STATE OF MICHIGAN

COURT OF APPEALS

CHARLES E. PHYLE, SR., as Trustee of the CHARLES E. PHYLE RESTATED REVOCABLE TRUST,

Plaintiff/Counterdefendant-Appellee,

v

SCHEPPE INVESTMENTS, INC,

Defendant/Counterplaintiff-Appellant,

and

TRAVERSE BAY RV PARK CONDOMINIUM ASSOCIATION,

Defendant.

UNPUBLISHED
April 22, 2021

No. 353045
Grand Traverse Circuit Court
LC No. 17-032082-CH

CHARLES E. PHYLE, SR., as Trustee of the CHARLES E. PHYLE RESTATED REVOCABLE TRUST,

Plaintiff/Counterdefendant-Appellee/Cross-Appellant,

v

SCHEPPE INVESTMENTS, INC,

Defendant/Counterplaintiff-Appellant/Cross-Appellee,

and

TRAVERSE BAY RV PARK CONDOMINIUM ASSOCIATION,

No. 355283
Grand Traverse Circuit Court
LC No. 17-032082-CH

Defendant.

Before: MURRAY, C.J., and MARKEY and LETICA, JJ.

PER CURIAM.

I. INTRODUCTION

In Docket No. 353045, defendant Scheppe Investments, Inc. (Scheppe), appeals as of right an order granting summary disposition to plaintiff, Charles E. Phyle, Sr., as trustee of the Charles E. Phyle Restated Revocable Trust. In Docket No. 355283, Scheppe appeals as of right an award of costs and attorney fees—granted as discovery sanctions—to plaintiff, and plaintiff cross-appeals, arguing that additional sanctions should have been imposed. We affirm the court's decisions to (1) grant summary disposition to plaintiff on Counts III, IV, and VI of the complaint, (2) refrain from sanctioning Scheppe for its defenses to Counts I and VI of the complaint, (3) refrain from sanctioning Scheppe for its alleged violation of court rulings, and (4) impose sanctions against Scheppe for discovery violations. However, we remand this case for a minor recalculation of the costs and fees awarded.

Scheppe is the successor developer of the Traverse Bay Recreational Vehicle Park, where plaintiff is a condominium co-owner. Scheppe also owns recreational facilities adjacent to the condominium project. Since 2008, Scheppe has been charging every condominium co-owner a yearly flat usage fee, adjustable for inflation, in connection with these recreational facilities. After co-owners protested, Scheppe attempted to "rectify" any issues regarding the fees by way of a 2012 agreement with the condominium association and a 2017 "clarification" of this agreement. Plaintiff, however, filed suit, alleging, among other things, that he should not be required to pay the usage fees. The court ultimately ruled that Scheppe violated administrative rules by imposing the fees and awarded a reimbursement of fees paid by plaintiff. The court also ruled that Scheppe violated the condominium bylaws by imposing a *flat* fee because the bylaws allowed only for a fee covering maintenance and repair of the facilities. Scheppe takes issue with these rulings and also challenges the court's imposition of sanctions against it for discovery violations. On cross-appeal, plaintiff contends that Scheppe should have been sanctioned to an even greater extent by the court.

II. SUMMARY DISPOSITION

Scheppe contends that the trial court erred by granting summary disposition to plaintiff on Counts III, IV, and VI of the complaint, which sought a declaratory judgment and damages related to the usage fees and asserted plaintiff's right to inspect the books and records of the recreational facilities. The court relied on MCR 2.116(I)(2) and MCR 2.116(C)(10) in granting summary disposition.

This Court reviews de novo a trial court's decision regarding a motion for summary disposition. *Spohn v Van Dyke Pub Schs*, 296 Mich App 470, 479; 822 NW2d 239 (2012).

> A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions,

> and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. [*Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).]

MCR 2.116(I)(2) states, "If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party."

Issues of statutory construction are likewise reviewed de novo. *Alticor, Inc v Dep't of Treasury*, 324 Mich App 403, 406-407; 921 NW2d 748 (2018).

> When interpreting statutes, [this Court's] goal is to give effect to the Legislature's intent, focusing first on the statute's plain language. In so doing, [this Court] examine[s] the statute as a whole, reading individual words and phrases in the context of the entire legislative scheme. When a statute's language is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. [*Id*. at 407 (quotation marks and citations omitted).]

"In construing administrative rules, courts apply principles of statutory construction." *City of Coldwater v Consumers Energy Co*, 500 Mich 158, 167; 895 NW2d 154 (2017) (quotation marks and citation omitted).

The trial court, in granting relief to plaintiff in connection with Counts III, IV, and VI, relied on its conclusion that Scheppe violated Mich Admin Code, R 559.111(b). Scheppe argues that the rule cannot be applied to it because MCL 559.234, upon which the rule is allegedly based, is inapplicable to the current circumstances. MCL 559.234 states, "Recreational facilities and other amenities, whether on condominium property or on adjacent property with respect to which the condominium has an obligation of support, shall comply with requirements prescribed by the administrator, to assure equitable treatment of all users." Mich Admin Code, R 559.111(b), states:

> Pursuant to [MCL 559.234], a recreational facility which is to be enjoyed by condominium co-owners and third parties shall, at a minimum, comply with the following provisions:
>
> * * *
>
> (b) When recreational facilities are owned by a third party and condominium co-owners are obligated to help financially support the recreational facilities, all of the following conditions shall be met:
>
> (i) Disclosure shall be made to prospective purchasers of their financial obligations and responsibilities as co-owners to support the recreational facilities. Such disclosure shall include information regarding all fees charged and compensation paid.

(ii) The condominium co-owners shall have an equitable vote, as set forth in the disclosure statement, as to the operation and management of the recreational facilities.

(iii) An arbitration clause to settle disputes upon consent of the parties shall be included in the condominium legal documents.

(iv) The necessary easements shall be established.

(v) The books and records of the recreational facilities shall be kept separate from other operations and shall be made available for inspection by the co-owners.

Even assuming, without deciding, that the statute must apply for the rule to be effective,[1] Scheppe's argument that the present circumstances are not encompassed by MCL 559.234 is not persuasive. Scheppe contends that the phrase "with respect to which the condominium has an obligation of support" in the statute must be construed to mean "with respect to which the condominium project as administered by the condominium association has an obligation of support." Scheppe contends that because the facilities at issue were supported not by the condominium association but by the condominium co-owners themselves, by way of Scheppe's direct billing to the co-owners, the statute is not applicable. But there is no reasonable basis for construing the statute in this manner. It is clear from its own language that the statute is concerned with the "equitable treatment of all users." MCL 559.234. Also, it is not disputed that the condominium co-owners were all *obligated* to pay for the recreational facilities, ostensibly on the basis of the condominium bylaws. Clearly, the "condominium" had an "obligation of support" in this circumstance, and rules regarding the equitable treatment of all users of the facilities were required. As argued by plaintiff, Scheppe is trying to create a "loophole" whereby if a condominium co-owner is directly billed by a facility, that facility need not comply with condominium statutes and rules.[2]

Scheppe goes on to argue that even if the administrative rule is deemed applicable on the basis of its interaction with MCL 559.234, the rule is inapplicable for two other reasons, i.e.,

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[1] The general enabling statute for the condominium rules is MCL 559.242, which states, "The administrator may promulgate rules, forms, and orders as are necessary to implement [the Condominium Act, MCL 559.101 *et seq*.] *or which are necessary for the establishment of unusual forms of condominium projects*; and may define any terms necessary in administration of the act. The rules and definition of terms shall be promulgated pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws." (Emphasis added.)

[2]Scheppe contends that plaintiff's interpretation would mean that if a condominium *association* enters into a contract with a recreational facility on adjacent land, the statute would be inapplicable, leading to an absurd result. This contention is without merit, because in such a situation the condominium, again, would have an obligation of support; it is just that the support would come through assessments by the condominium association to its members instead of through direct billing to the co-owners.

because there were no third-party users of the facilities and because Scheppe was not a third-party owner of the facilities.

As noted, Mich Admin Code, R 559.111(b), deals with a circumstance in which "recreational facilities are owned by a third party and condominium co-owners are obligated to help financially support the recreational facilities[.]" Scheppe contends that it, as the developer and as an owner of some rental units, was not a "third party" for purposes of this subrule.

Mich Admin Code, R 559.111, states, in full:

> Pursuant to [MCL 559.234], a recreational facility which is to be enjoyed by condominium co-owners and third parties shall, at a minimum, comply with the following provisions:
>
> (a) *When the recreational facilities are owned by the condominium co-owners and are to be used by a third party,* all of the following conditions shall be met:
>
> (i) Disclosure shall be made to all prospective purchasers that the recreational facilities will be shared with a third party.
>
> (ii) The master deed shall define who is entitled to use recreational facilities.
>
> (iii) The master deed shall set forth the appropriate financial obligations of all the parties involved.
>
> (b) *When recreational facilities are owned by a third party and condominium co-owners are obligated to help financially support the recreational facilities,* all of the following conditions shall be met:
>
> (i) Disclosure shall be made to prospective purchasers of their financial obligations and responsibilities as co-owners to support the recreational facilities. Such disclosure shall include information regarding all fees charged and compensation paid.
>
> (ii) The condominium co-owners shall have an equitable vote, as set forth in the disclosure statement, as to the operation and management of the recreational facilities.
>
> (iii) An arbitration clause to settle disputes upon consent of the parties shall be included in the condominium legal documents.
>
> (iv) The necessary easements shall be established.
>
> (v) The books and records of the recreational facilities shall be kept separate from other operations and shall be made available for inspection by the co-owners. [(Emphases added).]

Viewing the administrative rule as a whole, it is apparent that the agency, in promulgating the rule, was attempting to address situations in which co-owners own recreational facilities

collectively and *when they do not*, in order to address issues that might arise and protect the interests of those involved. Here, the recreational facilities at issue are *not* owned by the co-owners collectively; instead, they are owned solely by Scheppe. Scheppe is indeed a "third party" *in its role as the owner of the facilities*.

Scheppe contends that Mich Admin Code, R 559.111, is inapplicable by virtue of its very first sentence because the facilities were not "enjoyed" by any "third parties[.]" Plaintiff contends, in part, that because the rule refers to a "facility *which is to be enjoyed* by condominium co-owners and third parties," Mich Admin Code, R 559.111 (emphasis added), it encompasses facilities that were intended, at any point in the future, to be used by third parties.

Plaintiff stated below that persons from a "tiny house" project were using the facilities, and Scheppe did not disagree with that factual assertion, but instead argued that the tiny-house inhabitants should not be considered "third parties" because their homes were intended to be included in the condominium development but, because of a lawsuit, the homes had to be included in a separate development. In fact, Scheppe admits on appeal that in the middle of 2017, third parties began using the facilities. And plaintiff's argument that the phrase "is to be enjoyed" contemplates future use is compelling. In other words, even if the facilities were not currently being offered to third parties, if such offers were contemplated, the rule would apply. Significantly, the condominium bylaws state, in part:

> Recreational areas and facilities, including, but not limited to, open space areas, bath and laundry facilities, a swimming pool and hot tub, a tennis court, a shuffle board court, and a horseshoe pit have been planned for areas which are currently owned by the Developer and adjacent to the project. Although the Developer is under no obligation to install any such amenities, such areas and facilities may be constructed by the Developer at its sole cost and expense. If installed, the Developer reserves the right to implement a shared use (membership) arrangement for the Co-Owners of this Project *and those of any adjacent or proximate lots or projects*; however, each Co-Owner will have the right, by virtue of ownership of a lot in the project, to utilize any such installed recreational facilities. The Developer, on behalf of itself and its successors or assigns, hereby reserves the right to charge a reasonable usage or other fee to cover the cost of maintenance and repair of any such amenities. The Developer has also reserved the right through its reserved expansion rights, to add any such areas and/or facilities to the project as general common elements reserving the use of such amenities for the benefit of rental RV lots adjacent to the project. Any such amenities would be for limited pedestrian use (including hiking and biking) by the Co-Owners (and lot renters) and their guests and invitees only, subject to all reserved rights created herein. The use of the recreational areas shall be subject to the rules and regulations, including permitted hours of use (as posted), as may adopted and implemented by the Developer, or its successors or assigns, from time to time (or, if the features are added to the project, the Board of Directors) which shall be applied on a uniform basis to all users of the amenities. [(Emphasis added).]

The developer reserved the right to offer the facilities to co-owners and to owners of other projects. Given this language, Scheppe's argument about third parties is without merit.

Scheppe next argues that even if the requirements of Mich Admin Code, R 559.111(b), were applicable, it was the condominium association, not Scheppe as owner of the recreational facilities, which had to comply with the provisions of the subrule. The premise of Scheppe's argument is faulty, however, because the court, in discussing Scheppe's violation of the subrule, was focusing on his role as the developer, not on his role as owner of the recreational facilities. In addition, Scheppe's analysis regarding its assertion is, in large part, merely a rehashing of its argument that MCL 559.234 applies only to condominium associations. Moreover, Scheppe's argument makes little sense in a situation such as the present one, where the co-owners were obligated to pay for the recreational facilities *independent of their membership in the condominium association*.

In addition, the rule, as noted, refers to disclosures. Mich Admin Code, R 559.901, states:

> (1) Pursuant to section 84a of the act, *the developer shall prepare a disclosure statement* at the time of recordation of the master deed. A disclosure statement shall not be used unless it meets the requirements set forth in the act and these rules. A disclosure statement shall be amended before further use if there is a material change in the information contained therein.
>
> (2) Pursuant to sections 84 and 84a of the act, *the developer shall furnish a copy of a current, effective disclosure statement* to a prospective condominium purchaser not less than 9 business days before a binding purchase agreement. [(Emphases added).]

MCL 559.184a states, in part:

> (1) *The developer shall provide copies of all of the following documents to a prospective purchaser of a condominium unit*, other than a business condominium unit:
>
> * * *
>
> (d) *A disclosure statement* relating to the project containing all of the following:
>
> * * *
>
> (*x*) Other material information about the condominium project and the developer that the administrator requires by rule.
>
> * * *
>
> (5) With regard to any documents required under this section, a developer shall not make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.
>
> (6) The developer promptly shall amend a document required under this section to reflect any material change or to correct any omission in the document.

> (7) In addition to other liabilities and penalties, a developer who violates this section is subject to [MCL 559.215]. [(Emphases added).]

MCL 559.215 states:

> (1) A person or association of co-owners adversely affected by a violation of or failure to comply with this act, rules promulgated under this act, or any provision of an agreement or a master deed may bring an action for relief in a court of competent jurisdiction. The court may award costs to the prevailing party.
>
> (2) A developer who offers or sells a condominium unit in violation of section 21 or 84a is liable to the person purchasing the condominium unit for damages.

The trial court, in finding a violation of Mich Admin Code, R 559.111(b), did not err by focusing on Scheppe's role as the developer.[3]

Scheppe argues that any rule violation cannot void the "bylaws contract" between Scheppe, as developer, and plaintiff, as a co-owner. It contends that plaintiff is bound by the bylaws and that no violation of the by-law fee provision occurred because the fees charged for the facility were in accordance with the language in the bylaws for "a reasonable usage or other fee to cover the cost of maintenance and repair of any such amenities." Scheppe contends that because no breach of the fee provision in the bylaws[4] occurred, the fees from plaintiff were collected properly and the award of damages must be reversed. We reject these arguments.

First, as stated in *Conlin v Upton*, 313 Mich App 243, 255; 881 NW2d 511 (2015), "[w]hen validly promulgated, an entity's bylaws or similar governing instrument will constitute a binding contractual agreement between the entity and its members." Given the rule violations, the fee provision was not "validly promulgated[.]" In addition, the court justified its award of damages by referring to the administrative-rule violations. The court concluded that Scheppe had violated the provisions of Mich Admin Code, R 559.111(b). Given the court's finding that the rule violations themselves justified the award of damages, Scheppe's discussion about why, allegedly, the fee provision in the bylaws was not violated is irrelevant.[5]

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[3] Scheppe contends, in a footnote, that he was only a successor developer and a different developer was at the helm when plaintiff bought his condominium. But the failure to allow inspection of books and the absence of voting rights were ongoing violations. Scheppe also incorrectly contends that even if Mich Admin Code, R 559.111(b), was applicable, plaintiff's only recourse would be to sue the condominium association. But as noted, the rule is properly directed at the developer, not the condominium association, and in fact MCL 559.215(1) allows for an association itself to *initiate suit*.

[4] Condominium documents expressly required compliance with the Condominium Act.

[5] *Johnson v QFD, Inc*, 292 Mich App 359; 807 NW2d 719 (2011), does contain some language that could be interpreted as favorable to Scheppe, when read in isolation. But the Court ultimately went on to state that the plaintiff could bring an action for rescission or damages under the

III. SANCTIONS FOR DISCOVERY VIOLATIONS

Scheppe contends that the trial court erred by granting attorney fees and costs to plaintiff in connection with granting motions to compel discovery. Scheppe also takes issue with some of the amounts awarded. The orders to compel pertained to financial documents for the recreational facilities.

This Court reviews for an abuse of discretion both a court's decision to award discovery sanctions and the reasonableness of an attorney-fee award. *Elahham v Al-Jabban*, 319 Mich App 112, 135; 899 NW2d 768 (2017); *Zoran v Twp of Cottrellville*, 322 Mich App 470, 475; 913 NW2d 359 (2017). "An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes." *Brown v Home-Owners Ins Co*, 298 Mich App 678, 690; 828 NW2d 400 (2012) (quotation marks and citations omitted). Findings of fact underlying an award of attorney fees are reviewed for clear error. *Id*.; see also *Zoran*, 322 Mich App at 475.

At the time of the discovery violations and orders to compel,[6] MCR 2.313(A)(5) stated:

> If the motion [to compel] is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct, or both, to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

MCR 2.313(B)(2) stated that if a party failed to obey an order to provide discovery, the court "shall require the party failing to obey the order or the attorney advising the party, or both, to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust."

Importantly, Scheppe does not dispute that it failed to provide discovery. In arguing against sanctions, it focuses on its argument that it was not required to provide the documents because they were the subject of Count VI of plaintiff's complaint. It argues that, in such a circumstance, its "opposition to the motion was substantially justified or . . . other circumstances make an award of expenses unjust." MCR 2.313(A)(5).

However, in reviewing the decision for an abuse of discretion, *Elahham*, 319 Mich App at 135, we cannot conclude that the trial court abused its discretion in assessing discovery

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appropriate statutory provision. *Id*. at 372. The authorization for the lawsuit was significant for determining the appropriate statute of limitations. *Id*. *Johnson* is actually supportive of *plaintiff's* position because plaintiff cited MCL 559.215 in the complaint. Scheppe's contention that plaintiff could seek relief only against *the association* under MCL 559.215(1) is clearly without merit. And even if the statute is interpreted as *not* providing the avenue of relief sought by plaintiff, then the reasoning of *Johnson* for disallowing a voiding of the contract would not apply because there would be no "express private remedy" for plaintiff's having had to pay the improperly assessed usage fees to Scheppe. *Id*. at 366. We reject Scheppe's reliance on *Johnson*.

[6] The court rule has been recently amended.

sanctions. First, plaintiff was asserting claims other than just the claim in Count VI, related to the inspection of records of the recreational facilities. Plaintiff was also arguing, for example, that Scheppe was allowed to charge usage fees only to the extent that the fees represented the actual costs incurred to maintain and repair the facilities. The documents were pertinent to this claim because plaintiff needed to assess how monies were being expended. In addition, Count VI of the complaint referred to plaintiff's "right" to inspect the books and relied on Mich Admin Code, R 559.111(b)(v), in doing so. Plaintiff requested an order compelling a full inspection of the records, at least implying that plaintiff was seeking the establishment of his ongoing right to inspect the books. We conclude, in light of the above considerations and the deferential standard of review, that the trial court's decision to award sanctions was not outside the range of reasonable and principled outcomes. *Brown*, 298 Mich App at 690.

Scheppe contends that even if the award itself was allowable, two categories of fees should not have been included in it. Scheppe first argues that fees related to the work of a nonattorney should have been excluded from the award.

In his itemized bill, plaintiff represented that a man named Paul Hittie spent 50 hours on the case and requested $60 an hour for his work. The court concluded that Hittie's work had been in support of the attorneys and further concluded that, as argued by plaintiff, the work had been necessary to determine if the documents provided by Scheppe were complete. The court reduced the requested hourly rate for Hittie by $15 but did not order any reduction in the hours claimed. We conclude that a remand is warranted for a recalculation of the fees plaintiff is entitled to in association with Hittie's work.

In a letter attached by plaintiff to the itemized bill of costs, Hittie stated:

> Starting with your initial request to me on May 9, 2017[,] I spent time off and on at the office around my other responsibilities working on the Scheppe case for you. I spent over 40 hours comparing the actual paid invoices to the financial statements provided, and *determining whether or not they were acceptable under Article VI, Section 1a of the Condominium Bylaws*. I prepared a schedule of all of the expenses, including a number of estimates used by Scheppe in preparing them, and then *started drafting a report for Ron Harris, CPA for him to provide as evidence in the case that your attorney was developing on behalf of the property owners at the resort*. Later I added a similar analysis of the 2016 expenses, and then forwarded my complete to report to [sic] Mr. Harris in January 2018. The additional work to add 2016 to the report, plus follow up questions with CPA Harris and Attorney Hirzel was another 10-12 hours, for a minimum of at least 50 hours spent on this project. I retained most of the e-mails, and still have my work papers if anyone needs them. [(Emphasis added).]

It is clear from this letter that Hittie's claimed hours encompassed actions other than determining whether Scheppe had adequately complied with the discovery request. As such, the court clearly erred by, in essence, making the factual finding that *all* of Hittie's work was in furtherance of obtaining proper discovery, *Brown*, 298 Mich App at 690, and the court, correspondingly, abused its discretion by including all of Hittie's fees in the total award, *Zoran*, 322 Mich App at 475.

Scheppe also contends that the court erred by including in the award fees associated with a third motion to compel, noting that plaintiff had withdrawn this particular motion. Scheppe argued that, as a result, the $695 being claimed for work performed on November 27, 29, and 30 of 2017 needed to be deducted from the total amount being sought by plaintiff. Scheppe provided a document showing that plaintiff had, indeed, claimed $695 for the work related to this third motion to compel. The court stated, without elaboration, that the charges were appropriate.

But the trial court's June 19, 2020 order—i.e., the order preceding plaintiff's filing of the bill of costs—stated that Scheppe must pay fees and costs incurred by plaintiff "in securing the appropriate orders to obtain responsive documents." It stated that plaintiff was to submit a bill of costs "in accordance with this Order." The *last* pertinent discovery order was dated November 28, 2017; this order referred to a hearing for various matters that took place in November 2017 and stated that pertinent documents were to be turned over by November 27, 2017. This demonstrates that the work performed on November 27, 29, and 30 of 2017—in connection with a withdrawn motion to compel—was not work incurred "in securing the appropriate orders to obtain responsive documents." Accordingly, we conclude that the court clearly erred and abused its discretion by including the $695 in the award. The work on November 27, 29, and 30 was not for the purpose of securing the orders to compel, of which there were only two—the one on November 8, 2017, and the one on November 28, 2017.[7]

IV. SANCTIONS FOR ALLEGEDLY FRIVOLOUS DEFENSES

Plaintiff contends that the trial court should have granted sanctions to plaintiff because Scheppe advanced frivolous defenses to Counts I[8] and VI of the complaint.

A court's decision regarding whether to impose sanctions on the basis of frivolousness is reviewed for clear error. *Meisner Law Group, PC v Weston Downs Condo Ass'n*, 321 Mich App 702, 730; 909 NW2d 890 (2017). A finding is clearly erroneous if the reviewing court is left with a firm and definite conviction that the lower court made a mistake. *Id*.

MCR 1.109(E) states, in part:

> (5) *Effect of Signature*. The signature of a person filing a document, whether or not represented by an attorney, constitutes a certification by the signer that:
>
> (a) he or she has read the document;
>
> (b) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by

[7] Plaintiff argues that it took these two orders "before Scheppe finally complied with its discovery obligations and the trial court's directives," and that preparation of the third motion to compel was "in anticipation of continued gamesmanship," and that fees for that motion should be reimbursed. But the court rules address expenses necessitated by the failure to provide discovery or caused by a failure to comply with an order, MCR 2.313(A)(5) and (B)(2), so this argument fails.

[8] Count I dealt with Scheppe's disputed extension of his right to expand the condominium project.

existing law or a good-faith argument for the extension, modification, or reversal of existing law; and

(c) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(6) *Sanctions for Violation*. If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages.

(7) *Sanctions for Frivolous Claims and Defenses*. In addition to sanctions under this rule, a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2). The court may not assess punitive damages.

MCR 2.625(A)(2) states, "In an action filed on or after October 1, 1986, if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591."

It is important to note that plaintiff is *not* arguing that Scheppe's defenses raised in response to Counts I and VI of the complaint were frivolous because of the legal theories set forth. Instead, plaintiff relies on the fact that the court had ruled against Scheppe on similar claims raised by Steve Irish, in prior litigation, and therefore litigating it again was frivolous. But it is not disputed that Irish's lawsuit was settled. And crucially, plaintiff provided this Court with a January 2017 consent judgment showing that the December 2016 order in Irish's case had been expressly *rescinded*. As such, the premise of plaintiff's appellate argument is without merit, because Scheppe was not relitigating something that had been definitively ruled upon.

Plaintiff contends that *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App at 379; 651 NW2d 756 (2002), "establishes that a dismissal of a case, even based on a lack of jurisdiction, does not vitiate the fact that later relitigation of the same issues with knowledge of the prior legal result is frivolous." The present case is not comparable to *Yee* because the order in Irish's lawsuit was expressly rescinded by way of the consent judgment, whereas in *Yee*, the prior ruling of the court in regard to the lake level remained in effect. *Yee*, 251 Mich App at 386-387, 408. Plaintiff's reliance on *Yee* is misplaced. Scheppe was within its rights to defend against the new lawsuit.

Given the posture of the case, we are not left with a firm and definite conviction that the trial court made a mistake in concluding that Scheppe did not act frivolously in defending against Counts I and VI of the complaint. *Meisner Law Group*, 321 Mich App at 730.

V. SANCTIONS FOR VIOLATING A RULING

Plaintiff contends that the trial court should have sanctioned Scheppe for violating several rulings of the court. As we discern it, plaintiff is arguing that the trial court erred by finding that there was insufficient evidence demonstrating that Scheppe violated rulings of the court. This was, in effect, a factual finding by the court, and factual findings by a trial court are reviewed for clear error. *Zoran*, 322 Mich App at 475.

We reject any attempt to argue that Scheppe committed civil contempt. In *In re Contempt of Calcutt*, 184 Mich App 749, 758; 458 NW2d 919 (1990), the Court, discussing civil contempt, stated, "The contemnor must . . . indemnify any person for losses sustained as a direct result of the contemptuous conduct, including attorney fees." Plaintiff, however, does not explain how the alleged violation of the court's orders resulted in "losses sustained[.]" *Id.*

At any rate, plaintiff's argument about the violation is not persuasive. He is arguing that the trial court should have sanctioned Scheppe for its violation of the court's December 20, 2017 written order and the oral ruling on November 20, 2017, that preceded it. The December 2017 written order stated that the 2012 agreement and 2016 clarification were unenforceable because of a failure to meet "the legal requirements of" Mich Admin Code, R 559.111. In its November 2017 oral ruling, the court referred to the fixed fee's being "void" because of the violation of Mich Admin Code, R 559.111(b). But the court went on to say that it was not ready to rule on Count IV and that count would proceed to a trial. The court stated that it was not sure whether the fixed fee violated the parties' agreement by way of the master deed and bylaws. The court's ruling was somewhat ambiguous, because Scheppe could have concluded that the bylaws provided a separate avenue for imposing the fees. We note, too, that the very evidence cited by plaintiff to support his argument on appeal shows that bills were sent out by a principal of Scheppe on *November 15, 2017*—i.e., *before* the oral and written rulings. Given the circumstances, there is no basis for a finding of clear error. *Zoran*, 322 Mich App at 475.[9]

VI. CONCLUSION

We affirm in Docket No. 353045. In Docket No. 355283, we affirm the court's order denying sanctions against Scheppe for its defenses to Counts I and VI, and for its alleged violation of court rulings, and imposing sanctions against Scheppe for discovery violations. However, we remand this case for a recalculation of costs and fees in accordance with this opinion. We do not retain jurisdiction.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Anica Letica

[9] We decline Scheppe's invitation to impose sanctions against plaintiff for an allegedly vexatious cross-appeal, as it is not properly before us by motion.