

STATE OF MICHIGAN
COURT OF APPEALS

MIRANDA & ASSOCIATES, INC., MARY Y.
ABRO, TED B. ABRO, ROBERT B. ABRO, and
JASON B. ABRO,

UNPUBLISHED
November 22, 2011

Plaintiffs-Appellees,

v

GEORGE ABRO and JOHNNY ENTERPRISES,
INC.,

No. 299430
Wayne Circuit Court
LC No. 06-614580-CK

Defendants-Appellants.

Before: M. J. KELLY, P.J., and SAAD and O'CONNELL, JJ.

PER CURIAM.

Defendants appeal as of right from a circuit court order denying their motion for attorney fees. We affirm.

Plaintiffs and defendants entered into agreements for the sale of a business and the lease of the property on which the business was located. The lease agreement contained an option to purchase the property for \$400,000, with payment of \$120,000 down and a land contract for the balance, which was to be paid in 120 monthly installments at nine percent interest. Plaintiffs gave defendants notice that they were exercising the option to purchase, but defendants refused to sell the property. The trial court determined that plaintiffs were entitled to specific performance and ordered defendants to execute a land contract containing all "usual and customary covenants," as well as a clause allowing plaintiffs to prepay the balance without penalty. After it was discovered that the property was owned by another person, the trial court ordered defendants to clear title. Eventually, the trial court granted plaintiffs' motion for attorney fees pursuant to ¶ 18 of the lease agreement, which provided:

If suit is brought to enforce any covenant of this Lease or for the breach of any covenant or condition herein contained, the parties hereto agree that the losing party shall pay to the prevailing party a reasonable attorney's fee, which shall be fixed by the court, and the court costs.

In a prior appeal, this Court affirmed, but remanded to the trial court to strike a "no prepayment penalty" clause in the land contract. *Miranda & Assoc, Inc v Abro*, unpublished opinion per curiam of the Court of Appeals, issued December 29, 2009 (Docket No. 287230).

On remand, the trial court granted defendants' motion to amend the land contract in accordance with this Court's ruling. Defendants then moved for attorney fees pursuant to ¶ 18 of the lease agreement, arguing that they were the prevailing party because they had successfully appealed the inclusion of the prepayment penalty clause in the land contract. Defendants further argued that because they, rather than plaintiffs, were the prevailing party, the attorney fees previously awarded to plaintiffs should be disallowed. The trial court denied defendants' motion. This appeal followed.

A trial court's ruling on a motion for attorney fees is generally reviewed for an abuse of discretion. *Reed v Reed*, 265 Mich App 131, 164; 693 NW2d 825 (2005). But the interpretation of a contract is a question of law that is reviewed de novo on appeal, *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006), as are other questions of law. *Flint Cold Storage v Dep't of Treasury*, 285 Mich App 483, 492; 776 NW2d 387 (2009).

Unambiguous contracts are to be enforced as written. *Holland v Trinity Health Care Corp*, 287 Mich App 524, 527; 791 NW2d 724 (2010). The words used in a contract are to be given their plain and ordinary meanings. *Id.* When specific terms are not defined by the contract, their plain and ordinary meaning may be determined by reference to dictionary definitions. *Id.* at 527-528. A prevailing party is one "in whose favor a judgment is rendered, regardless of the amount of damages awarded." Black's Law Dictionary (9th ed).

Contrary to defendants' argument, defendants were not the prevailing party in the trial court or on the first appeal. In the trial court, defendants argued that the option was void, that plaintiffs had not properly exercised the option, and that any land contract could not contain any terms not expressly included in the option itself. The trial court rejected those arguments and this Court affirmed, holding that plaintiffs had properly exercised the option to purchase and that the trial court did not err in requiring execution of a land contract containing terms consistent with the option to purchase and other terms "ordinarily and customarily used in any land contract" other than the prepayment penalty clause. This Court also rejected as moot the argument that the option was void, and the Court left the order for attorney fees in effect. *Miranda & Assoc, Inc*, unpub op at 7-11. In fact, this Court determined that neither party had prevailed in full on appeal. *Id.* at 11. Thus, the law of the case doctrine precluded the trial court from concluding that defendants were the prevailing party on appeal. *New Prop, Inc v George D Newpower, Jr, Inc*, 282 Mich App 120, 132; 762 NW2d 178 (2009).

The trial court properly determined that defendants were not prevailing parties entitled to attorney fees under ¶ 18 of the lease agreement.

Affirmed.

/s/ Michael J. Kelly
/s/ Henry William Saad
/s/ Peter D. O'Connell