

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD G. BEAUCHEMIN, Trustee of the
RICHARD G. BEAUCHEMIN LIVING TRUST,

UNPUBLISHED
January 15, 2013

Plaintiff/Counter-Defendant-
Appellant,

v

No. 306510
Macomb Circuit Court
LC No. 2010-000597-CH

LOTTIE SCHMIDT, INC., DAVID M. HALL and
DAVID M. HALL, L.L.C.,

Defendants-Appellees,

and

DAVID M. HALL, L.L.C. and DAVID M. HALL,
Trustee of the DAVID M. HALL LIVING
TRUST,

Defendants/Counter-Plaintiffs-
Appellees.

Before: STEPHENS, P.J., and OWENS and MURRAY, JJ.

PER CURIAM.

Plaintiff Richard G. Beauchemin, trustee of the Richard G. Beauchemin Living Trust, appeals as of right the trial court's judgment concluding that defendants David M. Hall, L.L.C., David M. Hall and David M. Hall, trustee of the David M. Hall Living Trust, ("the Hall defendants"), conditional acceptance of a case evaluation award was proper.¹ We affirm.

I. BACKGROUND

The trial court neatly summarized the facts that form the basis of plaintiff's claims:

¹ Plaintiff received a default judgment against defendant Lottie Schmidt, Inc.

In his amended complaint, plaintiff alleges that he loaned \$100,000 to Lottie M. Schmidt, Inc. (“Lottie Schmidt”) on October 24, 2001. Plaintiff alleges that Lottie Schmidt then granted him a mortgage which purports to encumber “Lots 205, 204 Anchor Bay Harbor.” Plaintiff alleges that David M. Hall was actively involved in the daily operations of Lottie Schmidt. Plaintiff alleges that Lottie Schmidt subsequently granted David M. Hall, LLC a mortgage on the property encumbered by plaintiff’s mortgage. Plaintiff avers that Lottie Schmidt’s actions constituted a default under plaintiff’s mortgage. Once Lottie Schmidt defaulted, it granted plaintiff additional collateral to secure plaintiff’s interest. However, plaintiff alleges that Lottie Schmidt began transferring assets to – and granting mortgages in favor of – the Hall defendants without any new consideration. According to plaintiff, the Hall defendants were attempting to shelter assets from creditors of Lottie Schmidt. Moreover, the Hall defendants continued doing business as Lottie Schmidt. Plaintiff avers that Lottie Schmidt is a sham corporation and a mere instrumentality of the Hall defendants. Plaintiff brings count I, breach of contract; count II, unjust enrichment/quantum meruit; count III, violation of the Michigan Uniform Fraudulent Transfer Act; count IV, foreclosure of mortgage; count V, successor liability; and count VI, pierce the corporate veil.

This matter proceeded to case evaluation on March 7, 2011. Plaintiff accepted the case evaluation award in its entirety. The Hall defendants also accepted the case evaluation award. However, the Hall defendants indicated that their acceptance of the award on their counterclaims was conditional.^[2] [Footnote added.]

Once plaintiff realized that the Hall defendants had conditionally accepted the case evaluation on the counterclaim, plaintiff filed a motion to confirm the Hall defendants’ rejection of the case evaluation award. Plaintiff argued that the Hall defendants’ conditional acceptance violated MCR 2.403 because they chose to be treated as a single party for purposes of case evaluation, as evidenced by the fact that they paid only one case evaluation fee, submitted one case evaluation summary, were all represented by the same attorney, and the case evaluators only rendered one award. Plaintiff asserted that since the Hall defendants elected to be considered a single party, they were required to either accept or reject the case evaluation within 28 days pursuant to MCR 2.403(L)(1). Consequently, plaintiff asserted that the Hall defendants’ conditional acceptance constituted a rejection of the case evaluation.

Meanwhile, the Hall defendants filed a motion to enforce the case evaluation acceptance and deposit funds with the court. The Hall defendants argued that they properly gave a conditional acceptance under MCR 2.403(L)(3) because there were four named defendants in

² Defendants David M. Hall, trustee of the David M. Hall Revocable Living Trust, and David M. Hall, L.L.C., filed a counterclaim alleging plaintiff failed to properly record his mortgage.

this action. Consequently, the Hall defendants asserted that all parties had properly accepted the case evaluation award and the matter should be concluded pursuant to MCR 2.403(M).

The trial court issued an opinion and order denying plaintiff's motion to confirm the Hall defendants' rejection of the case evaluation award and granting the Hall defendants' motion to enforce case evaluation acceptance. The trial court concluded that the Hall defendants properly made a conditional acceptance and the claims were resolved by plaintiff's acceptance:

Having carefully considered the parties' arguments, the Court is satisfied that the case evaluation at issue involved "multiple parties." To wit, David M. Hall in his individual capacity, David M. Hall, LLC, and the David M. Hall Revocable Living Trust u/a/d 9/23/94 are each distinct legal persons. While plaintiff points out that related parties can elect to treat an action as involving one claim, this rule only applies "[i]n the case of multiple injuries to members of a single family." MCR 2.403(H)(4). Plaintiff has failed to direct the Court's attention to any other authority permitting multiple defendants to be treated as a single party. Therefore, MCR 2.403(L)(3) applies to the case at bar.¹

Because the case evaluation involved multiple parties, the Hall defendants were free to conditionally accepted [sic] the award in accordance with MCR 2.403(L)(3)(b)(i) and (ii). Because plaintiff – the sole opposing party – also accepted the case evaluation award, the Hall defendants' conditional acceptance means that each of the individual defendants "is deemed to have agreed to entry of judgment, or dismissal as provided in subrule (M)(1)." As such, plaintiff's motion to confirm rejection of the case evaluation is denied, whereas the Hall defendants' motion to enforce the case evaluation is granted.

¹ The Court recognizes that the case evaluators rendered a single case evaluation award in this matter. While it might have been more appropriate for separate awards to have been rendered with respect to each of the defendants, the Court is not convinced that the case evaluation thereby ceased to involve "multiple parties" within the meaning of MCR 2.403(L)(3).

Thereafter, plaintiff refused the Hall defendants attempts to tender a single payment of \$35,000 in satisfaction of the case evaluation. After 28 days passed, plaintiff filed a motion for reconsideration and entry of judgment arguing that the Hall defendants failed to tender the correct payment of \$35,000 per defendant within 28 days. Thus, plaintiff asserted that the trial court was required to enter judgment in its favor pursuant to MCR 2.403(M)(1). Moreover, plaintiff claimed that MCR 2.403(K) required that it receive a separate award of \$35,000 against each individual Hall defendant. The trial court denied plaintiff's motion for reconsideration, but partially granted plaintiff's motion for entry of judgment. The trial court ordered that a judgment be prepared that clarified that the Hall defendants were jointly and severally liable:

In the case at bar, there is no question that the Hall defendants attempted to tender payment within 28 days as provided in MCR 2.403(M)(1). The court rules do not expressly contemplate the situation presented in this case – that a party who has accepted case evaluation will then refuse to accept the tender of the

award. However, the language in MCR 2.403(M)(1) is mandatory, requiring that “judgment will be entered” if payment is not made within 28 days. Since the Hall defendants were prevented from tendering payment within 28 days – albeit as a result of plaintiff’s own actions – entry of judgment is warranted.

Although entry of judgment is warranted, the judgment proposed by plaintiff does not comport with the case evaluation. The evaluation notice plainly provides for one award in favor of party 2 (plaintiff) against parties 4, 5, and 6 (the Hall defendants). The proposed judgment, on the other hand, provides for three separate judgments against each of the Hall defendants individually. Therefore, plaintiff’s proposed judgment will not be entered by this Court. Rather, plaintiff should prepare a new judgment which accurately reflects that a single case evaluation award was entered as to the Hall defendants jointly and severally.

Following the entry of judgment in favor of plaintiff against the Hall defendants jointly and severally for \$35,000, plaintiff appeals as of right.

II. ANALYSIS

A. MCR 2.403(L)

Plaintiff argues that the Hall defendants’ conditional acceptance on the counterclaim violated MCR 2.403(L)(1) because the court rule provides for only acceptance or rejection by a single party. Although the Hall defendants allege that plaintiff failed to preserve this issue, we find that this issue is preserved for review because plaintiff argued before the trial court that the Hall defendants could only accept or reject the case evaluation pursuant to MCR 2.403(L)(1), and the motion was decided by the trial court. *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008).

The interpretation and application of a court rule is reviewed de novo. *Henry v Dow Chem Co*, 484 Mich 483, 495; 772 NW2d 301 (2009), citing *Haliw v City of Sterling Hts*, 471 Mich 700, 704; 691 NW2d 753 (2005). A Michigan court rule is interpreted using the principles of statutory construction. *Id.* “The main goal of judicial construction of a statute is to ascertain and to give effect to the intent of the Legislature.” *Alvan Motor Freight, Inc v Dep’t of Treasury*, 281 Mich App 35, 39; 761 NW2d 269 (2008) (quotation marks and citations omitted). Thus, “[w]e begin by considering the plain language of the court rule in order to ascertain its meaning.” *Henry*, 484 Mich at 495. “The Court should avoid construing a court rule in a manner that results in a part of the rule becoming nugatory or surplusage.” *Dykes v William Beaumont Hosp*, 246 Mich App 471, 484; 633 NW2d 440 (2001).

The heart of plaintiff’s argument is that although there were three listed defendants in the case evaluation, it was commonly understood that the Hall defendants elected to be treated as a single party for purposes of case evaluation. Due to this fact, plaintiff contends that MCR 2.403(L)(1) applies and the Hall defendants were required to either accept or reject the entire case evaluation. Since the Hall defendants failed to follow MCR 2.403(L)(1), plaintiff asserts that this matter should proceed to trial and the Hall defendants should be exposed to potential

sanctions under MCR 2.403(O). The Hall defendants reject plaintiff's argument and assert that they were multiple parties for purposes of case evaluation, thus, they were permitted under MCR 2.403(L)(3) to conditionally accept the case evaluation.

MCR 2.403(L)³ provides:

(L) Acceptance or Rejection of Evaluation.

(1) *Each party* shall file a written acceptance or rejection of the panel's evaluation with the ADR clerk within 28 days after service of the panel's evaluation. Even if there are separate awards on multiple claims, the party must either accept or reject the evaluation in its entirety as to a particular opposing party. The failure to file a written acceptance or rejection within 28 days constitutes rejection.

(2) There may be no disclosure of a party's acceptance or rejection of the panel's evaluation until the expiration of the 28-day period, at which time the ADR clerk shall send a notice indicating each party's acceptance or rejection of the panel's evaluation.

(3) *In case evaluations involving multiple parties* the following rules apply:

(a) Each party has the option of accepting all of the awards covering the claims by or against that party or of accepting some and rejecting others. However, as to any particular opposing party, the party must either accept or reject the evaluation in its entirety.

(b) A party who accepts all of the awards may specifically indicate that he or she intends the acceptance to be effective only if

(i) all opposing parties accept, and/or

(ii) the opposing parties accept as to specified coparties.

If such a limitation is not included in the acceptance, an accepting party is deemed to have agreed to entry of judgment, or dismissal as provided in subrule (M)(1), as to that party and those of the opposing parties who accept, with the action to continue between the accepting party and those opposing parties who reject.

³ We quote MCR 2.403, effective May 1, 2009, because it was the court rule in effect at the time of the case evaluation and trial court's decision. However, in the most recent version of MCR 2.403, effective May 1, 2012, the subsections at issue remain substantially the same.

(c) If a party makes a limited acceptance under subrule (L)(3)(b) and some of the opposing parties accept and others reject, for the purposes of the cost provisions of subrule (O) the party who made the limited acceptance is deemed to have rejected as to those opposing parties who accept. [Emphasis added.]

The word “party” is not specifically defined by the court rule, thus, we turn to a dictionary definition to assist us in determining the plain meaning of the term. *Wardell v Hincka*, 297 Mich App 127, ___ ; 822 NW2d 278 (Docket No. 308243, issued June 21, 2012), slip op, p 3. Party is defined as “[o]ne by or against whom a lawsuit is brought.” Black’s Law Dictionary (9th ed). This definition makes it clear that a party is a single individual. Since the definition of party contemplates a single individual, and there were three separately named defendants in the case evaluation, the trial court correctly concluded that the case evaluation involved multiple parties, and thus, limited acceptance by the Hall defendants was permitted pursuant to MCR 2.403(L)(3). See *Dane Constr, Inc v Royal’s Wine & Deli, Inc*, 192 Mich App 287, 290; 480 NW2d 343 (1991) (“We agree with the trial court that MCR 2.403(L)(3) was appropriately applied in this case because there were two defendants.”).⁴

Because MCR 2.403(L)(3)(b)(ii) permits a limited acceptance when there are multiple parties involved, the Hall defendants properly accepted the case evaluation on the complaint and accepted with limitations the case evaluation on the counterclaim, as the limitation was that the acceptance would be effective only if all opposing parties accepted as to the co-defendants. The fact that the multiple parties were aligned on one side against the single plaintiff is not dispositive. Instead, MCR 2.403(L) clearly provides for one of two scenarios: an evaluation involving two single opposing sides or an evaluation involving two opposing sides with co-parties on one or both sides. See 2 Longhofer, Michigan Court Rules Practice, pp 537-538 (“Under MCR 2.403(L)(1), each party to the action must file a written acceptance or rejection of the case evaluation award In actions involving multiple parties . . . subrule 2.403(L)(3)(b) permits a party accepting all of the awards to condition that acceptance on . . . the acceptance by the opposing parties as to specified co-parties.”). The limited acceptance was in conformity with MCR 2.403(L)(3)(b)(ii) and the purpose of that rule – to fully settle the entire case. See Committee Report, 451 Mich at 1218 (“Current MCR 2.403(L)(3) provides for conditional acceptances in multiple-party cases. It permits a party to indicate that it intends its acceptance to be effective only if all opposing parties accept. The principle is to allow a party to take the position that it will accept the award only if it has the effect of disposing the entire lawsuit.”); *Henderson v Sprout Bros, Inc*, 176 Mich App 661, 668; 440 NW2d 629 (1989) superseded by rule on other grounds MCR 2.403(L)(1).

B. MCR 2.403(K)(2)

⁴ *Bush v Mobil Oil Corp*, 223 Mich App 222; 565 NW2d 921 (1997), overruled in part on other grounds, *CAM Constr v Lake Edgewood Condo Ass’n*, 465 Mich 549, 556-557; 640 NW2d 256 (2002), is not helpful to plaintiff because that case did not involve multiple parties and therefore did not apply MCR 2.403(L)(3).

Plaintiff next asserts that the trial court failed to follow MCR 2.403(M)(1)⁵ when it entered a judgment in the amount of \$35,000 against the Hall defendants jointly and severally. Plaintiff maintains that because MCR 2.403(K)(2) requires a separate award against each defendant, the trial court should have entered a judgment that reflected an award of \$35,000 against each Hall defendant. Questions of law, including the interpretation and application of a court rule, are reviewed de novo. *Henry*, 484 Mich at 495.

MCR 2.403(K)(2) provides:

The evaluation must include a separate award as to the plaintiff's claim against each defendant and as to each cross-claim, counterclaim, or third-party claim that has been filed in the action. For the purpose of this subrule, all such claims filed by any one party against any other party shall be treated as a single claim. [Emphasis added.]

In reviewing the case evaluation notice, we agree with the trial court's determination that "[t]he evaluation notice plainly provides for one award in favor of party 2 (plaintiff) against parties 4, 5, and 6 (the Hall defendants)." Although a plain reading of MCR 2.403(K)(2) requires that the case evaluation provide a separate award against each defendant on plaintiff's claim, *Minority Earth Movers, Inc v Walter Toebe Constr Co*, 251 Mich App 87, 93; 649 NW2d 397 (2002), that court rule does not provide a remedy for such a violation, and we generally do not impose one when the Supreme Court declined to do so, see *People v Kodlowski*, ___ Mich App ___, ___; ___ NW2d ___ (Docket No. 301774, issued December 4, 2012), slip op, p 6, and cases cited therein. And, this error by the panel does not mean that the trial court should have awarded plaintiff \$35,000 against each Hall defendant (for a total of \$105,000), because plaintiff's theory was that defendants were liable for the same injury.

Specifically, the underlying facts giving rise to plaintiffs multiple counts alleged that Schmidt and the Hall defendants transferred Schmidt's assets to the Hall defendants to shelter Schmidt's assets from its creditors, including plaintiff, in an attempt to avoid paying the creditors. According to its amended complaint, plaintiff sought \$180,018.62 in damages from Schmidt and the Hall defendants for the same injury. Consequently, when case evaluators rendered a single award of \$35,000, they were simply being consistent with plaintiff's theory of damages.

⁵ MCR 2.403(M)(1) provides:

If all the parties accept the panel's evaluation, judgment will be entered in accordance with the evaluation, unless the amount of the award is paid within 28 days after notification of the acceptances, in which case the court shall dismiss the action with prejudice. The judgment or dismissal shall be deemed to dispose of all claims in the action and includes all fees, costs, and interest to the date it is entered.

Moreover, according to Black's Law Dictionary (9th ed), "joint and several liability" means

[l]iability that may be apportioned either among two or more parties or to only one or a few select members of the group, at the adversary's discretion . . . [t]hus, *each liable party is individually responsible for the entire obligation*, but a paying party may have a right of contribution and indemnity from nonpaying parties. [Emphasis added.]

Given that a limited liability company and a living revocable trust both owned by the same individual compromise the three named defendants in the case evaluation, we find that the trial court's decision to render a joint and several award was consistent with MCR 2.403(K)(2) because each party is individually liable for the entire award. Thus, the judgment entered by the trial court properly reflects an award of \$35,000 against the Hall defendants jointly and severally.

We do not reach plaintiff's assertion that our application of MCR 2.403(K)(2) frustrates the purpose of MCR 2.403(O)(4)(a),⁶ as a verdict was not entered nor did the trial court award sanctions. Because neither a verdict nor sanctions were rendered, MCR 2.403(O) is simply not applicable to this case. Finally, because both parties accepted the case evaluation under MCR 2.403(L)(3), all claims have been disposed of, MCR 2.403(M)(1), and we decline plaintiff's request to remand.

Affirmed.

No costs to either side. MCR 7.219(A).

/s/ Cynthia Diane Stephens
/s/ Donald S. Owens
/s/ Christopher M. Murray

⁶ MCR 2.403(O)(4)(a) provides:

(4) In cases involving multiple parties, the following rules apply:

(a) Except as provided in subrule (O)(4)(b), in determining whether the verdict is more favorable to a party than the case evaluation, the court shall consider only the amount of the evaluation and verdict as to the particular pair of parties, rather than the aggregate evaluation or verdict as to all parties. However, costs may not be imposed on a plaintiff who obtains an aggregate verdict more favorable to the plaintiff than the aggregate evaluation.