S T A T E   O F   M I C H I G A N

C O U R T   O F   A P P E A L S

PCJ INVESTMENTS, LLC, Plaintiff-Appellee,	UNPUBLISHED August 13, 2026 8:37 AM
v	No. 371319 Wayne Circuit Court LC No. 21-009946-CB
RICHARD ROWHOUSES ASSOCIATION, Defendant/Cross-Defendant-Appellee,	
and	
TRIPLE PROPERTIES DETROIT, LLC, Defendant/Cross-Plaintiff-Appellant.	

Before: ACKERMAN, P.J., and BAZZI and LIEVENSE, JJ.

PER CURIAM.

In this action involving the reversion of condominium units, defendant/cross-plaintiff, Triple Properties Detroit, LLC (Triple), appeals as of right the order granting in part and denying in part plaintiff's, PCJ Investments, LLC, motion to compel compliance with a court order requiring Triple to make a second settlement payment. Relatedly, Triple challenges (a) the order entering a written settlement agreement between plaintiff and Triple, (b) the prior order denying its motion for summary disposition and instead granting summary disposition in favor of defendant/cross-defendant, Richard Rowhouses Association (the Association), and (c) an order entered after the filing of this claim of appeal, which granted plaintiff's motion to enforce the settlement agreement and ordered the release of the second settlement payment from escrow to plaintiff. We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

This matter stems from the development of Richard Rowhouses, a condominium project, and whether units 13 through 26 (the subject units) reverted to the general common elements 10 years after construction commenced because of a lack of completion of the construction of those units. On August 13, 2003, a master deed was executed by the developer, Westminster Abbey Homes, LLC, under the Condominium Act, MCL 559.101 *et seq*. The development was to be "administered" by the Association, a nonprofit corporation. The development was to have three buildings and 42 total units, and units 7 through 42 were labeled as "need not be built." As it existed at the time, MCL 559.167(3)[1] stated, in relevant part:

> [I]f the developer has not completed development and construction of units or improvements in the condominium project that are identified as "need not be built" during a period ending 10 years after the date of commencement of construction by the developer of the project, the developer, its successors, or assigns have the right to withdraw from the project all undeveloped portions of the project not identified as "must be built" without the prior consent of any co-owners, mortgagees of units in the project, or any other party having an interest in the project . . . . If the developer does not withdraw the undeveloped portions of the project from the project before expiration of the time periods, those undeveloped lands shall remain part of the project as general common elements and all rights to construct units upon that land shall cease.

On March 16, 2004, the developer recorded a notice of commencement of the construction. On October 1, 2009, Bank of America, N.A. (BOA) foreclosed on a mortgage and obtained a sheriff's deed, which conveyed the subject units to BOA for $48,053.90. On October 18, 2011, BOA assigned its developer rights to the subject units to Triple for $42,350.

In September 2015, Triple entered into a purchase agreement to sell the units to the Ferlito Group for $140,000. In March 2016, counsel for the Association's board of directors, Gregory J. Fioritto, sent a letter to Michael Ferlito regarding the "potential development" of the subject units, and a proposed first amendment to the master deed which would be necessary to reinstate the subject units. In October 2016, the Association's co-owners held a meeting discussing the project. In December 2016, Fioritto sent the Association's co-owners a proposed first amendment to the master deed. Any amendment required the approval of two-thirds of the Association's co-owners. In January 2017, Fioritto e-mailed Alex Loewy, an employee of Triple and assistant to its owner, Andreas Apostolopoulos, stating that the proposal passed. However, the sale of the subject units to the Ferlito Group never occurred. Fioritto did not record the first amendment to the master deed.

In August 2019, Triple, through Andreas Apostolopoulos, and Christos Karatsikakis, "on behalf of an entity to be formed," entered into a purchase and sale agreement for the subject units for $420,000. In November 2019, Triple purportedly conveyed the subject units to plaintiff. In December 2019, Ian Fairbrother, an employee of plaintiff, e-mailed members of the Association's board of directors regarding the sale. In February 2020, Tiffany Semanisin, a community manager

[1] This version of the statute was effective during this case. Any reference to MCL 559.167 is to this version of the statute, unless otherwise noted. MCL 559.167 was amended effective September 21, 2016. See MCL 559.167, as amended by 2016 PA 233. However, the amendment does not apply retroactively. See *Cove Creek Condo Ass'n v Vista Land & Home Dev, LLC*, 330 Mich App 679, 697-701; 950 NW2d 502 (2019).

at LandArc, which was the Association's property manager, arranged a meeting with Fairbrother and the Association's board of directors. An "informal introduction" meeting between plaintiff's representatives and members of the Association's board of directors occurred in March 2020.

In December 2020, Kyle Knopsnyder, senior claims counsel at North American Title Insurance Company (NATIC), stated there was a potential issue regarding plaintiff's ability to develop the subject units because they "converted into common elements." Knopsnyder requested the Association execute a quitclaim deed conveying the subject units to plaintiff. In April 2021, counsel for the Association sent a letter to Knopsnyder stating, under MCL 559.167(3), the subject units reverted to the Association on March 16, 2014.

Plaintiff filed a complaint to quiet title in the subject units. Triple filed a cross-claim against the Association, seeking declaratory relief on the grounds that the Association never possessed an interest in the subject units, and that no reversion occurred. The Association moved for summary disposition against plaintiff and Triple under MCR 2.116(C)(8) and (C)(10), asserting the subject units reverted to the general common elements in 2014. Because Triple never completed construction of the subject units, it lost its rights to them before its purported sale to plaintiff. The Association sought dismissal of Triple's cross-claim seeking declaratory relief, asserting the current version of MCL 559.167 did not apply retroactively. Plaintiff opposed the Association's motion for summary disposition, arguing the subject units never reverted to the Association. Triple also opposed the Association's motion for summary disposition, contending the subject units never reverted to the Association, and, regardless, the first amendment to the master deed reinstated the subject units.

Plaintiff filed a first amended complaint, which included additional counts against Triple. Triple moved for summary disposition under MCR 2.116(C)(10) against plaintiff, seeking dismissal of plaintiff's claims of intentional fraud, silent fraud, statutory stealing, and exemplary damages. Plaintiff opposed Triple's motion and contended that, if the trial court held the subject units reverted to the Association, it should also grant summary disposition in favor of plaintiff under MCR 2.116(I)(2) against Triple regarding plaintiff's breach of contract and breach of warranty claims. Triple moved for summary disposition under MCR 2.116(C)(10) against the Association, asserting Triple held title to the subject units under MCL 559.167, and the Association was equitably estopped from claiming any ownership interest in the subject units. Triple contended that this Court's opinion in *Cove Creek Condo Ass'n v Vista Land & Home Dev, LLC*, 330 Mich App 679; 950 NW2d 502 (2019), was wrongly decided insofar as it determined that reversion under the former version of MCL 559.167 did not violate due process. The Association argued summary disposition should be granted in its favor as to the cross-claim under MCR 2.116(C)(8), (C)(10), and (I)(2).

The trial court granted the Association's motion for summary disposition as to plaintiff's first amended complaint because the subject units reverted to the Association. The trial court explained the subject units "were not withdrawn from the project and construction was not completed as of . . . 10 years from commencement. Triple lost title to the units by operation of law . . . . Neither Triple nor [plaintiff] had title and cannot seek quiet title to property . . . ." The trial court granted in part and denied in part Triple's motion for summary disposition of plaintiff's first amended complaint. The trial court also denied Triple's motion for summary disposition against the Association under MCR 2.116(C)(10) and granted the Association's motion for summary disposition under MCR 2.116(I)(2), dismissing the cross-claim because the subject units "reverted to [the Association] as a matter of law." The court granted the Association's "motion for summary disposition of Triple's [cross-]complaint," which was brought under MCR 2.116(C)(8) and (C)(10). The trial court determined the current version of MCL 559.167 "cannot be applied retroactively," and the automatic reversion of property under the statute "did not violate due process," as held by this Court in *Cove Creek*, 330 Mich App 679. The trial court determined, under MCL 559.167(3), the subject units needed to be completed, not partially constructed, within 10 years after the commencement of construction. The trial court noted the estoppel claim was meritless, and Triple's quiet title and declaratory relief claims failed. The trial court dismissed the amended cross-claim, as well as plaintiff's claims against the Association, and judgment was entered in favor of the Association. Triple applied on an emergency basis for leave to appeal the order denying its motion for summary disposition against the Association and granting the Association's motion for summary disposition against Triple. This Court denied the application. *PCJ Investments LLC v Richard Rowhouses Ass'n*, unpublished order of the Court of Appeals, entered June 13, 2023 (Docket No. 365750).

Plaintiff moved for summary disposition under MCR 2.116(C)(10) against Triple, seeking a judgment of $1,837,298.73. The trial court granted summary disposition regarding the claims of breach of contract and breach of warranty, awarding plaintiff $10,000 "pursuant to the contractual fee provision contained in Paragraph 17i of the Contract or Purchase Agreement." The court denied summary disposition regarding the claims of "Innocent/Negligent Misrepresentation and Statutory Stealing/Conversion." On February 6, 2024, the parties held a settlement conference. Counsel for Triple and plaintiff, as well as Karatsikakis, Padraig O'Laoire, Steven Apostolopoulos, Jim Apostolopoulos, and Peter Apostolopoulos, representatives of each party possessing settlement authority, affirmed that the parties reached a settlement agreement. The trial court recited the terms of the settlement:

> [L]isten very carefully to the terms. The offer made was from Peter, Jim and Steve one million taxable income complete and final settlement of any and all causes of action derived out of it. Liability being denied but made in confidential agreement, the Confidential Settlement Agreement. Title reverts from [plaintiff] back to the [Association]. Half paid down and half to be paid within 60 days, and then the case will be dismissed with prejudice and any and all counts brought.

The parties and their respective counsel affirmed these terms were accurate.

Plaintiff moved to enforce the settlement agreement between plaintiff and Triple. The trial court held a hearing, and Triple's counsel agreed the first payment was due on the execution of the written settlement agreement, but argued the second payment was not due until 60 days after the "title paperwork was essentially squared away." The trial court stated the Association's recording of the deed reflecting its ownership interest and the settlement agreement were "not contingent on each other." Triple's counsel stated it would make the second settlement payment "60 days from the day we execute the [settlement] agreement[,] which [] we'll do[] presumably today . . . ."

Plaintiff moved for a second time to compel compliance with the settlement agreement. Triple asserted the first payment was owed when title of the subject units "reverts back to the Association, and the second to be paid [60] days after the first payment[.]" The trial court stated such a recording of the deed was "not an essential term" of the settlement agreement and the reversion "was accomplished by operation of law." The trial court ordered Triple's first payment be "put in escrow." The trial court stated Triple's challenge of the settlement agreement was untimely. Triple's first $500,000 settlement payment was due by March 6, 2024, and was to be held in escrow by plaintiff's counsel "until further order." In March 2024, Triple moved (a) to revisit the trial court's rulings granting summary disposition in favor of the Association and (b) to set aside the settlement agreement. Plaintiff opposed Triple's motion, asserting it was an "untimely" motion for reconsideration. The trial court denied Triple's motion and ordered the "release" of the first settlement payment funds.

Plaintiff moved to compel the second payment under the settlement agreement, which Triple opposed. At a hearing, Triple's counsel indicated the written settlement agreement was never executed because there "was no meeting of the minds." The trial court reiterated: "[T]here was a settlement," and Triple "changed [its] mind." The trial court denied Triple's request for a stay and ordered Triple's compliance. The trial court stated: "If [] Triple refuses to sign it, enter it without their signature. The money will be paid into escrow within a week[.]" In May 2024, plaintiff moved to compel Triple to make the second settlement payment. The court denied Triple's motion to revisit rulings granting summary disposition in favor of the Association and to set aside the settlement agreement. The court ordered plaintiff's counsel was authorized to release the first settlement payment to plaintiff. The court ordered the Association was "not required to file any order or deed with the Wayne County Register of Deeds reflecting the reversion." On June 10, 2024, the trial court denied in part and granted in part plaintiff's motion to compel the second settlement payment, ordering Triple to pay the second settlement payment to plaintiff's counsel's client trust account, which was to be held "until further order of the [c]ourt." The trial court ordered the "written settlement agreement . . . attached hereto as Exhibit A, is the final written settlement agreement between the parties, irrespective of Defendant [Triple's] lack of signature." The written settlement agreement and release stated that Triple was to pay plaintiff $1,000,000 and the parties were to file a stipulated order dismissing the case upon full payment. Also on June 10, 2024, the trial court entered a final order dismissing the case and retaining jurisdiction "for the purpose of enforcing the parties' settlement agreement[.]" Triple appealed from that order on June 14, 2024.

Meanwhile, plaintiff moved the trial court for the release of the second settlement payment, which Triple opposed, and the trial court denied. The trial court denied Triple's request for a stay, as well as a request to "claw back the initial $500,000.00 distribution." In September 2024, Triple moved this Court for a stay pending appeal, and for an order "clawing back the funds previously distributed," and we denied the motions. *PCJ Investments LLC v Richard Rowhouses Assoc*, unpublished order of the Court of Appeals, entered September 30, 2024 (Docket No. 371319). Triple moved for reconsideration, which we denied. *PCJ Investments LLC v Richard Rowhouses Assoc*, unpublished order of the Court of Appeals, entered November 25, 2024 (Docket No. 371319). In October 2024, plaintiff filed supplemental briefs in the trial court in support of the motion to release the second settlement payment. The trial court granted plaintiff's motion and ordered the release of the second settlement payment to plaintiff.

II. JURISDICTION

Plaintiff contests this Court's jurisdiction over Triple's claim of appeal. Plaintiff asserts the order appealed from was not the final order because the trial court retained jurisdiction to enforce the settlement agreement, which was not fully consummated until the trial court entered its December 18, 2024 order releasing the second settlement payment to plaintiff. We disagree.

"The jurisdiction of the Court of Appeals is governed by statute and court rule. This Court reviews de novo the proper interpretation of statutes and court rules as questions of law. Hence, whether this Court has jurisdiction is a question of law that this Court reviews de novo." *Chen v Wayne State Univ*, 284 Mich App 172, 191; 771 NW2d 820 (2009) (citations omitted). "A de-novo review means [this Court] review[s] the legal issue independently, without deference to the lower court." *Bowman v Walker*, 340 Mich App 420, 425; 986 NW2d 419 (2022) (quotation marks and citation omitted).

This Court "has jurisdiction of an appeal of right filed by an aggrieved party from . . . [a] final judgment or final order of the circuit court . . . ." MCR 7.203(A)(1). In a civil case, a final judgment or a final order is "the first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties . . . ." MCR 7.202(6)(a)(i). A final order must "resolve the merits of the remaining claims," such that they are "barred from being resurrected on that docket at some future date." *Detroit v Michigan*, 262 Mich App 542, 545; 686 NW2d 514 (2004) (quotation marks and citation omitted). "If the order is not final, this Court lacks jurisdiction under MCR 7.203." *Faircloth v Family Independence Agency*, 232 Mich App 391, 400-401; 591 NW2d 314 (1998).

A trial court typically retains a limited function after a claim of appeal is filed. MCR 7.208(A). Under MCR 7.208(A)(2), a trial court "may not set aside or amend the judgment or order appealed from except . . . by stipulation of the parties[.]" Further, MCR 7.208(C) states:

> (C) **Correction of Defects.** Except as otherwise provided by rule and until the record is filed in the Court of Appeals, the trial court or tribunal has jurisdiction
>
> (1) to grant further time to do, properly perform, or correct any act in the trial court or tribunal in connection with the appeal that was omitted or insufficiently done, other than to extend the time for filing a claim of appeal or for paying the entry fee or to allow delayed appeal;
>
> (2) to correct any part of the record to be transmitted to the Court of Appeals, but only after notice to the parties and an opportunity for a hearing on the proposed correction.
>
> After the record is filed in the Court of Appeals, the trial court may correct the record only with leave of the Court of Appeals.

MCR 7.208(E) states: "When an appeal is filed while property is being held for conservation or management under the order or judgment of the trial court, that court retains jurisdiction over the property pending the outcome of the appeal, except as the Court of Appeals otherwise orders." MCR 7.208(F) states: "A trial court order entered before final judgment concerning custody, control, and management of property . . . remains in effect and is enforceable in the trial court, pending interlocutory appeal, except as the trial court or the Court of Appeals may otherwise order."

Plaintiff's jurisdictional challenge is meritless because, at the time the order appealed was entered, the parties' claims were resolved, and no other final order or judgment was entered. Under MCR 7.208(E), the second settlement payment was property that was held for management by the trial court. The record established the parties entered into a settlement agreement on the record in open court. At the June 7, 2024 hearing, the trial court recognized Triple "wants a final order and [plaintiff] wants the money." Plaintiff opposed the final order because the second settlement payment would be held in escrow while the appeal was pending. The trial court responded: "I can retain jurisdiction for distribution at any time." The trial court noted it was focused on entering a final order for Triple to appeal from, having the money transferred into plaintiff's counsel's client trust account, and then addressing "distribution later." The trial court concluded: "We're going to do a final order. I'm going to retain jurisdiction. And that's not going to impact the finality of the order. I only retain jurisdiction to enforce the settlement." The court stated this was "standard language." Further, the trial court stated the retention of jurisdiction "in no way affects this being a final order." Rather, the potential distribution of the second settlement payment "would be [a] post[]final order matter."

In the order appealed, the trial court stated it was "a final order and disposes of the last pending claim in this case." The case was "dismissed with prejudice," and the court retained jurisdiction "for the purposes of enforcing the parties' settlement agreement[.]" The retention of jurisdiction "shall not affect nor impede [Triple's] ability to file a Claim of Appeal, there being no just cause for delay." After this Court denied Triple's motion for a stay pending appeal, the trial court entered an order releasing the second and final settlement payment, which was being held in escrow, to plaintiff. Because that order involved the enforcement of the settlement agreement, and was not a final order, Triple was not required to file its claim of appeal from that order.

Plaintiff relies on out-of-state caselaw from Ohio and New York.[2] But those cases are distinguishable from this matter or otherwise unpersuasive. In sum, this Court possesses jurisdiction. The December 18, 2024 order did not further adjudicate any claims. Rather, the court merely determined plaintiff was entitled to a disbursement of the second settlement payment. Further, the order appealed from, as stated, properly dismissed the action. Accordingly, we maintain jurisdiction.[3]

---

[2] We recognize, however, that out-of-state caselaw "is not binding precedent but may be relied on for its persuasive value." *Haydaw v Farm Bureau Ins Co*, 332 Mich App 719, 726 n 5; 957 NW2d 858 (2020).

[3] Notably, Triple may not challenge the trial court's December 18, 2024 order because it was entered after Triple filed its claim of appeal. See *Gracey v Grosse Pointe Farms Clerk*, 182 Mich App 193, 197; 452 NW2d 471 (1989) (noting an appeal from a final order allows review of "prior interlocutory orders" but not orders entered after the filing of a claim of appeal).

III. SUMMARY DISPOSITION

Triple contends the trial court erred by (a) denying its motion for summary disposition and (b) granting summary disposition in favor of the Association because the subject units did not revert to the general common elements. Triple argues it never lost its ownership interest in the subject units under MCL 559.167, and the Association is estopped from denying plaintiff's ownership interest in the subject units. We disagree.

This Court "review[s] de novo a trial court's decision on a motion for summary disposition." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). "A de-novo review means [this Court] review[s] the legal issue independently, without deference to the lower court." *Bowman*, 340 Mich App at 425 (quotation marks and citation omitted). The Association moved for summary disposition regarding Triple's cross-claim under MCR 2.116(C)(8) and (C)(10). Triple moved for summary disposition under MCR 2.116(C)(10) against the Association. The Association opposed Triple's motion for summary disposition, requesting summary disposition under MCR 2.116(C)(8), (C)(10), and (I)(2). The trial court denied Triple's motion for summary disposition against the Association, and granted the Association's motion for summary disposition under MCR 2.116(I)(2). The court also granted the Association's "motion for summary disposition of Triple's [cross-]complaint," which was brought under MCR 2.116(C)(8) and (C)(10). Because the trial court considered documentary evidence outside of the pleadings, this Court reviews the motion under the standard of review for a motion under MCR 2.116(C)(10). *Cuddington v United Health Servs, Inc*, 298 Mich App 264, 270; 826 NW2d 519 (2012).

A motion for summary disposition under MCR 2.116(C)(10) "tests the *factual sufficiency* of a claim." *El-Khalil*, 504 Mich at 160.

> When considering such a motion, a trial court must consider all evidence submitted by the parties in the light most favorable to the party opposing the motion. A motion under MCR 2.116(C)(10) may only be granted when there is no genuine issue of material fact. A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ. [*Id*. (quotation marks and citations omitted).]

Specifically,

> the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. [*Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996) (citations omitted).]

"The reviewing court should evaluate a motion for summary disposition under MCR 2.116(C)(10) by considering the substantively admissible evidence actually proffered in opposition to the motion." *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999). "If no facts are in dispute, and if reasonable minds could not differ regarding the legal effect of those facts, whether summary disposition is proper is a question of law for the Court." *Miller Estate v Angels' Place, Inc*, 334 Mich App 325, 330; 964 NW2d 839 (2020).

"Statutory interpretation is a question of law, which this Court also reviews de novo." *O'Neal v St John Hosp & Med Ctr*, 487 Mich 485, 493; 791 NW2d 853 (2010).

> When interpreting the meaning of a statute, [this Court's] primary goal is to discern the intent of the Legislature by first examining the plain language of the statute. Statutory provisions must be read in the context of the entire act, giving every word its plain and ordinary meaning. When the language is clear and unambiguous, [this Court] will apply the statute as written and judicial construction is not permitted. [*Driver v Naini*, 490 Mich 239, 246-247; 802 NW2d 311 (2011) (footnotes and citations omitted).]

"Courts must give effect to every word, phrase, and clause in a statute, and must avoid an interpretation that would render any part of the statute surplusage or nugatory." *Koontz v Ameritech Servs, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002) (citations omitted). "[W]hether equitable relief is proper . . . is a question of law that an appellate court reviews de novo." *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 197; 747 NW2d 811 (2008).

This issue involves the interpretation and application of MCL 559.167(3) as it existed at the relevant times in this case. MCL 559.167 was amended effective September 21, 2016. 2016 PA 233. However, the amended version of MCL 559.167 does not apply retroactively. See *Cove Creek*, 330 Mich App at 697-701. See also *Elizabeth Trace Condo Ass'n v American Global Enterprises, Inc*, 340 Mich App 435, 438 n 1; 986 NW2d 412 (2022). The parties do not dispute that the former version of MCL 559.167(3) applies in this case. The former version of MCL 559.167(3), as amended by 2002 PA 283, states in pertinent part:

> [I]f the developer has not completed development and construction of units or improvements in the condominium project that are identified as "need not be built" during a period ending 10 years after the date of commencement of construction by the developer of the project, the developer, its successors, or assigns have the right to withdraw from the project all undeveloped portions of the project not identified as "must be built" without the prior consent of any co-owners, mortgagees of units in the project, or any other party having an interest in the project . . . . If the developer does not withdraw the undeveloped portions of the project from the project before expiration of the time periods, those undeveloped lands shall remain part of the project as general common elements and all rights to construct units upon that land shall cease.

"Common elements" is defined as "the portions of the condominium project other than the condominium units." MCL 559.103(7).

The master deed stated the development was to have 42 total units, including the subject units, which were labeled as "need not be built." On March 16, 2004, the developer recorded a notice of commencement, signifying the start of construction. In October 2009, BOA foreclosed on a mortgage and obtained a sheriff's deed, which conveyed the subject units to BOA for $48,053.90. In October 2011, BOA assigned its developer rights to the subject units to Triple and conveyed the subject units to Triple for $42,350. In November 2019, after having entered into the purchase agreement, Triple purported to convey the subject units to plaintiff.

Triple's argument that the subject units did not revert to the general common elements under MCL 559.167(3) because the subject units were not undeveloped is meritless. Triple maintains reversion was not statutorily mandated for partially constructed property, but only for undeveloped units, or "land on which construction has not yet commenced." Notably, the record did not clearly establish what work, if any, Triple performed on the subject units. Loewy testified "there's utilities, there's foundations, there's roughed-in plumbing," but was unaware if Triple performed this work. Triple asserted it "completed foundations, vertical construction, and internal utility infrastructure[.]" Even assuming this work was performed on the subject units, the development and construction of the units needed to be "completed."

Triple relies on the current version of MCL 559.167(3), as amended by 2016 PA 233, which defined "undeveloped land," for the proposition that the Legislature must have intended for that term to have the same definition in the former version of the statute. MCL 559.167(7), as amended by 2016 PA 233, defined "undeveloped land" as "land on which were recorded 1 or more condominium units, none of which were either identified in the condominium subdivision plan as 'must be built' or have had construction commenced, although infrastructure construction or common element construction may have commenced." While it is true that the Legislature added a definition of the term "undeveloped land" to the statute in 2016, one which would clearly benefit Triple's position, the version of the statute that applies in this case has no definition of the term "undeveloped land." 2002 PA 283. The Legislature's amendment of the statute in 2016 is irrelevant to this case.

Further, along with adding the definition of "undeveloped land," the Legislature also removed from the first sentence of MCL 559.167(3) language referring to "completed" development and construction.[4] MCL 559.167(3), as amended by 2016 PA 233. Stated alternatively, the Legislature not only added the definition of "undeveloped land," but also removed the language that requires completion of the units. Contrary to Triple's argument, the amendment of the statute would indicate that the Legislature was changing the meaning of the statute, not simply attempting to clarify the existing statute. The amendment expresses a clear intent to change the meaning of the statute—unlike before, units that are partially constructed do not need to be withdrawn from the project to avoid reversion. But again, that amendment has no application in this matter because it does not apply retroactively. See *Cove Creek*, 330 Mich App at 697-701.

---

[4] The statute now begins, "Notwithstanding section 33, for 10 years after the recording of the master deed, the developer, its successors, or assigns may withdraw from the project any undeveloped land . . . ." MCL 559.167(3), as amended by 2016 PA 233.

Triple's contention that this Court's opinion in *Elizabeth Trace*, 340 Mich App at 435, indicates the partially constructed subject units were not undeveloped and therefore could not be subject to reversion is misguided. In that case, the plaintiff, a condominium association, claimed ownership of unbuilt units that had reverted to it under MCL 559.167(3) because construction was not completed within 10 years. *Id*. at 438. The trial court granted summary disposition in favor of the plaintiff. *Id*. The defendant asserted the trial court erred by misinterpreting the statute. *Id*. at 440. This Court, having determined the "language of MCL 559.167(3) [was] clear and unambiguous," *id*. at 442, disagreed with the defendant's argument "that construction of general common elements supporting the units equates to commencement of construction of the units themselves, such that the units were not 'undeveloped[.]' " *Id*. at 446. This Court explained:

> The record shows only that construction had begun, to some extent, on roads, sidewalks, water systems, and other general common elements within the project. MCL 559.167(3) contemplates that construction and improvements on "need not be built" units be *completed* within 10 years, absent withdrawal of those units during that time. Defendant's interpretation would allow developers to indefinitely avoid the statutory time frame simply by starting construction of a single general common element, like a road. This would render MCL 559.167(3) nugatory and meaningless. [*Id*.]

This Court's published decision clearly states that, to avoid reversion under the version of MCL 559.167(3) that applies in this matter, units must be completed. That is also consistent with the plain language of the statute, which begins with the phrase:

> [I]f the developer has not *completed development and construction of units* or improvements in the condominium project that are identified as "need not be built" during a period ending 10 years after the date of commencement of construction by the developer of the project, the developer, its successors, or assigns have the right to withdraw from the project all undeveloped portions of the project not identified as "must be built . . . ." [Emphasis added.]

When the Legislature used the word "undeveloped" in the same sentence where it was clearly discussing incomplete units, it seems that the Legislature understood that "incomplete" units were "undeveloped." Accordingly, we reach the same conclusion as *Elizabeth Trace*, 340 Mich App at 446—that under the prior version of the statute, a unit that has not been completed is "undeveloped." Ultimately, Triple did not complete the construction of the units, and ownership of the subject units reverted to the Association in 2014, or 10 years after construction commenced, because the units were neither complete nor withdrawn from the project.

Triple relies on extratextual sources to argue that the former version of MCL 559.167(3) should be interpreted to mean that partially built units do not revert. This Court, however, has already determined MCL 559.167(3), as amended by 2002 PA 283, was "not ambiguous," and this Court's "role is simply to apply that language as written." *Elizabeth Trace*, 340 Mich App at 445. Statutory construction is only permissible "when the language of a statute is ambiguous." *Id*. This Court must follow this ruling, which "has not been reversed or modified by the Supreme Court, or by a special panel of the Court of Appeals." MCR 7.215(J)(1). This Court may not consider extratextual sources. Nor may it use the current version of the statute to clarify the otherwise plain language used in the former version of the statute.

Triple further asserts the co-owners of the Association passed a proposed first amendment to the master deed, which reinstated the subject units from the general common elements on January 6, 2017. Triple contends that because this occurred after MCL 559.167(3), as amended by 2016 PA 233, was effective, that version controls. Triple additionally argues that even if the subject units reverted, the first amendment recreated the subject units, allowing the successor developer to complete the subject units within 10 years from January 6, 2017. These arguments are unpersuasive.

The master deed is "the condominium document recording the condominium project to which are attached as exhibits and incorporated by reference the bylaws for the project and the condominium subdivision plan . . . ." MCL 559.108. A condominium plan must include "[a]ny proposed structure and improvement shown shall be labeled either 'must be built' or 'need not be built.' " MCL 559.166(2)(j). Condominium subdivision plans must "be numbered consecutively when recorded by the register of deeds . . . ." MCL 559.166(3). "A change in a condominium project shall be reflected in an amendment to the appropriate condominium document." MCL 559.167(1). Under MCL 559.191, "[a]n amendment to the master deed or other recorded condominium document shall not be effective until the amendment is recorded."

It is undisputed that any amendment to the master deed required the approval of two-thirds of the co-owners of the Association under Article IX of the master deed. However, Triple presupposes the first amendment was effective in the first place. The record established that the proposed first amendment, which contemplated the sale of the subject units to the Ferlito Group, was not recorded. In September 2015, Triple entered into a purchase agreement to sell the subject units to the Ferlito Group for $140,000. In October 2016, at a meeting of the Association's co-owners, Fioritto explained the subject units had reverted to the general common elements and the first amendment was required to reinstate the units. In December 2016, Fioritto sent a letter to the Association's co-owners regarding the Ferlito Group's proposal to hire Howard SW LLC to complete the development, as well as the proposed first amendment. The letter included a voting ballot and a copy of the proposed first amendment.

In January 2017, Fioritto stated the proposal "received enough co-owner votes to pass." However, Fioritto testified that the Association's board of directors was "overthrown shortly thereafter by a recall." Fioritto testified Triple "voted no on all their ballots that they had for all their units." The sale of the subject units from Triple to the Ferlito Group never occurred. Critically, Fioritto did not record the first amendment to the master deed, noting concerns that (a) the Ferlito Group never signed it, (b) the closing never occurred, and (c) the Association's new board of directors opposed the project.

Because the first amendment did not take effect, the subject units were never reinstated. Triple's assertion that MCL 559.167(3), as amended by 2016 PA 233, controls, and the subject units have not reverted because they are not undeveloped is meritless. Similarly, the assertion that the subject units would have been recreated even if they previously reverted to the general common elements is unsupported. The 10-year statutory period did not reset on January 6, 2017, because the proposed first amendment never became effective.

Triple then asserts that the Association was equitably estopped from denying plaintiff title to the subject units because it acted as if the proposed first amendment to the master deed became effective. Relatedly, Triple argues the Association failed to record a replat of the development when the reversion occurred in 2014.

Triple notes that quiet title actions are equitable in nature. See *1373 Moulin, LLC v Wolf*, 341 Mich App 652, 663; 992 NW2d 314 (2022) ("Actions to quiet title are equitable in nature . . . .") (quotation marks and citation omitted). "The principle of estoppel is an equitable defense that prevents one party to a contract from enforcing a specific provision contained in the contract." *21st Century Premier Ins Co v Zufelt*, 315 Mich App 437, 447; 889 NW2d 759 (2016) (quotation marks and citation omitted).

> Equitable estoppel may arise where (1) a party, by representations, admissions, or silence intentionally or negligently induces another party to believe facts, (2) the other party justifiably relies and acts on that belief, and (3) the other party is prejudiced if the first party is allowed to deny the existence of those facts. [*Id*. (quotation marks and citation omitted).]

Triple also briefed estoppel by acquiescence and estoppel by laches. However, these specific arguments were not raised in the trial court and are deemed waived on appeal. See *Tolas Oil & Gas Exploration Co v Bach Servs & Mfg, LLC*, 347 Mich App 280, 289; 14 NW3d 472 (2023) ("In civil cases, Michigan follows the raise or waive rule of appellate review. Under that rule, litigants must preserve an issue for appellate review.") (quotation marks and citation omitted).

This Court explained that under MCL 559.167(3), "after the expiration of that period, *by operation of law*, the Unbuilt Units remained part of the project as general common elements, and all rights to construct upon that land ceased." *Elizabeth Trace*, 340 Mich App at 442 (emphasis added). Regarding a replat, MCL 559.167(2), as amended by 2002 PA 283, stated: "If a change involves a change in the boundaries of a condominium unit or the addition or elimination of condominium units, a replat of the condominium subdivision plan shall be prepared and recorded assigning a condominium unit number to each condominium unit in the amended project." However, this Court clarified, "Although the preparation and recording of a replat was required by MCL 559.167(2), there is nothing linking this requirement to Subsection (3) or conditioning the 'reversion' in Subsection (3) on that requirement." *Cove Creek*, 330 Mich App at 701 n 17. In other words, the failure to record a replat does "not prevent the undeveloped property from remaining part of the project as general common elements . . . ." *Id*. at 701. On the basis of the plain statutory language, the Association was not required to record a replat of the reversion.

In further support of its estoppel argument, Triple contends that the Association, through various conduct, represented that Triple owned the subject units after the reversion. However, this argument is meritless because the reversion was automatic. Regardless, even assuming this Court could grant equitable relief, the record does not support the Association acted inequitably such that it should be estopped from denying plaintiff's title to the subject units.

The Association was aware of its ownership interest in the subject units postreversion. In Fioritto's March 2016 letter, he noted the Association could assert "it is the owner of the land such that Ferlito Group should be buying the unbuilt Units from the Association." Loewy testified that he was unaware of any defects in Triple's title after the proposed sale of the subject units to the Ferlito Group failed. He did not know the Association believed the subject units had reverted to it. Further, in November 2019, when Triple was preparing to sell the subject units to plaintiff, Annie Driscoll, an accounting specialist at LandArc, requested information from Tracy Parnell, a manager at Detroit Title and Escrow, regarding (1) who owned the "lots," (2) who was buying them, and (3) whether the buyer had plans for development. Parnell stated Triple was selling the "lots" to plaintiff but was "not sure if they have made plans for the development." Driscoll responded, "the key will be finding out what they're [sic] intentions are . . . ."

In December 2019, Fairbrother e-mailed members of the Association's board of directors stating plaintiff "just purchased the property to build and complete the last [14] townhomes." In February 2020, Semanisin arranged a meeting with Fairbrother and the Association's board of directors. A meeting between two of plaintiff's representatives, as well as members of the Association's board of directors, including Sydney Cotton and Lakeisha Becton, occurred in March 2020. Plaintiff expressed excitement to build the subject units. In September 2020, David Krzezewski, a member of the Association's board of directors, e-mailed Fairbrother asking if there was "a plan in place for the development?" Fairbrother replied, "[y]es," but noted delays caused by the pandemic.

In a December 2020 e-mail, Knopsnyder stated there was a potential issue regarding plaintiff's ability to develop the subject units because there was a question whether, "per Michigan statute, the Property has technically been converted into common elements of the subject condominium." In a January 2021 e-mail to Semanisin, Knopsnyder requested the Association provide plaintiff "clean title" to the subject units by executing a quitclaim deed conveying the subject units to plaintiff. In January 2021, Semanisin e-mailed Knopsnyder for clarity as to why a quitclaim deed was necessary. In response, Knopsnyder recited MCL 559.167(3), stating, "there is an argument that the Property has been converted to the general common elements of the Condominium, and thus title to the same may be vested in the [Association] . . . ." In April 2021, counsel for the Association sent a letter to NATIC, in care of Knopsnyder, stating that under MCL 559.167(3), the subject units reverted to the Association on March 16, 2014, or 10 years after the developer commenced construction of the development. Counsel for the Association demanded plaintiff "provide written acknowledgment that it does not own any land or Unbuilt Units within the Condominium and written confirmation that it will not engage in any construction or development activities . . . ." Although there was confusion regarding the ownership status of the subject units, none of the above conduct warrants equitable relief, even if this Court were in a position to grant such relief.

Triple nevertheless relies on this Court's opinion in *Wellesley Gardens Condo Ass'n v Manek*, unpublished per curiam opinion of the Court of Appeals, issued January 9, 2020 (Docket No. 344190), for the proposition that its equitable estoppel argument is not precluded from consideration. Triple also contends the facts in this case are distinguishable from those presented in *Wellesley Gardens Condo Ass'n*. Initially, it is noted that "unpublished opinions are not binding authority." *Astemborski v Manetta*, 341 Mich App 190, 203; 988 NW2d 857 (2022). In any event, this Court in *Wellesley*, unpub op at 11, rejected the defendants' "argument that Wellesley acted in bad faith and therefore is equitably estopped from seeking to quiet title to the units." Similarly, there is no evidence the Association "acted inequitably or in bad faith." *Id*. at 12. This Court noted neither of the following actions by Wellesley justified equitable relief: (1) the failure to pay property taxes on unbuilt units, or (2) the failure to inform "Shunnar that unbuilt Units 210-427 would be extinguished by MCL 559.167(3) until after that event occurred" because there was no statutory obligation to do so. *Id*. at 11-12. Similarly, here, there was no statutory obligation that the Association failed to perform. Thus, the trial court did not err in its summary disposition rulings.

IV. CONSTITUTIONALITY OF MCL 559.167(3)

Triple asserts MCL 559.167(3) was facially unconstitutional because it constituted a taking of property, i.e., the subject units, without due process of law and this Court must overrule its decision in *Cove Creek*. Triple contends the statute did not provide the necessary procedural safeguards to protect its property interests. We disagree.

"Constitutional issues are also reviewed de novo on appeal." *Weishuhn v Lansing Catholic Diocese (After Remand)*, 287 Mich App 211, 218; 787 NW2d 513 (2010). "A de-novo review means [this Court] review[s] the legal issue independently, without deference to the lower court." *Bowman*, 340 Mich App at 425 (quotation marks and citation omitted).

The Fifth Amendment's Due Process Clause states no person "shall be deprived of life, liberty, or property, without due process of law[.]" US Const, Am V. "No State shall . . . deprive any person of life, liberty, or property, without due process of law[.]" US Const, Am XIV, § 1. Further, the Michigan Constitution states: "No person shall be . . . deprived of life, liberty or property, without due process of law." Const 1963, art 1, § 17. "The Fifth Amendment prohibition applies against the states through the Fourteenth Amendment[, US Const, Am XIV]. Michigan's Constitution is substantially similar to the Takings Clause of the United States Constitution. One who asserts an uncompensated taking claim must first establish that a vested property right is affected." *Cove Creek*, 330 Mich App at 704 (quotation marks and citations omitted). "Due process is violated only when legislation impairs vested rights. To constitute a vested right, the interest . . . must have become a title, legal or equitable, to the present or future enjoyment of property . . . ." *Id*. at 701-702 (quotation marks and citations omitted).

To the extent Triple alleges its procedural due-process rights were violated, it is well settled, "procedural due process requires that a party be provided notice of the nature of the proceedings and an opportunity to be heard by an impartial decision maker at a meaningful time and in a meaningful manner." *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 213-214; 761 NW2d 293 (2008) (citations omitted). Moreover, a state "may condition the permanent retention of a property right on performance of reasonable conditions that indicate a present intention to retain the property interest." *Cove Creek*, 330 Mich App at 703 (quotation marks and citation omitted). "[A] legislature need only enact and publish a law and afford citizens a reasonable opportunity to familiarize themselves with the terms of a statute to advise its citizens of the lapse of a property right." *Id*. (quotation marks and citation omitted).

This Court in *Cove Creek*, *id*. at 703-704, held that MCL 559.167(3), as amended by 2002 PA 283, afforded due process of law. This Court explained:

> MCL 559.167(3), as amended by 2002 PA 283, conditioned the retention of a property right on the performance of reasonable conditions that indicate a present

> intention to retain that property interest. Within the 10-year period, [the] defendants were required to either develop Units 1 through 14 or withdraw the undeveloped portions from the project. See MCL 559.167(3), as amended by 2002 PA 283. [The] [d]efendants had sufficient notice of the law and that their property rights would lapse if they did not take action within the 10-year period. Moreover, the requirements of either completing the project or withdrawing the units from the project are reasonable requirements designed to further the legitimate objectives of preventing incomplete projects and providing finality. [The] [d]efendants rely on cases involving the forfeiture of real property for the failure to pay taxes, which require notice and a hearing to afford due process. Under the applicable caselaw, however, [the] defendants received all the process that was due. As a consequence, any vested rights defendants possessed in the property lapsed by 2012. [*Cove Creek*, 330 Mich App at 703-704.]

Addressing whether there was an unconstitutional taking, this Court stated, "there is no 'taking' that requires compensation under the United States and Michigan Constitutions." *Id.* at 705. This Court further provided:

> [The] defendants had a vested property right in former Units 1 through 14, such that they could properly assert a claim for an uncompensated taking. Nonetheless, the necessary state action required to find an unconstitutional taking is not present. As stated in [*Kentwood v Sommerdyke Estate*, 458 Mich 642, 663; 581 NW2d 670 (1998)], "It is the owner's failure to make any use of the property—and not the action of the State—that causes the lapse of the property right; there is no 'taking' that requires compensation." (Quotation marks and citation omitted.) Similarly, in this case, it was [the] defendants' failure to act within the 10-year period that caused the lapse of their property right, not any action of the state. [*Cove Creek*, 330 Mich App at 704-705.]

Similarly, in *Elizabeth Trace*, 340 Mich App at 446, the defendant argued "that MCL 559.167(3) is unconstitutional as applied to defendant because it would result in a taking of its property without due process of law in violation of the Fifth Amendment of the United States Constitution." The *Elizabeth Trace* Court followed the holding of this Court in *Cove Creek*, stating, "the lapse of the defendants' title to the project did not deny them due process of law because the 10-year time frame of MCL 559.167(3) was a reasonable provision that allowed them sufficient notice." *Elizabeth Trace*, 340 Mich App at 446-447.

This Court must follow the decisions in *Cove Creek* and *Elizabeth Trace*. See MCR 7.215(C)(2) ("A published opinion of the Court of Appeals has precedential effect under the rule of stare decisis."). Triple's assertion that it was not afforded the necessary procedural due-process safeguards is unavailing when it should have known the law in place at the time and could have ascertained under the master deed that the subject units were subject to reversion.

V. SETTLEMENT AGREEMENT

Triple argues that the parties' settlement agreement should be set aside because there was no meeting of the minds regarding whether the Association was required to record its ownership interest in the subject units as a condition precedent. We disagree.

This Court reviews a trial court's decision on a motion to enforce a settlement agreement for an abuse of discretion. *Groulx v Carlson*, 176 Mich App 484, 493; 440 NW2d 644 (1989). "An abuse of discretion occurs when the trial court chooses an outcome falling outside the range of principled outcomes." *Nowacki v Dep't of Corrections*, 319 Mich App 144, 148; 900 NW2d 154 (2017) (quotation marks and citation omitted). "The existence and interpretation of a contract are questions of law reviewed de novo. An agreement to settle a pending lawsuit is a contract and is to be governed by the legal principles applicable to the construction and interpretation of contracts." *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006) (quotation marks and citations omitted). "De-novo review means that we review the legal issue independently, without deference to the lower court." *Bowman*, 340 Mich App at 425 (quotation marks and citation omitted). "If the contractual language is unambiguous, courts must interpret and enforce the contract as written, because an unambiguous contract reflects the parties' intent as a matter of law." *Tripp v Baker*, 346 Mich App 257, 273; 12 NW3d 45 (2023) (quotation marks and citations omitted). "The construction and application of a court rule are questions of law that this Court reviews de novo on appeal." *Kloian*, 273 Mich App at 456.

" 'Before a contract can be completed, there must be an offer and acceptance. Unless an acceptance is unambiguous and in strict conformance with the offer, no contract is formed. Further, a contract requires mutual assent or a meeting of the minds on all the essential terms.' " *Clark v Al-Amin*, 309 Mich App 387, 394; 872 NW2d 730 (2015), quoting *Kloian*, 273 Mich App at 452-453. "A meeting of the minds is judged by an objective standard, looking to the express words of the parties and their visible acts, not their subjective states of mind." *Kloian*, 273 Mich App at 454 (quotation marks and citation omitted).

Generally, "settlement agreements are final and cannot be modified. This is because settlements are favored by the law, and therefore will not be set aside, except for fraud, mutual mistake, or duress." *Clark*, 309 Mich App at 395 (quotation marks and citation omitted). "A mutual mistake is an erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction." *Id*. (quotation marks and citation omitted). "More specifically, a party cannot void a settlement agreement merely because [he] has had a change of heart, nor can he do so merely because [his] assessment of the consequences [of the settlement] was incorrect." *Id*. at 396 (quotation marks, citations, and footnote omitted; alterations in original).

"When a case involves an agreement to settle pending litigation, it must comply with MCR 2.507(G) to be enforceable." *Dabish v Gayar*, 343 Mich App 285, 290; 997 NW2d 463 (2022) (quotation marks, footnote, and citation omitted). MCR 2.507(G) states:

> An agreement or consent between the parties or their attorneys respecting the proceedings in an action is not binding unless it was made in open court, or unless

> evidence of the agreement is in writing, subscribed by the party against whom the agreement is offered or by that party's attorney.

"The purpose of MCR 2.507(G), which 'is in the nature of a statute of frauds,' *Kloian*, 273 Mich App at 456, is to take the guesswork out of settling a pending lawsuit." *Dabish*, 343 Mich App at 291-292. "[T]he settlement must exist in a form that indisputably reflects a final agreement of the parties. That is, the settlement must either be set forth on the record in open court or memorialized in a document subscribed by the party challenging the existence of an enforceable settlement." *Id*. at 292. "A valid compromise and settlement is final, conclusive, and binding upon the parties; it is as binding as any contract the parties could make, and as binding as if its terms were embodied in a judgment[.]" *Meyer v Rosenbaum*, 71 Mich App 388, 392; 248 NW2d 558 (1976) (quotation marks and citation omitted). " 'Every presumption of judicial care, of professional competence, and of decretal stability is against the overthrow, in the appellate court, of such [a court recorded stipulation] and of orders and decrees based thereon.' " *Id*., quoting *Wagner v Myers*, 355 Mich 62, 68; 93 NW2d 914 (1959).

"This Court will enforce unambiguous contracts as written." *Zwiker v Lake Superior State Univ*, 340 Mich App 448, 475; 986 NW2d 427 (2022). "It is not this Court's role to undermine the parties' freedom to contract by rewriting clear contractual language to comply with what the Court perceives as the parties' intent." *Id*. "Rather, this Court construes contractual terms in context, according to their commonly used meanings. A contract is ambiguous when its provisions are capable of conflicting interpretations. A contract is not ambiguous solely because the parties may interpret a term differently." *Id*. (citations omitted).

The record established plaintiff and Triple entered into a settlement agreement on the record in open court. Then, Triple had a change of heart, arguing there was no meeting of the minds regarding when each settlement payment was due and owed. Subsequently, Triple substituted counsel, and maintained the settlement agreement made on the record in open court was ineffective. Plaintiff pursued numerous motions to enforce the settlement agreement. In short, the trial court recited the following as the terms of the parties' settlement agreement:

> The offer made was from Peter, Jim and Steve one million taxable income complete and final settlement of any and all causes of action derived out of it. Liability being denied but made in confidential agreement, the Confidential Settlement Agreement. Title reverts from [plaintiff] back to the [Association]. Half paid down and half to be paid within 60 days, and then the case will be dismissed with prejudice and any and all counts brought.

The following colloquy occurred:

> *Trial Court*. Peter, did I say it right?
>
> *Peter Apostolopoulos*. Yes.
>
> *Trial Court*. Jim?
>
> *Jim Apostolopoulos*. Yes.

Trial Court. Steve?

Steve Apostolopoulos. Yes.

Trial Court. Counsel?

Triple's Counsel (Bedoya). Yes.

Trial Court. Mr. Anderson?

Plaintiff's Counsel (Anderson). Yes.

Trial Court. Sir?

Padraig O'Laoire. Yes.

Christos Karatsikakis. Yes.

Plaintiff's counsel asked: "How long for the down?" The trial court replied: "You guys got to get the documents ready." The trial court noted it "already ordered that the [Association] has title," but action was required by the Association to "make sure that's effectuated" in the register of deeds. In other words, the trial court stated the title to the subject units needed to indicate the Association's ownership by the reversion. The trial court also stated the 60-day period started "from the paperwork." The parties reaffirmed the accuracy of the terms, and counsel for the parties stated those were the "complete and full essential terms[.]"

At this point, the parties reached a final settlement agreement. See *Dabish*, 343 Mich App at 292. The terms were unambiguous. The first settlement payment was to occur when the written agreement was entered, and the second settlement payment was to occur within 60 days of that date. Triple's argument that the Association's recording of a deed reflecting its ownership interest was required merely reflected a change of heart. See *Clark*, 309 Mich App at 396. Although the trial court stated its desire for the Association to record a deed, that was not the "paperwork" that triggered the 60-day period. That "paperwork" was the soon-to-be-drafted written settlement agreement, which Triple refused to sign. Stated differently, the recording of a deed by the Association was a separate requirement from the terms of the settlement agreement.

After Triple refused to sign the written settlement agreement, plaintiff moved for enforcement. In its response, Triple admitted "the agreement made in open court [was] binding," and stated it was "prepared to immediately make its first $500,000 payment upon execution of the signed agreement[.]" Triple's only contention was that the second settlement payment was to be made "within [60] days of the date [that] title paperwork is complete." That position, which Triple maintains on appeal, is meritless because the 60-day period started "from the paperwork," or the written settlement agreement. Plaintiff's counsel correctly noted that at the next hearing, and the trial court reiterated the recording of the deed and the settlement agreement were "not contingent on each other," but the trial court nevertheless wanted the Association "to record that deed." The trial court wanted the settlement agreement "on the parallel tracks." Critically, Triple's counsel stated it would make the second settlement payment "60 days from the day we execute the [settlement] agreement[,] which [] we'll do[] presumably today . . . ."

Despite Triple's statement, plaintiff was required to move for a second time to compel Triple's compliance with the settlement agreement. Triple again asserted the first payment was owed when title of the subject units "reverts back to the Association, and the second to be paid [60] days after the first payment[.]" At the next hearing, Triple, represented by new counsel, argued payment was not owed under the settlement agreement until after the deed was recorded. These actions are indicative of Triple's turnaround. The trial court stated the recording was "not a condition precedent" and instead the reversion "was accomplished by operation of law." The trial court ordered Triple to "tender the sum of" $500,000 to plaintiff's counsel by March 6, 2024, to be held in escrow.

Triple moved to set aside the settlement agreement because there was no meeting of the minds and it was unclear whether the Association needed to record title to the subject units. Triple also moved for the trial court to revisit its prior rulings granting summary disposition in favor of the Association. This further reflected Triple's change of heart. The trial court denied Triple's motion and ordered the "immediate release of the funds" for the first settlement payment. On May 10, 2024, plaintiff moved to compel the second payment under the settlement agreement, asserting it was due 60 days after the first payment. Triple opposed the motion to compel, arguing the written settlement agreement was never executed because Triple believed that placing title in the Association's name "was an essential term." The trial court determined, "it's not an essential term." The trial court stated: "[T]here is full, final and complete settlement. If [] Triple refuses to sign it, enter it without their signature. The money will be paid into escrow within a week[.]" The trial court stated Triple "changed [its] mind."

On May 31, 2024, plaintiff moved to compel Triple to comply with the court's order requiring it to make the second settlement payment. The court ordered the Association was "not required to file any order or deed with the Wayne County Register of Deeds reflecting the reversion." On June 10, 2024, the trial court ordered Triple to remit the second settlement payment, which was to be held in escrow "until further order of the [c]ourt." The trial court entered the written settlement agreement without Triple's signature. The written settlement agreement and release stated the parties were to file a stipulated order dismissing the case upon full payment. Further, on June 10, 2024, the court entered its final order, which reflected its order that the second settlement payment was to be held in escrow. Ultimately, the parties reached a binding settlement agreement, and Triple's subsequent conduct indicating its change of heart did not release it from its obligations to abide by the pertinent terms, which included payment. Appellees—plaintiff and the Association—having prevailed are entitled to costs. MCR 7.219(A).

Affirmed.

/s/ Matthew S. Ackerman
/s/ Mariam S. Bazzi
/s/ Andrew J. Lievense