STATE OF MICHIGAN

COURT OF APPEALS

BRIAN JENICH,

Plaintiff/Counterdefendant-Appellant/Cross-Appellee,

v

ICON BUILDING II CO., INC.,

Defendant/Counterplaintff-Appellee/Cross-Appellant.

UNPUBLISHED
March 20, 2003

No. 236392
Macomb Circuit Court
LC No. 00-004744-CK

Before: Whitbeck, C.J., and Griffin and Owens, JJ.

PER CURIAM.

Plaintiff Brian Jenich appeals as of right from an order granting summary disposition pursuant to MCR 2.116(C)(10) in favor of defendant Icon Building II Co., Inc. (Icon) on Jenich's breach of contract claim. Icon cross-appeals the trial court's dismissal of its counterclaim that Jenich's claim was frivolous. We affirm.

I. Basic Facts And Procedural History

On March 17, 1999, Jenich and Icon signed a construction contract under which Icon would construct a facility for Jenich's manufacturing business on a vacant lot that Icon owned. The vacant lot was in an industrial development district, which made the facility eligible for a tax abatement under the plant rehabilitation and industrial development districts act (PRIDDA).[1] The construction contract contained the following provision: "Purchaser to apply for tax abatement with the Charter Township of Clinton as soon as possible." The parties entered into a purchase agreement for the lot and building on April 13, 1999. The purchase agreement specified that closing would take place within ten days after Icon notified Jenich that the township issued a final certificate of occupancy, at which point the parties would execute a land contract.

Construction began in mid-June of 1999. After construction was complete and closing occurred in April of 2000, Jenich attempted to apply for a tax abatement certificate. However, an employee in the assessor's office informed Jenich that tax abatement applications must be

[1] MCL 207.551 *et seq*.

filed within six months of construction. Accordingly, Jenich's application was rejected as untimely.

On November 20, 2000, Jenich filed a complaint against Icon alleging breach of contract and promissory estoppel on the theory that Icon, as legal title holder during the six-month application period, had a duty to file the application. Jenich argued that under MCL 207.555(1), only an owner or lessee may file an application for a tax exemption certificate. Icon filed a counterclaim alleging that Jenich's claims were frivolous.

The trial court granted summary disposition in Icon's favor, holding that Jenich, as equitable owner under the land contract, had the ability to timely apply for the tax abatement, as the construction contract specified. The trial court noted that Icon would not have been eligible for the tax abatement certificate because it was Jenich, not Icon, who planned to establish a manufacturing operation on the site. However, the trial court denied Icon's motion for sanctions because there were few cases interpreting the PRIDDA and there was no evidence of wrongful conduct or improper motive on Jenich's part.

II. Application Requirements Under The PRIDDA

A. Standard Of Review

We review de novo the trial court's decision on a motion for summary disposition[2] as well as questions involving statutory interpretation.[3]

B. Analysis

To qualify for a tax abatement under the PRIDDA, "the owner or lessee of a facility may file an application for an industrial facilities exemption certificate with the clerk of the local governmental unit that established the plant rehabilitation district or industrial development district."[4] The PRIDDA provides that no industrial facilities exemption certificates will be granted unless certain requirements are met.[5] Among these requirements is that "the commencement of the . . . construction of the facility occurred not earlier than 6 months before the filing of the application for the industrial facilities exemption certificate."[6] In this case, the township approved Icon's building application on June 22, 1999, and Icon began construction shortly thereafter.

The trial court rejected Jenich's argument that only Icon, as the facility's owner, could have filed the application timely, concluding that Jenich was the equitable owner as the land

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[2] *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

[3] *Oakland Co Bd of Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998).

[4] MCL 207.555(1).

[5] MCL 207.559(2).

[6] MCL 207.559(2)(c).

contract vendee, thus qualifying him as an "owner or lessee" under the statute. However, our reading of the facts indicates that the trial court need not have reached this issue. The question whether Jenich's application would have been accepted within the six-month period was rendered moot by the fact that he did not attempt to apply. Jenich acknowledged that he did "absolutely nothing" relating to the application until July 2000, despite the contractual provision making the application his responsibility. Although he attributed this dilatoriness to the fact that he "had no ownership in the building" when construction began, he admitted being unaware that ownership might have been statutorily required until he attempted to file the application over a year later.

In any event, Jenich should have been aware that the statute required that an application be filed within six months of when construction began. Generally, parties to an arm's length transaction are "supposed to know the law."[7] Had Jenich begun making inquiries regarding the requirements for application in a timely fashion, the parties would have discovered that only owners and lessees could file for the tax abatement while there was still time to explore alternative options, such as conveying title to Jenich before the facility was completed rather than after. As it happened, however, Jenich's delay foreclosed any alternative solutions that might have been available within the six-month period.

Jenich argues that Icon, as owner of the building during the six-month period, had a duty to file for the tax abatement. However, the statute provides that "the owner or lessee of a facility *may* file an application," [8] and does not state that the owner "shall" or "must" file. This indicates that while an owner is *permitted* to apply for a tax abatement, he or she is not *required* to do so.[9] The only duty to apply for a tax abatement in this case arose from the parties' contract, which placed the duty squarely on Jenich. The fact that Jenich failed to take any action respecting his contractual duty until the statutory period had lapsed in no way shifted his responsibility to Icon.

A motion for summary disposition may be granted when the movant is entitled to judgment as a matter of law, and the affidavits or other proofs show that there is no genuine issue of material fact.[10] Although the trial court granted summary disposition on different grounds, we agree that it was properly granted. We will not reverse a trial court's order if it reached the right result for the wrong reason.[11]

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[7] *Cassidy v Kraft-Phenix Cheese Corp*, 285 Mich 426, 438; 280 NW 814 (1938).

[8] MCL 207.555(1) (emphasis added).

[9] See, e.g., *In re Chrzanowski*, 465 Mich 468, 482; 636 NW2d 758 (2001); *State Employees Ass'n v Liquor Control Comm'n*, 232 Mich App 456, 468; 591 NW2d 353 (1998).

[10] *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998).

[11] *Detroit v Presti*, 240 Mich App 208, 214; 610 NW2d 261 (2000).

III. Contractual Interpretation

A. Standard Of Review

We review de novo issues concerning the proper interpretation of contracts.[12]

B. Analysis

Jenich argues that the trial court improperly granted summary disposition because the parties' contract was ambiguous. When deciding a motion for summary disposition in a claim for breach of contract, a court may interpret the contract only where the terms are clear.[13] If the terms are ambiguous, a factual development is necessary to determine the intent of the parties, and summary disposition is inappropriate.[14] Summary disposition is proper in a claim for breach of contract when the terms are clear and there is no evidence creating any other issue of fact.[15]

In this case, Jenich and Icon's contract provided, in pertinent part, "Purchaser to apply for tax abatement with the Charter Township of Clinton as soon as possible." Jenich argues that this phrase is ambiguous because it is unclear whether the parties intended that Jenich be entitled to a tax abatement, and whether this intention gave rise to a duty for Icon to file the application. However, this suggestion is unsupported by the plain language of the clause, which makes no mention of any entitlement to an abatement. Moreover, regardless of the parties' possible intent, Icon was in no position to guarantee that Jenich would receive the tax abatement because, under the PRIDDA, applications can be approved only by the legislative body of the local governmental unit[16] and the state tax commission.[17]

The only conceivable ambiguity in the above clause is the phrase "as soon as possible," given the fact that Jenich did not become the owner of the building, and therefore qualified to apply, until April 2000. However, while this ambiguity might have been relevant had Icon sued Jenich for breach of contract, it has no bearing on this case. The clause at issue unambiguously placed the responsibility to file the application on Jenich,[18] and there is simply no legal basis to shift this duty to Icon. Therefore, the trial court properly granted summary disposition regarding Jenich's breach of contract claim.[19]

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[12] *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002).

[13] *Michaels v Amway Corp*, 206 Mich App 644, 649; 522 NW2d 703 (1994).

[14] *Id*.

[15] *Workers' Disability Compensation Bureau Director v Durant Enterprises, Inc*, 195 Mich App 626, 628-629; 491 NW2d 584 (1992).

[16] MCL 207.556.

[17] MCL 207.557(1).

[18] *Michaels, supra* at 649.

[19] *Id.*; *Workers' Disability Compensation Bureau Director, supra* at 628-629.

IV. Icon's Cross-Appeal

A. Waiver

On cross-appeal, Icon argues that the trial court erred when it sua sponte dismissed its counterclaim for sanctions without providing it with an opportunity to address the issue. As Icon acknowledges, the trial court had the authority to render an immediate judgment under MCR 2.116(I)(1), which provides:

> (1) if the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay.

Apart from the fact that Icon did, in fact, have the opportunity to address the issue by virtue of the filing of its counterclaim, in this case the parties stipulated that (1) no oral arguments would be presented at the hearing scheduled on July 2, 2001 regarding their respective motions and pleadings, and (2) the trial court would issue a written opinion. Because Icon stipulated that the trial court would decide the motions without oral arguments, it may not argue on appeal that to do so was error.[20]

B. Frivolous Claim

1. Standard Of Review

We review the trial court's decision to grant summary disposition de novo,[21] and its conclusion respecting whether a claim was frivolous for clear error.[22]

2. Analysis

Icon argues that the trial court erred in summarily dismissing its counterclaim because an issue of material fact existed to support its argument that Jenich's claim was frivolous. The trial court concluded that Icon failed to make a proper showing that Jenich filed his claim either with an improper motive or, given the paucity of caselaw interpreting the PRIDDA, that the claim was without arguable legal merit.

Icon counterclaimed for sanctions under the statutory rule, which allows the trial court to award the prevailing party costs and fees if it determines that the action was frivolous.[23] An action is considered frivolous if one of the following conditions exists:

> (i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.

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[20] See *Weiss v Hodge (After Remand)*, 223 Mich App 620, 636; 567 NW2d 468 (1997).

[21] *Maiden*, *supra* at 118.

[22] *In re Attorney Fees & Costs*, 233 Mich App 694, 701; 593 NW2d 589 (1999).

[23] MCL 600.2591(1).

(ii) The party had no reasonable basis to believe that the facts underlying the party's legal position were in fact true.

(iii) The party's legal position was devoid of arguable legal merit.[24]

In this case, Icon presented no evidence indicating that Jenich filed the claim to harass Icon, or that Jenich did not have a reasonable basis to believe the facts underlying his claim. Further, although we resolved the claim on other grounds, Jenich argued, and the trial court agreed, that the resolution of his claim hinged on the definition of "owner" under the PRIDDA. Because this is an unsettled issue of law with no published authority addressing it, Jenich's claim was not devoid of legal merit.[25] Accordingly, the trial court properly dismissed defendant's counterclaim.[26]

Affirmed.

/s/ William C. Whitbeck
/s/ Richard Allen Griffin
/s/ Donald S. Owens

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[24] MCL 600.2591(3)(a).

[25] *Traveler's Ins v U-Haul of Michigan, Inc*, 235 Mich App 273, 290; 597 NW2d 235 (1999).

[26] MCL 600.2591; MCR 2.116(I)(1).