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STATE OF MICHIGAN

COURT OF APPEALS

KALVIN WAYNE SCHANZ,

Plaintiff-Appellant,

v

PINE CREEK FARMS, INC., doing business as PINE CREEK CONSTRUCTION, INC., LIENHOLDERS, LLC, DOUGLAS GRITTER, MATT GRITTER, RON BROUWER, and GORDON ROSENBURG,

Defendants-Appellees.

UNPUBLISHED
October 14, 2026
9:21 AM

No. 370515
Allegan Circuit Court
LC No. 2023-067802-CK

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

PER CURIAM.

In this real property action, plaintiff-appellant, Kalvin Wayne Schanz, appeals as of right the trial court judgment entered in favor of defendants-appellees, Pine Creek Farms, Inc. (Pine Creek), Lienholders, LLC (Lienholders), and Douglas Gritter, in the amount of $22,451.94. Plaintiff also challenges the trial court's previous order granting summary disposition in favor of defendants-appellees, Pine Creek, Lienholders, Douglas Gritter, Matt Gritter, Ron Brouwer, and Gordon Rosenberg.[1] We affirm the trial court's order and judgment but remand for the limited purpose of determining, and awarding, the costs and attorney fees that defendants incurred in this appeal.

I. FACTS

On August 4, 2017, the parties entered into a purchase agreement for the partially developed land denominated "Sherman Hills," with plaintiff as the buyer and "Pine Creek

[1] Any reference to "Gritter" in this opinion will be referring to Douglas Gritter, not Matt Gritter.

Construction/Lienholders LLC" as the seller.[2] The purchase price was $1,600,000. Specifically at issue in this case was the purchase-agreement provision stating that plaintiff "shall" tender $40,000 in supplemental earnest money to Pine Creek 24 days after the agreement was signed, i.e., by August 28, 2017. According to plaintiff, before the purchase agreement was signed, plaintiff "and his real estate agent Brian Silvernail told the Defendants multiple times that [plaintiff] was an intermediary for an investor [Mark Finkelstein] who would ultimately furnish the funds to pay the purchase price."

The parties have conflicting versions about the events of August 28, 2017; however, they agree that a meeting was initially scheduled for 4:00 p.m., at which Silvernail was to tender $40,000 to Gritter, but before that meeting occurred, plaintiff called Gritter and requested a three-day extension for the $40,000 payment. According to plaintiff, Gritter "unconditionally consented to the extension," but according to defendants, Gritter told plaintiff that he would have to discuss the request with his partners and that the earliest he could do so was in three days. After that phone call, Silvernail proceeded to draft an extension addendum and attempted to locate Gritter to have him sign it. During that time, Gritter responded to Silvernail only once, stating, "As I told [plaintiff] I cannot get our full Management Team together right away. I'm trying to schedule a meeting for Thursday to discuss it with all the owners." As the end of the day was approaching, Silvernail decided to contact Finkelstein and ask if he could immediately provide the $40,000 so that it could be delivered to Gritter before midnight. At 9:28 p.m., Finkelstein e-mailed a copy of a signed $40,000 check (the Finkelstein check) "payable from the trust of Louise A. Finkelstein, Mark Finkelstein's wife . . . ." A little over an hour later, Silvernail e-mailed Gritter, detailing the efforts he had made to find Gritter and enclosing a copy of (1) the three-day extension addendum and (2) the Finkelstein check. Gritter did not respond, and August 28, 2017, passed without payment of the $40,000.

On August 30, 2017, defendants terminated the purchase agreement due to default and notified plaintiff that he "may submit a new offer if he desires and it will be considered with any others." On August 31, 2017, plaintiff, Silvernail, Gritter, and Finkelstein met with a few others; plaintiff failed to make a new offer, and Finkelstein decided he did not want to move forward with the investment. On September 5, 2017, defendants e-mailed plaintiff, offering to reinstate the purchase agreement if he paid the required $40,000 deposit and provided "proof of funds for closing in a form acceptable to Seller" by September 7, 2017. Plaintiff did not sign the addendum nor tender the deposit.

Three years later, in 2020, plaintiff made "a couple offers" on the property, and defendants again stated that they would sell it to plaintiff for $1,600,000. Plaintiff decided to sue defendants

[2] When the parties signed the purchase agreement, Pine Creek was the sole member of Lienholders; Douglas Gritter was the president of Pine Creek and managing member of Lienholders; and Douglas Gritter, Matt Gritter, Ron Brouwer, and Gordon Rosenberg were shareholders of Pine Creek.

instead of moving forward with that offer because he had already lost three years of his time, and the cost of materials had doubled.[3]

In August 2023, plaintiff filed his complaint in this matter, claiming that defendants breached the purchase agreement by refusing to accept the $40,000 on August 31, 2017. Thereafter, defendants moved for summary disposition under MCR 2.116(C)(10), arguing that plaintiff breached the purchase agreement—and was therefore barred from recovery—because he failed to: (1) make the August 28, 2017 payment, and (2) tender closing by the agreed upon date, November 15, 2017. In response, plaintiff requested that the trial court deny defendants' motion for summary disposition and instead grant summary disposition in plaintiff's favor under MCR 2.116(C)(10) and MCR 2.116(I)(2). After holding a hearing on the matter, the trial court entered a written opinion and order, granting summary disposition in defendants' favor under MCR 2.116(C)(10). Thereafter, the court dismissed plaintiff's complaint and entered a judgment in defendants' favor in the amount of $22,451.94. Plaintiff now appeals.

II. SUMMARY DISPOSITION—BREACH OF CONTRACT

On appeal, plaintiff argues that he had the right to tender the $40,000 within a reasonable time after August 28, 2017, because: (1) time was not of the essence; (2) even if time was of the essence, Gritter's agreement to the extension waived strict performance of the payment date; and (3) Gritter's evasive conduct on that date violated the implied covenant of good faith and fair dealing. We disagree.

A. PRESERVATION AND STANDARD OF REVIEW

Each of these arguments were raised in the trial court; therefore, they are preserved for appellate review. See *Tolas Oil & Gas Exploration Co v Bach Servs & Mfg, LLC*, 347 Mich App 280, 289; 14 NW3d 472 (2023).

"A trial court's decision on a motion for summary disposition is reviewed de novo. Issues of statutory interpretation present questions of law that are [also] reviewed de novo." *Progressive Marathon Ins Co v Espinoza-Solis*, 351 Mich App 672, 677; 36 NW3d 137 (2024) (citation omitted).

Summary disposition may be granted if "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Anderson v Transdev Servs, Inc*, 341 Mich App 501, 507; 991 NW2d 230 (2022) (quotation marks and citation omitted). "In evaluating such a motion, a court considers the entire record in the light most favorable to the party opposing the motion, including affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties." *Progressive Marathon*, 351 Mich App at 677 (quotation marks and citations omitted). "The trial court is not permitted to assess credibility, weigh the evidence, or resolve factual

[3] In 2021, defendants sold the Sherman Hills property to a different party.

disputes, and if material evidence conflicts, it is not appropriate to grant a motion for summary disposition under MCR 2.116(C)(10)." *Anderson*, 341 Mich App at 507 (quotation marks and citation omitted).

B. ANALYSIS

"That contracts are enforced according to their terms is a corollary of the parties' liberty to contract." *Coates v Bastian Bros, Inc*, 276 Mich App 498, 503; 741 NW2d 539 (2007). "This Court examines contractual language and gives the words their plain and ordinary meanings." *Id*. "An unambiguous contractual provision is reflective of the parties' intent as a matter of law, and if the language of the contract is unambiguous, we construe and enforce the contract as written." *Id*. (quotation marks and citation omitted).

"The general rule is that time is not to be regarded as of the essence of a contract unless made so by express provision of the parties or by the nature of the contract itself or by circumstances under which it was executed." *MacRitchie v Plumb*, 70 Mich App 242, 246; 245 NW2d 582 (1976). In this case, the purchase agreement specifically stated that plaintiff "shall" tender: (1) $40,000 in supplemental earnest money 24 days after the agreement was signed, i.e., by August 28, 2017; and (2) closing on or before November 15, 2017, with an additional 30 days allowed in various circumstances, none of which are present here. Those terms, coupled with defendants' follow-through in terminating the purchase agreement due to default, clearly show that defendants were concerned about the transaction's timing and placed a time limit on the $40,000 payment date and the final closing date. Cf. *id*. (concluding that the trial court's finding that time was not of the essence in the contract was amply supported by the record because: (1) "the real estate broker testified that the 30-day closing requirement was inserted as a matter of course and not as a result of [the] defendants' concern that the land contract be executed immediately"; (2) the "defendants did not request a time limitation be placed upon the closing"; and (3) one of the defendants admitted that at the time that the contract was entered, he and his wife "were not concerned with placing a time limitation on the final closing"). Accordingly, the record amply supports the trial court's finding that time was of the essence. Cf. *id*.

Moreover, the purchase agreement unequivocally stated that it "may be modified or amended only by written instrument signed by the parties to this Agreement." Therefore, although a question of fact remains regarding whether an oral agreement for extension was made, any alleged oral agreement would not be binding under the terms of the purchase agreement. See *Coates*, 276 Mich App at 503 (stating that if contract language is unambiguous, it should be construed and enforced as written).[4]

[4] Plaintiff specifically argues that a remand is necessary so that he can assert a claim of promissory estoppel at trial. But this Court has held that estoppel cannot be based on an oral promise that is expressly contradicted by a binding contract. *Zaremba Equip, Inc v Harco Nat'l Ins Co*, 280 Mich App 16, 41; 761 NW2d 151 (2008). Because the alleged oral agreement in this case simply extended a deadline that was expressly written in the purchase agreement, plaintiff's claim of promissory estoppel lacks merit, and a remand is not necessary on that basis. See *id*.

Similarly, although questions of fact remain regarding the parties' intentions on August 28, 2017, it is undisputed that plaintiff initiated the extension request, and even when Silvernail was in search of Gritter thereafter, he was only in possession of the unsigned extension addendum, not the necessary $40,000. In the late evening hours of August 28, 2017, Finklestein e-mailed a *copy* of the Finkelstein check to Silvernail, and Silvernail proceeded to inquire where he could drop the check off to Gritter. But even if Silvernail could have picked up the check and delivered it in time before midnight, that check would not have constituted a valid tender of payment because it was drawn on a stranger to the contract's account. "As a matter of law, a party to a contract has a right to demand payment from the other party to a contract." *Swain v Kayko*, 44 Mich App 496, 502; 205 NW2d 621 (1973). Nothing in the record suggests that plaintiff had any intention of tendering his alleged $40,000 cash on August 28, 2017. To the contrary, plaintiff was very clear that his verbally-committed investor, Finklestein, was to make the $40,000 payment, and as previously indicated, that payment—the Finkelstein check—would not have been deemed a valid payment even if Silvernail had been able to timely deliver it to Gritter.

It is undisputed that: (1) plaintiff requested an extension for the payment deadline, (2) defendants never signed an extension addendum, and (3) plaintiff never tendered $40,000. Therefore, plaintiff failed to comply with the terms of the purchase agreement, and defendants were entitled to summary disposition.

III. COSTS AND ATTORNEY FEES

Considering that the trial court did not err by granting summary disposition in defendants' favor, defendants request that we remand for the trial court to determine an award of costs and attorney fees incurred in this appeal, pursuant to the purchase agreement. We agree that remand is appropriate for this limited purpose.

"A court may award costs and attorney fees only if specifically authorized by a statute, a court rule, or a recognized exception to the American rule (which mandates that a litigant be responsible for his or her own attorney fees)." *Jay Chevrolet, Inc v Dedvukaj*, 310 Mich App 733, 738 n 3; 874 NW2d 146 (2015) (quotation marks and citation omitted). Notably, an exception to the American rule exists where the parties' contract provides for attorney fees under certain circumstances. *Id*. at 738.

In this case, Section 24 of the purchase agreement states as follows:

> Attorney Fees. In the event of litigation arising from the failure or alleged failure of either party to perform its obligations under this Agreement, the party prevailing in that litigation (including appeals of all levels) shall be entitled to collect its court costs and reasonable attorneys' fees incurred in connection with such litigation from the other party. The provisions of this Section shall survive Closing or termination of this Agreement.

In accordance with that provision, the trial court's judgment specifically awarded "interest and attorney fees and costs incurred by Defendants after entry to enforce this Judgment." Because attorney fees were provided by contract of the parties—including appellate attorney fees—defendant, as the prevailing party, "shall be entitled to collect its court costs and reasonable

attorneys' fees incurred in connection with such litigation from [plaintiff]." See *id*. Accordingly, we remand to the trial court for the limited purpose of determining, and awarding, the costs and attorney fees defendants incurred in this appeal.

IV. JUDICIAL REASSIGNMENT

Plaintiff also asks that we reassign this case to a different judge on remand. We decline to do so.

"The general concern when deciding whether to remand to a different trial judge is whether the appearance of justice will be better served if another judge presides over the case." *Swain v Morse*, 332 Mich App 510, 537; 957 NW2d 396 (2020) (quotation marks and citation omitted). "In deciding whether to remand to a different judge, this Court considers whether the original judge would have difficulty in putting aside previously expressed views or findings, whether reassignment is advisable to preserve the appearance of justice, and whether reassignment will not entail excessive waste or duplication." *Id*. (quotation marks and citation omitted). "A trial judge is presumed to be fair and impartial, and any litigant who would challenge this presumption bears a heavy burden to prove otherwise." *Id*. (quotation marks and citation omitted).

We are not persuaded that the trial court showed preferential treatment in favor of defendants. Other than the fact that the trial judge ruled against plaintiff on contested issues, plaintiff points to no judicial conduct demonstrating prejudice or bias. Because rulings against a litigant, even if erroneous, do not themselves constitute bias or prejudice sufficient to establish a denial of due process, we cannot, in the absence of a more specific demonstration of bias or prejudice, conclude that plaintiff has overcome the presumption of judicial impartiality. See *In re Susser Estate*, 254 Mich App 232, 237; 657 NW2d 147 (2002). Accordingly, judicial reassignment is not necessary.

V. CONCLUSION

We affirm the trial court's order and judgment but remand for the limited purpose of determining, and awarding, the costs and attorney fees that defendants incurred in this appeal. We do not retain jurisdiction.

/s/ Adrienne N. Young
/s/ James Robert Redford
/s/ Kathleen A. Feeney