 2005-071288-CK

Before: Murphy, C.J., and Jansen and Zahra, JJ.

PER CURIAM.

In this real property dispute involving a condominium development in the City of South Lyon (the City), DeMaria Investments (DeMaria) appeals by right the circuit court's separate orders granting summary disposition in favor of the City and the association of co-owners known as the Trotters' Pointe Homeowners Association (the Homeowners Association). We affirm, albeit partially for different reasons than those relied on by the circuit court.

I. Background Facts

This case concerns the use and ownership of certain lands that were originally designated as "open spaces" within the boundaries of a condominium project located in the City. In the early 1990s, DeMaria approached the City and requested permission to construct a condominium project within the city limits. DeMaria wished to build the project with smaller-than-usual lot sizes and a higher-than-average housing density. In exchange for allowing DeMaria to build the proposed project according to these specifications, the City required that DeMaria set aside a specific amount of land within the boundaries of the project as open space.

On December 6, 1995, DeMaria formed the Trotters' Pointe Condominium Project (the condominium project) by executing a Master Deed pursuant to the Michigan Condominium Act (MCA), MCL 559.101 *et seq*. The Master Deed was recorded on December 13, 1995. Under the Master Deed, the Homeowners Association was vested with the responsibility of administering, maintaining, operating, and managing the condominium project and all common elements.[1]

Article II of the Master Deed identified the land that would be included in the condominium project and gave its legal description. In essence, Article II provided that the condominium project would be comprised of approximately 150.7 acres of land within the City lying to the north of Eleven Mile Road and to the west of Pontiac Trail. Incorporated into the Master Deed by reference, and attached thereto as Exhibit B, was a series of several drawings and survey maps known as the "Condominium Subdivision Plan," which depicted the proposed condominium project. This Condominium Subdivision Plan showed the exact dimensions and locations of the proposed condominium units, as well as all proposed lot lines between the units. In contrast to the actual condominium units, which were shown in white, the Condominium Subdivision Plan showed everything else within the boundaries of the condominium project—including all roadways, drives, easements, and cul-de-sacs, as well as all land for which no immediate development was planned—shaded with diagonal black lines. These shaded areas were collectively described as the "General Common Element." A large portion of this General Common Element, consisting of wetland areas, was located behind and to the southeast of several of the proposed units. Beyond these wetland areas, however, the General Common Element continued, extending all the way to the condominium project's southeasterly corner at the intersection of Pontiac Trail and Eleven Mile Road. According to the notations on the Condominium Subdivision Plan, the portion of the General Common Element directly abutting the intersection of Pontiac Trail and Eleven Mile Road was *not* a wetland area.

Of particular relevance in this case, Article IX of the Master Deed provided in pertinent part:

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[1] In a case such as this, the association of co-owners is the proper party to assert ownership in the common elements of the condominium project. See MCL 559.160 (providing that "[a]ctions on behalf of and against the co-owners shall be brought in the name of the association of co-owners" and that "[t]he association of co-owners may assert, defend, or settle claims on behalf of all co-owners in connection with the common elements of the condominium project").

ARTICLE IX
AMENDMENT

This Master Deed and the Condominium Subdivision Plan may be amended with the consent of 66-2/3% of the Co-owners, except as hereinafter set forth:

* * *

Section 3. By Developer. Prior to one year after expiration of the Development and Sales Period,[2] [DeMaria] may, without the consent of any Co-owner or any other person, amend this Master Deed and the Condominium Subdivision Plan attached as Exhibit B in order to correct survey or other errors made in such documents and to make such other amendments to such instruments and to the Bylaws attached hereto as Exhibit A as do not materially affect any rights of any Co-owners or mortgagees in the Project.

* * *

Section 8. Consent of City Required. Anything herein contained notwithstanding, Article VIII, Sections 6 through 11, inclusive, and this Article IX, Section 8 of this Master Deed shall not be amended without the specific consent of the City.

One of the sections of the Master Deed identified in Article IX, § 8 as a section that could "not be amended without the specific consent of the City" was Article VIII, § 10, which provided in relevant part:

Section 10. Open Space Areas and Access Thereto. All areas within the [condominium project] other than the Units, Roads, and drives shall be deemed to be Open Space Areas within the meaning of the City Open Space Community Ordinance. The Open Space Areas as designated on the Condominium Subdivision Plan shall be retained predominantly in their natural, scenic, and open space condition, subject to such recreational uses as are provided for in Article VI, Section 20 of the Bylaws and prohibiting any use that will significantly impair or interfere with the natural and scenic values of the Open Space Areas as a part of an ecologically sensitive system of uplands, meadowlands, woodlands, wetlands, ponds and streams. Their use shall perpetually be subject to the covenants, conditions, and restrictions set forth herein and in said Bylaws. There shall exist easements for pedestrian access by all Co-owners to the Open Space Areas over the Pedestrian Path System depicted as a General Common Element on the Condominium Subdivision Plan.

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[2] Article II, § 12 of the Master Deed defined the "Development and Sales Period" as the period "continu[ing] for so long as [DeMaria] continues to own any Unit in the Project."

Supposedly pursuant to its power to unilaterally amend the Master Deed and attached Condominium Subdivision Plan, DeMaria executed a First Amended and Restated Master Deed, which was recorded on November 18, 1998. The First Amended and Restated Master Deed purported to make several changes to the original Master Deed and Condominium Subdivision Plan. Although DeMaria asserts in its brief on appeal that the First Amended and Restated Master Deed "did not amend any of the provisions . . . mentioned in Article IX, Section 8," and suggests that the changes made by way of the First Amended and Restated Master Deed were merely "technical," these characterizations are dubious at best. It is true that the First Amended and Restated Master Deed did implement some "technical" changes. For instance, the First Amended and Restated Master Deed replaced the term "Lot" with the term "Unit," reconfigured the boundaries of some of the unsold condominium units, and granted certain utility easements within the condominium project. But the First Amended and Restated Master Deed also added a new Article X, by which DeMaria would be allowed to "contract" the scope of the condominium project by withdrawing from the project the southeasternmost portion of the previously designated General Common Element at the corner of Pontiac Trail and Eleven Mile Road. The new Article X did not purport to withdraw the parcel from the condominium project immediately, but rather purported to grant DeMaria the option of withdrawing the land from the condominium project at some point in the future, by making yet another amendment to the Master Deed at that time.

Specifically, Article X of the First Amended and Restated Master Deed provided in its entirety:

> ARTICLE X
> CONTRACTION OF CONDOMINIUM
>
> (a) As of the date this Master Deed is recorded, [DeMaria] reserves the right to withdraw from the Condominium that portion of the land described in Article II that consists of the General Common Element area . . . located at the Northwest corner of 11 Mile Road and Pontiac Trail. At the option of [DeMaria], within a period ending no later than (6) years from the date of recording this Master Deed, the land included in the Condominium may be contracted to withdraw from the Condominium the General Common Element area . . . located at the Northwest corner of 11 Mile Road and Pontiac Trail.
>
> (b) In connection with such contraction, [DeMaria] unconditionally reserves the right to withdraw from the Condominium that portion of the land described in Article II that is the General Common Element area (approximately 4.256 +/- acres) located at the Northwest corner of 11 Mile Road and Pontiac Trail. The withdrawal of such land pursuant to this Article X shall be effected by an amendment of the Master Deed as provided in paragraph (d) below.
>
> (c) There are no restrictions on [DeMaria]'s right to contract the Condominium as provided in this Article X.
>
> (d) The consent of any Co-owner shall not be required to contract the Condominium. All of the Co-owners and Mortgagees and other persons interested or to become interested in the Condominium from time to time shall be

> deemed to have irrevocably and unanimously consented to such contraction of the Condominium and any amendment or amendments to the Master Deed to effectuate the contraction. All such interested persons irrevocably appoint [DeMaria] or its successors, as agents and attorneys for the purpose of execution of such amendment or amendments to the Master Deed and all other documents necessary to effectuate the foregoing. Such amendments may be effected without the necessity of rerecording an entire Master Deed or the Exhibits thereto and may incorporate by reference all or any pertinent portions of this Master Deed and the Exhibits hereto. Nothing herein contained, however, shall in any way obligate [DeMaria] to contract the Condominium as herein provided. These provisions give notice to all Co-owners, Mortgagees and other persons acquiring interests in the Condominium that such amendments of this Master Deed may be made and recorded, and no further notice of such amendment shall be required.

According to DeMaria, the City never objected to any of the changes made by way of the First Amended and Restated Master Deed. In contrast, the City argues that it did object to the validity of the First Amended and Restated Master Deed at the time it was recorded. While there is certainly no record evidence that the City ever affirmatively approved the execution and recording of the First Amended and Restated Master Deed, it is undisputed that the City issued building permits for certain condominium units after DeMaria had recorded the amendment.

On January 10, 2001, DeMaria executed an amendment to the First Amended and Restated Master Deed. This 2001 amendment, which was recorded on April 5, 2001, purported to make two revisions to the terms of the First Amended and Restated Master Deed. First, the 2001 amendment purported to add the following language to the existing Article II:

> The Land which is contracted from the Condominium pursuant to Article X of the Amended and Restated Master Deed is described as follows:
>
> > A parcel of land being part of the SE ¼ of Section 18, T1N, R7E, City of South Lyon, Oakland County, Michigan, more particularly described as: Beginning at the SE corner of said Section 18, T1N, R7E, Oakland County, thence along the South line of said section and the centerline of Eleven Mile Road right-of-way, (60 foot ½ right-of-way), North 89°26’40” West, 536.99 feet to the intersection of the West line of a 100.00 foot easement to the Lyon No. 1 Drain and said South Section line; thence along said West line, North 00°41’40” West 356.18 feet; thence along the South line of said easement to the Lyon No. 1 Drain, North 88°43’20” East 547.56 feet to the East line of said Section 18 and the centerline of Pontiac Trail right-of-way (56 foot wide); thence along said East line and centerline, South 00°56’32” West 373.62 feet to the point of beginning. Containing 4.541 acres, more or less.
>
> The ownership of the contracted area shall be vested in the Developer, DeMaria Investment, a Michigan Co-Partnership, 45500 Grand River Ave., Novi, Michigan 48376.

Second, the 2001 amendment purported to replace the existing Exhibit B Condominium Subdivision Plan with a new series of attached maps and drawings. The new maps and drawings showed that an approximately 4.5-acre rectangular parcel of land at the northwest corner of Pontiac Trail and Eleven Mile Road had been carved out of the condominium project and was no longer within the "limits of ownership" of the Trotters' Pointe condominium development.

Following the recording of this 2001 amendment, DeMaria claimed exclusive fee simple ownership of the 4.5-acre carved-out parcel at the northwest corner of Pontiac Trail and Eleven Mile Road. DeMaria thereafter asked the City to rezone the carved-out parcel to allow for its development, and attempted to obtain a separate property identification number for the parcel. Maintaining that the First Amended and Restated Master Deed had been improper, and that the purported 2001 amendment had also therefore been invalid, the City refused to recognize DeMaria's alleged title to the carved-out parcel, refused to rezone the parcel, and declined to facilitate the issuance of a separate property identification number for the parcel.

The validity of the First Amended and Restated Master Deed and the subsequent 2001 amendment form the basis of the instant appeal.

II. Procedural History

This action was commenced on December 20, 2005, when the City sued to recover certain engineering fees that it believed it was owed by DeMaria or the related entity DeMaria Building Company.[3] Thereafter, on January 26, 2006, DeMaria filed a countercomplaint against the City, alleging counterclaims of breach of contract, estoppel, and inverse condemnation, and seeking a writ of mandamus. DeMaria alleged that the terms of the original Master Deed had formed a contract with the City, and that the City had breached this contract by refusing to recognize DeMaria's right to amend the Master Deed and withdraw the disputed parcel at the northwest corner of Pontiac Trail and Eleven Mile Road from the condominium project. According to DeMaria, the City had also breached the contract by refusing to recognize its fee simple ownership of the disputed parcel, by refusing to rezone the parcel, and by refusing to approve the issuance of a separate property identification number for the parcel.

DeMaria further asserted that even if the Master Deed was not a contract with the City, the City had nonetheless made specific representations on which it had relied. Therefore, DeMaria argued that the City should be estopped from challenging DeMaria's right to amend the Master Deed and withdraw the disputed parcel from the condominium project. DeMaria also alleged that the City's refusal to recognize its valid title to the disputed parcel, to rezone the parcel, and to approve the issuance of a separate property identification number for the parcel

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[3] The City also sued St. Paul Travelers Company and United States Fidelity & Guaranty Company, the sureties on a bond posted by DeMaria or DeMaria Building Company. Neither St. Paul Travelers Company nor United States Fidelity & Guaranty Company is involved in the present appeal. The City's original complaint against DeMaria, DeMaria Building Company, St. Paul Travelers Company, and United States Fidelity & Guaranty Company was ultimately dismissed with prejudice on stipulation of the parties.

constituted a governmental taking of private property without just compensation. Lastly, DeMaria sought a writ of mandamus to compel rezoning of the disputed parcel and to compel the City to approve the issuance of a separate property identification number.

After answering the countercomplaint and filing its affirmative defenses, the City moved for summary disposition of DeMaria's counterclaims. As for DeMaria's breach of contract counterclaim, the City argued that even if there was a contract, DeMaria was the breaching party. The City noted that it had permitted DeMaria to construct the condominium project with smaller-than-usual lot sizes and a higher-than-usual housing density *in exchange for* DeMaria's specific agreement to set aside a significant amount of open space, including the parcel of upland area at the northwest corner of Pontiac Trail and Eleven Mile Road. The City asserted that it had never approved the First Amended and Restated Master Deed, and asserted that the 2001 amendment, purportedly changing ownership of the disputed parcel from the Homeowners Association to DeMaria, was void and unenforceable. The City pointed to a handwritten notation in the margin of a 1996 letter sent by DeMaria to the city assessor as evidence that the City had consistently objected to DeMaria's attempt to withdraw the parcel from the condominium project. The City argued that DeMaria had violated the terms of the original Master Deed by splitting off the parcel, and also argued that DeMaria had violated the City's open space ordinance, which required "approval of the City" before any land designated and set aside as "open space" in any subdivision or development could be "converted to land for development or for any other use . . . ." See South Lyon City Code § 102-459. Because it had never approved DeMaria's attempt to withdraw the parcel from the condominium project, the City argued that the breach of contract claim should be dismissed.

With respect to DeMaria's estoppel claim, the City argued that it had made no affirmative promises or representations that could possibly have induced DeMaria's reliance. The City again asserted that it had never approved the First Amended and Restated Master Deed or the subsequent 2001 amendment. Indeed, the City noted that neither of these amendments was ever the subject of negotiation between DeMaria and the City, and that it had not been aware that either amendment existed until DeMaria recorded it. Accordingly, the City contended that there was no way in which it could have led DeMaria to believe that the First Amended and Restated Master Deed or the subsequent 2001 amendment would be approved.

Regarding DeMaria's claim seeking a writ of mandamus, the City argued that DeMaria had specifically set aside the disputed parcel as part of the designated open space in the original Master Deed, and that the withdrawal of the parcel from the condominium project was in violation of both the original Master Deed and the City's open space ordinance. The City asserted that DeMaria could not establish that it owned the parcel, and consequently could not demonstrate that it was entitled to rezoning of the parcel or to the issuance of a separate property identification number. With respect to the inverse condemnation claim, the City noted that because DeMaria had itself set aside the parcel as part of the original open space, DeMaria could not show that the City had in any way taken it.[4]

[4] The City later renewed and supplemented its motion for summary disposition, adding two new
(continued…)

On August 15, 2007, the circuit court granted DeMaria leave to file a third-party complaint against the Homeowners Association. In its third-party complaint, DeMaria alleged that the Homeowners Association was required to indemnify it and hold it harmless with respect to the City's underlying claim for engineering fees. Also in the third-party complaint, DeMaria alleged that it was the rightful owner of the 4.5-acre disputed parcel and that title to the parcel should be quieted in DeMaria as opposed to the Homeowners Association. In conjunction with its answer to the third-party complaint, the Homeowners Association filed a one-count third-party countercomplaint against DeMaria. The Homeowners Association alleged that it was the rightful owner of the disputed parcel at the northwest corner of Pontiac Trail and Eleven Mile Road and asked the circuit court to quiet title to the parcel accordingly.

The Homeowners Association filed a motion for summary disposition on April 15, 2008. The Homeowners Association argued that DeMaria had lacked the authority to create the new Article X by way of the First Amended and Restated Master Deed, that DeMaria had therefore never gained the power to carve out the disputed parcel for its own use, and that the parcel accordingly remained under the control of the Homeowners Association as part of the condominium project's common element. The Homeowners Association argued that there was no genuine issue of material fact concerning the rightful ownership of the parcel, and that title to the parcel should be quieted in the Association.

The circuit court granted in part and denied in part the Homeowners Association's motion for summary disposition of the third-party complaint. Although the court found that a question of fact remained concerning the quiet title claim and the rightful ownership of the disputed 4.5-acre parcel, the court dismissed the portion of the third-party complaint by which DeMaria had sought indemnification from the Homeowners Association. The Homeowners Association thereafter renewed its motion for summary disposition with respect to the remaining third-party quiet title claim.

On June 20, 2008, the circuit court heard oral argument concerning the City's motion for summary disposition of DeMaria's counterclaims. At the outset, counsel informed the court that the City's original claim against DeMaria for engineering fees had been settled in exchange for DeMaria's agreement to pay the City $25,000. Counsel informed the court that only DeMaria's counterclaims against the City and the third-party quiet title action remained outstanding.

Regarding DeMaria's counterclaims, the City argued that the Master Deed was not a contract, that it had no other contract with DeMaria, and that DeMaria's breach of contract claim should be dismissed. Next, the City argued that even if there was a contract, it had not breached

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(…continued)

arguments. The City asserted that because DeMaria had never officially requested approval of the withdrawal of the disputed parcel or a rezoning of the parcel to allow for development, DeMaria had not exhausted its administrative remedies and therefore lacked standing to pursue this matter in circuit court. Second, with respect to DeMaria's breach of contract claim, the City argued that it had no contract with DeMaria. The City contended that neither the original Master Deed nor the First Amended and Restated Master Deed was a contract between the City and DeMaria, and pointed out that DeMaria had not attached a copy of any alleged contractual agreement to its countercomplaint. See MCR 2.113(F).

it because DeMaria, itself, had previously designated the disputed parcel as part of the open space area and could not now withdraw the parcel from the condominium project. The City then argued that DeMaria's actions had not been in compliance with its open space ordinance.

DeMaria responded by arguing that even without the 4.5-acre parcel at the northwest corner of Pontiac Trail and Eleven Mile Road, sufficient open space would remain within the boundaries of the condominium project to satisfy the City's open space ordinance. But the City argued that it was not up to DeMaria to determine whether withdrawal of the disputed parcel would leave sufficient open space in the condominium project.

DeMaria agreed with the City that its claim regarding rezoning of the disputed parcel was not ripe for adjudication because it had not exhausted its administrative remedies before the planning commission. However, DeMaria continued to assert that it owned the disputed parcel and that the City should be compelled via mandamus to rezone the parcel and recognize its legitimate ownership interest. DeMaria clarified that it was not seeking a writ of mandamus to directly compel the issuance of a separate property identification number by the City, but was instead seeking mandamus to compel the City to recognize its legitimate ownership of the disputed parcel, which in turn would facilitate the issuance of a property identification number by the Oakland County equalization department.

On July 18, 2008, the circuit court issued an opinion and order granting the City's motion for summary disposition of DeMaria's counterclaims pursuant to MCR 2.116(C)(8) and (10). The circuit court ruled that DeMaria had been required under the City's open space ordinance to seek and obtain the City's approval before withdrawing the 4.5-acre disputed parcel from the condominium project. See South Lyon City Code, § 102-459. Because DeMaria had never sought or obtained the City's approval before attempting to split off the disputed parcel, the circuit court ruled that it was beyond genuine factual dispute that the City had not taken any private property without just compensation and that the City was entitled to judgment as a matter of law on the inverse condemnation counterclaim. With respect to DeMaria's breach of contract counterclaim, the court ruled as a matter of law that nether the original Master Deed nor the First Amended and Restated Master Deed could have been a contract between DeMaria and the City. Moreover, the court noted that DeMaria had not identified any other contract with the City and had failed to attach any contract to its pleadings in violation of MCR 2.113(F). Accordingly, the court ruled that DeMaria had failed to state a legally cognizable claim of breach of contract. See MCR 2.116(C)(8).

With regard to DeMaria's mandamus claim, the circuit court ruled that because DeMaria had not sought and obtained the City's consent before splitting off the disputed parcel, it was beyond genuine factual dispute that DeMaria was not the rightful owner of the parcel and that DeMaria was not entitled to maintain the mandamus action. Lastly, as to DeMaria's estoppel claim, the court observed that DeMaria had failed to come forward with any admissible evidence that the City had made an affirmative promise or representation on which it had detrimentally relied.

Then, on August 26, 2008, the circuit court issued an opinion and order granting the Homeowners Association's renewed motion for summary disposition with respect to the third-party quiet title claim. Specifically, the court agreed with the Homeowners Association's argument that it was required by the doctrine of collateral estoppel to find that the First Amended

and Restated Master Deed and the subsequent 2001 amendment were invalid. Because the court had already essentially ruled DeMaria's amendments were invalid for failing to comply with the City's open space ordinance, it granted summary disposition in favor of the Homeowners Association on the remaining quiet title claim under the doctrine of collateral estoppel.[5]

DeMaria has timely appealed both the circuit court's opinion and order of July 18, 2008, and the circuit court's opinion and order of August 26, 2008.

III. Standards of Review

We review de novo the circuit court's grant or denial of summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition brought pursuant to MCR 2.116(C)(8) tests the legal sufficiency of a claim based on the pleadings alone. *Spiek*, 456 Mich at 337. The motion should be granted when the opposing party has failed to state a claim on which relief can be granted and "'no factual development could possibly justify recovery.'" *Gillie v Genesee Co Treasurer*, 277 Mich App 333, 344; 745 NW2d 137 (2007), quoting *Beaudrie v Henderson*, 465 Mich 124, 130; 631 NW2d 308 (2001). A motion for summary disposition brought pursuant to MCR 2.116(C)(10) tests the factual support for a claim, *Spiek*, 456 Mich at 337, and must be supported by affidavits, depositions, admissions, or other admissible documentary evidence, MCR 2.116(G)(3)(b) and (G)(6); *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). The motion should be granted when there is no genuine issue concerning any material fact and the moving party is entitled to judgment as a matter of law. *Kennedy v Great Atlantic & Pacific Tea Co*, 274 Mich App 710, 712; 737 NW2d 179 (2007).

The rules of contract interpretation generally apply to the interpretation of a master deed, which is in the nature of a contract. See *Rossow v Brentwood Farms Development, Inc*, 251 Mich App 652, 658-659, 661-662; 651 NW2d 458 (2002). The proper interpretation of contractual language presents a question of law that we review de novo. *Schmalfeldt v North Pointe Ins Co*, 469 Mich 422, 426; 670 NW2d 651 (2003). When a contract's language is plain and unambiguous, it must be enforced as written, and judicial construction is neither necessary nor permitted. *Rory v Continental Ins Co*, 473 Mich 457, 468; 703 NW2d 23 (2005).

We review de novo the ultimate disposition reached in a quiet title action, which is equitable in nature. *Canjar v Cole*, 283 Mich App 723, 727; 770 NW2d 451 (2009). All other questions of law, including issues of statutory interpretation, are reviewed de novo as well. *Cowles v Bank West*, 476 Mich 1, 13; 719 NW2d 94 (2006); *Griffith v State Farm Mut Auto Ins Co*, 472 Mich 521, 525-526; 697 NW2d 895 (2005).

IV. Analysis

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[5] The circuit court did note that it was "not making a determination that De[M]aria [did] not have the ability to make a change in title by a valid amendment of the Master Deed. That issue is not addressed in this Opinion and Order . . . . The Court has held only that the first and second Amendments . . . were invalid and therefore could not effect a change in title."

Although the circuit court partially based its rulings on incorrect reasoning, we conclude that it nonetheless reached the correct result by granting summary disposition in favor of the City and the Homeowners Association.

A. The Third-Party Quiet Title Claim

DeMaria argues that, by implementing the First Amended and Restated Master Deed and subsequent 2001 amendment, it became the sole rightful owner of the disputed parcel at the northwest corner of Pontiac Trail and Eleven Mile Road. Accordingly, DeMaria contends that the circuit court erred by granting summary disposition in favor of the Homeowners Association with respect to the third-party claim and quieting title to the disputed parcel in the Homeowners Association. We disagree.

When ruling on the third-party quiet title claim between the Homeowners Association and DeMaria, the circuit court noted that it had already determined that the First Amended and Restated Master Deed and the subsequent 2001 amendment violated the City's open space ordinance because both amendments were implemented without the City's consent. Therefore, under the doctrine of collateral estoppel, the court ruled that it was required to find both amendments to the original Master Deed invalid. But DeMaria contends that because it had the authority under the original Master Deed to implement the First Amended and Restated Master Deed (including the new Article X), and because it had the power under the new Article X to unilaterally split off the disputed parcel from the previously designated open space, it was not required to comply with the City's open space ordinance in this case.

The circuit court focused almost entirely on whether DeMaria's two purported amendments complied with the City's open space ordinance. However, it is unclear whether any right that DeMaria may have had to amend the Master Deed and split off the disputed parcel was even subject to the City's open space ordinance. Indeed, it is arguable that because the original Master Deed gave DeMaria certain powers of unilateral amendment, any amendment made by DeMaria pursuant to these powers would have taken effect notwithstanding DeMaria's noncompliance with the ordinance. The circuit court never actually analyzed whether the ordinance applied, simply assuming that any amendment affecting the previously designated open spaces needed to comply with the ordinance.

We are not certain that the circuit court's reasoning was correct, and question whether the City's open space ordinance truly would have applied in this instance. However, irrespective of the applicability of the open space ordinance in this case, we nonetheless conclude that DeMaria was not authorized to implement the First Amended and Restated Master Deed in the first instance.

Even assuming arguendo that DeMaria otherwise had the authority to amend the Master Deed pursuant to the general powers of amendment in Article IX, we note that Article IX, § 8 of the original Master Deed clearly required "the specific consent of the City" for any amendment to "Article VIII, Sections 6 through 11, inclusive, and this Article IX, Section 8 . . . ." Thus, any attempt by DeMaria to amend Article VIII, § 10 of the original Master Deed would have required "the specific consent of the City."

As noted earlier, Article VIII, § 10 provided in relevant part:

> Section 10. Open Space Areas and Access Thereto. All areas within the [condominium project] other than the Units, Roads, and drives shall be deemed to be Open Space Areas within the meaning of the City Open Space Community Ordinance. The Open Space Areas as designated on the Condominium Subdivision Plan shall be retained predominantly in their natural, scenic, and open space condition, subject to such recreational uses as are provided for in Article VI, Section 20 of the Bylaws and prohibiting any use that will significantly impair or interfere with the natural and scenic values of the Open Space Areas as a part of an ecologically sensitive system of uplands, meadowlands, woodlands, wetlands, ponds and streams. Their use shall perpetually be subject to the covenants, conditions, and restrictions set forth herein and in said Bylaws. There shall exist easements for pedestrian access by all Co-owners to the Open Space Areas over the Pedestrian Path System depicted as a General Common Element on the Condominium Subdivision Plan.

For the reasons set forth below, we hold that the First Amended and Restated Master Deed amended Article VIII, § 10, that the City did not consent to this amendment, and that it was therefore invalid under the terms of the original Master Deed. In reaching this conclusion, we have considered two questions: First, did the addition of the new Article X "amend" Article VIII, § 10 of the original Master Deed? And second, if the addition of the new Article X did "amend" Article VIII, § 10, did the City give its "specific consent" to this amendment?

With respect to the first of these two questions, we conclude that the addition of Article X by way of the First Amended and Restated Master Deed did, indeed, "amend" the original Article VIII, § 10. We fully acknowledge that the First Amended and Restated Master Deed did not actually alter the specific language of Article VIII, § 10, itself. Instead, among other things, it added a new Article X, which purported to give DeMaria the authority to withdraw the disputed parcel from the condominium project at a later date. But even though the addition of this new Article X did not directly modify the specific language of the existing Article VIII, § 10, it certainly had the effect of amending the existing Article VIII, § 10 by implication. As explained earlier, the original Article VIII, § 10 provided that "[a]ll areas within the [condominium project] other than the Units, Roads, and drives shall be deemed to be Open Space Areas . . . ." The "General Common Element" designated on the Condominium Subdivision Plan clearly constituted an Open Space Area within the meaning of this provision because it was open land within the condominium project and was not a unit, a road, or a drive. Therefore, because the disputed 4.5-acre parcel was a part of the "General Common Element," it necessarily constituted an "Open Space Area" within the meaning of Article VIII, § 10 as well.

Article VIII, § 10 of the original Master Deed provided that "[t]he Open Space Areas . . . on the Condominium Subdivision Plan shall be retained predominantly in their natural, scenic, and open space condition . . . ." The First Amended and Restated Master Deed clearly changed the effect of this provision by purporting to permit DeMaria to withdraw a portion of the open space from the condominium project for its own use at some point in the future. By allowing DeMaria to do so, the First Amended and Restated Master Deed clearly had the effect of undoing or undermining the original requirement that all open space areas "shall be retained predominantly in their natural, scenic, and open space condition . . . ."

The ordinary understanding of the word "amend" encompasses not only direct modifications and alterations, but also modifications and alterations by implication. See *Ferency v Secretary of State*, 409 Mich 569, 624; 297 NW2d 544 (1980) (WILLIAMS, J., concurring). We conclude that by allowing DeMaria to withdraw certain open space from the condominium project in the future, and therefore to keep it from being "retained predominantly in [its] natural, scenic, and open space condition," the addition of Article X by way of the First Amended and Restated Master Deed did "amend" Article VIII, § 10 of the original Master Deed, albeit implicitly rather than explicitly.

Having determined that the addition of the new Article X amended Article VIII, § 10 of the original Master Deed, it is necessary to determine whether the City ever gave its specific consent to this amendment. We conclude that it did not.

DeMaria argues that the City effectively consented to the First Amended and Restated Master Deed by continuing to issue building permits for various condominium units after the amendment was recorded. But this does not in any way equate to the City's "specific consent" as required by the original Article IX, Section 8. The word "consent" is defined as "'[a]greement, approval, or permission as to some act or purpose, esp. given voluntarily by a competent person; legally effective assent.'" *People v Buie*, 285 Mich App 401, 417; ___ NW2d ___ (2009), quoting Black's Law Dictionary (8th ed). It is clear from this definition that the term "consent" envisions some affirmative act of approval, and that the City's silence or passive acquiescence following DeMaria's recording of the First Amended and Restated Master Deed could not have constituted "specific consent" to the amendment. See *State v Young*, 425 SW2d 177, 182 (Mo, 1968) (observing that there is a "wide difference" between "consent" and "[m]ere acquiescence"); *Braden v Stumph*, 84 Tenn 581, 589 (1886) (noting that "the word 'consent'" had been defined as "active concurrence . . . and not a passive acquiescence"). Moreover, by modifying the term "consent" with the adjective "specific," it is manifest that the drafters of the original Master Deed intended to require the City's *explicit* approval before an amendment to any of the sections enumerated in Article IX, § 8 could take effect. See *Grebner v Clinton Charter Twp*, 216 Mich App 736, 743; 550 NW2d 265 (1996). After thoroughly reviewing the record evidence in this case, we hold that it was beyond genuine factual dispute that the City never specifically consented to DeMaria's execution of the First Amended and Restated Master Deed.

Because the addition of Article X by way of the First Amended and Restated Master Deed amended the original Article VIII, § 10, and because the City never specifically consented to this amendment, DeMaria was without authority to implement the amendment. See Master Deed, Article IX, § 8. Accordingly, DeMaria never gained the authority to withdraw the disputed parcel at the northwest corner of Pontiac Trail and Eleven Mile Road from the condominium project, and any acts taken by DeMaria in reliance on the new Article X—such as the subsequent 2001 amendment which actually purported to carve out the disputed parcel and remove it from the condominium project—were void and without effect. Because DeMaria's attempted amendments were void, DeMaria never acquired title to the disputed parcel at the northwest corner of Pontiac Trail and Eleven Mile Road.

Of course, as DeMaria pointed out before the circuit court, the First Amended and Restated Master Deed also purported to amend certain provisions of the Master Deed relating to the issue of storm water drainage, which were contained in Article VIII, §§ 6 and 9, without the

specific consent of the City. But unlike the addition of the new Article X, the City never objected to or disputed the validity of any of these amendments concerning storm water drainage. Thus, DeMaria contended that the City should be estopped from objecting to the addition of the new Article X and that the City's "treatment has to be uniform" with respect to all of the various amendments.

For the reasons set forth above, we conclude that *any* attempt by DeMaria to amend *any* provision enumerated in Article VIII, §§ 6-11 of the original Master Deed required the "specific consent" of the City. See Master Deed, Article IX, § 8. In other words, even DeMaria's attempted amendments of the storm water drainage provisions in Article VIII, §§ 6 and 9 are void and without effect in the absence of the City's specific consent. Because it appears that the City has merely acquiesced to these storm water amendments, and has never given its "specific consent" to them, any purported amendments of Article VIII, §§ 6 and 9 concerning the issue of storm water drainage are just as void and unenforceable as the purported addition of the new Article X.

Nonetheless, we perceive nothing in the language of the original Article IX, § 8 that would prevent the City from giving its "specific consent" to any purported amendment after the fact. Said another way, the City could retroactively give its specific consent to any of DeMaria's purported amendments made by way of the First Amended and Restated Master Deed or the subsequent 2001 amendment, thereby ratifying the amendments and making them valid. Of course, it is abundantly clear that the City will not wish to ratify the addition of Article X. After all, that is the very subject of this litigation. However, if the City chooses to do so, there is no reason why it could not retroactively give its specific consent to any amendment of any other provision enumerated in Article VIII, §§ 6-11 of the original Master Deed, such as the provisions dealing with the issue of storm water drainage.

In short, any change or alteration that has had the effect of "amend[ing]" any section enumerated in Article IX, § 8 of the original Master Deed is void and without effect unless it has garnered the City's specific consent. The City can certainly give its specific consent to such a purported amendment after the fact, thereby ratifying it. But this seems highly unlikely in the case of DeMaria's attempted addition of the new Article X and the subsequent 2001 amendment.

Because the addition of the new Article X by way of the First Amended and Restated Master Deed purported to allow DeMaria to withdraw the disputed parcel from the condominium project, and thus had the effect of amending Article VIII, § 10 of the original Master Deed, it is void and without effect in the absence of the City's specific consent. As the City has never specifically consented to this purported amendment, we conclude that DeMaria has never acquired title to the disputed parcel at the northwest corner of Pontiac Trail and Eleven Mile Road. Although it did so for the wrong reason, the circuit court reached the correct result by quieting title to the disputed parcel in the Homeowners Association. It is well settled that this Court will not reverse when the circuit court has reached the correct result, even if it has done so for the wrong reason. *Netter v Bowman*, 272 Mich App 289, 308; 725 NW2d 353 (2006); *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).

B. DeMaria's Counterclaims against the City

DeMaria also argues that the circuit court erred by granting summary disposition in favor of the City with respect to its counterclaims for breach of contract, estoppel, inverse condemnation, and mandamus. Again, we disagree.

For the reasons stated earlier, DeMaria never properly gained the power to carve out the parcel at the northwest corner of Pontiac Trail and Eleven Mile Road for its own use, and the Homeowners Association therefore retained title the disputed parcel. It is axiomatic that an individual who holds no ownership interest in the property at issue cannot institute an inverse condemnation claim. See *In re Acquisition of Virginia Park*, 121 Mich App 153, 158; 328 NW2d 602 (1982); see also *Merkur Steel Supply Inc v Detroit*, 261 Mich App 116, 130; 680 NW2d 485 (2004); *Bond v Dep't of Natural Resources*, 183 Mich App 225, 230; 454 NW2d 395 (1989). Because DeMaria held no ownership interest in the disputed parcel at the time, its counterclaim for inverse condemnation was insufficient to justify recovery as a matter of law. For the same reason, DeMaria similarly could not maintain a mandamus claim to compel rezoning of the disputed parcel or the issuance of a separate property identification number for the parcel. See *Haven v City of Troy*, 39 Mich App 219, 226, 226 n 10; 197 NW2d 496 (1972) (noting that a party must generally have an "interest in the land" in order to have standing to bring an action to compel the issuance of building or other permits); see also *In re MCI Telecommunications Complaint*, 460 Mich 396, 442-443; 596 NW2d 164 (1999) (observing that a writ of mandamus will not issue in the absence of a "'clear legal right to performance of the specific duty sought to be compelled'"). We conclude that the circuit court reached the correct result by granting the City's motion for summary disposition with respect to DeMaria's counterclaims for inverse condemnation and mandamus. As explained earlier, we will not reverse when the circuit court has reached the correct result, even if it has done so for the wrong reason. *Netter*, 272 Mich App at 308.

We also conclude that the circuit court properly granted summary disposition in favor of the City with respect to DeMaria's counterclaim for breach of contract. To plead a legally cognizable claim of breach of contract, an individual must first establish the existence of a valid contract between the parties. See, e.g., *Pawlak v Redox Corp*, 182 Mich App 758, 765; 453 NW2d 304 (1990); *Stoken v JET Electronics & Technology, Inc*, 174 Mich App 457, 463; 436 NW2d 389 (1988). "[A] contract is an agreement, upon a sufficient consideration, to do or not to do a particular thing." *McInerney v Detroit Trust Co*, 279 Mich 42, 46; 271 NW 545 (1937). "[T]he essential elements of a valid contract are (1) parties competent to contract, (2) a proper subject matter, (3) a legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation." *Thomas v Leja*, 187 Mich App 418, 422; 468 NW2d 58 (1991).

We fully acknowledge that a master deed is in the nature of a contract and that the rules of contract interpretation generally apply to its interpretation. See *Rossow*, 251 Mich App at 658-659, 661-662. But this does *not* necessarily mean that a Master Deed is a contract between a condominium developer and the local municipality. The MCA defines a "[m]aster deed" as "the condominium document recording the condominium project to which are attached as exhibits and incorporated by reference the bylaws for the project and the condominium subdivision plan for the project." MCL 559.108. Of particular note here, the MCA contains no requirement that a master deed obligate the local municipality "to do or not to do" any particular thing. See *McInerney*, 279 Mich at 46. It is clear from the abovementioned statutory definition that a master deed simply does not create the type of enforceable, mutual obligations between a

condominium developer and the local municipality that would be essential for the formation of a valid contract between these two entities. See *Thomas*, 187 Mich App at 422. We hold that the Master Deed was not a contract between DeMaria and the City.

Nor could DeMaria's counterclaim for breach of contract have been based on its oral agreement with the City concerning the issue of open space. It is unquestionably true that DeMaria negotiated with the City and reached certain agreements. Included was the City's agreement to allow higher-than-usual condominium density in exchange for DeMaria's commitment to designate and set aside a certain amount of open space within the condominium project. However, even assuming that these mutual agreements formed an otherwise-valid contract between DeMaria and the City, it is beyond factual dispute that DeMaria was the first party to breach this agreement by impermissibly attempting to carve out a portion of the previously designated open space for its own use. In Michigan, the party who first breaches a contract may not thereafter sue the other party for breach unless the initial breach was insubstantial. *Able Demolition v Pontiac*, 275 Mich App 577, 585; 739 NW2d 696 (2007); *Michaels v Amway Corp*, 206 Mich App 644, 650-651; 522 NW2d 703 (1994). A breach is substantial if it undermines the very essence of the contract, *McCarty v Mercury Metalcraft Co*, 372 Mich 567, 574; 127 NW2d 340 (1964), or "goes to the heart of the agreement," *Able Demolition*, 275 Mich App at 586. There can be no doubt that DeMaria's initial breach was substantial; indeed, it went to the very essence of the parties' understanding and significantly undermined DeMaria's commitment to set aside a certain amount of open space within the boundaries of the condominium project. See *id*. Therefore, DeMaria was not entitled to maintain a breach of contract claim against the City on the basis of this open-space agreement.

As the City points out in its brief on appeal, DeMaria did not attach any other alleged contract to the pleadings, see MCR 2.113(F), and has identified no other agreement with the City which could have formed the basis of its counterclaim for breach of contract. As already noted, a party must establish the existence of a valid contract in order to plead a legally cognizable claim of breach of contract. See *Stoken*, 174 Mich App at 463. We conclude that DeMaria failed to state a legally cognizable counterclaim for breach of contract, see *Pawlak*, 182 Mich App at 765, and that circuit court properly granted summary disposition in favor of the City with respect to the breach of contract counterclaim, MCR 2.116(C)(8).

Finally, we also conclude that the circuit court properly dismissed DeMaria's counterclaim entitled "estoppel." DeMaria's "estoppel" counterclaim was inartfully pled, and it is unclear whether DeMaria intended to base the counterclaim on the doctrine of promissory estoppel or the doctrine of equitable estoppel. However, "[e]quitable estoppel is not an independent cause of action," *Conagra, Inc v Farmers State Bank*, 237 Mich App 109, 140; 602 NW2d 390 (1999), and we therefore presume that DeMaria intended to base its counterclaim on the doctrine of promissory estoppel. "The elements of promissory estoppel are '(1) a promise, (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of promisee, (3) which in fact produced reliance or forbearance of that nature, and (4) in circumstances such that the promise must be enforced if injustice is to be avoided.'" *Ardt v Titan Ins Co*, 233 Mich App 685, 692; 593 NW2d 215 (1999), quoting *Mt Carmel Mercy Hosp v Allstate Ins Co*, 194 Mich App 580, 589; 487 NW2d 849 (1992).

Once the City moved for summary disposition of DeMaria's estoppel counterclaim, the burden shifted to DeMaria to establish the existence of a genuine issue of material fact for trial.

Quinto v Cross & Peters Co, 451 Mich 358, 362; 547 NW2d 314 (1996). "Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in [the] pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists." *Id*. Here, as the circuit court correctly noted, DeMaria failed to come forward with any admissible evidence that the City ever promised to approve its attempt to carve out the disputed parcel at the northwest corner of Pontiac Trail and Eleven Mile Road. Nor did DeMaria present any admissible evidence that it detrimentally relied on any statement or representation by the City to this effect. Accordingly, the circuit court properly granted summary disposition in favor of the City with respect to DeMaria's promissory estoppel counterclaim. MCR 2.116(C)(10).[6]

V. Conclusion

In sum, we conclude that the circuit court reached the correct result by quieting title to the disputed parcel in the Homeowners Association and by granting summary disposition in favor of the City with respect to DeMaria's counterclaims.

In light of the foregoing conclusions, it is unnecessary to address the remaining arguments raised by the parties on appeal.

Affirmed. As the prevailing parties, the City and the Homeowners Association may tax costs pursuant to MCR 7.219.

/s/ William B. Murphy
/s/ Kathleen Jansen

[6] Even if DeMaria somehow intended to base its estoppel counterclaim on the doctrine of equitable estoppel rather than promissory estoppel, summary disposition was nonetheless appropriate because DeMaria failed to come forward with any admissible evidence of justifiable reliance on the City's representations. *Conagra*, 237 Mich App at 141.