

STATE OF MICHIGAN
COURT OF APPEALS

HALEY SANDULA,

Plaintiff-Appellant,

v

EASTWOOD CUSTOM HOMES, INC.,

Defendant-Appellee.

UNPUBLISHED

August 19, 2026

11:47 AM

No. 375509

Grand Traverse Circuit Court

LC No. 2025-037385-CK

Before: ACKERMAN, P.J., and REDFORD and FEENEY, JJ.

PER CURIAM.

In this contract dispute, the trial court granted summary disposition to defendant Eastwood Custom Homes, Inc., because plaintiff Haley Sandula commenced litigation without first complying with a contractual provision requiring nonbinding mediation. But in doing so, the trial court failed to acknowledge plaintiff’s threshold claim that, under MCL 559.184(2), the agreement never became binding or was timely withdrawn. Because the trial court enforced the mediation provision without addressing the dispute over its enforceability, we vacate the trial court’s order and remand for further proceedings.

I. FACTS

According to her complaint, plaintiff entered into an agreement with defendant to purchase a condominium unit on October 9, 2024. On October 15, plaintiff e-mailed defendant’s agent and said that, after further consideration, she did not want to go through with the purchase. An attorney for defendant responded that plaintiff would be in default if she failed to complete the transaction and would owe defendant \$67,400 in liquidated damages.

In January 2025, plaintiff filed a complaint in the trial court. Although her complaint did not clearly articulate the precise legal theory on which she relied, she sought a declaratory judgment that: (1) defendant and Wistrand Woods, LLC, should “be regarded, in legal contemplation, as a single entity”; (2) she “timely withdrew from the agreement as allowed by law”; and (3) defendant’s claim for damages was unenforceable. Plaintiff developed her theory more fully in a subsequent motion for summary disposition under MCR 2.116(C)(10). She pointed to MCL 559.184(2), under which “a signed purchase agreement shall not become binding on a

purchaser and a purchaser may withdraw from a signed purchase agreement without cause and without penalty before conveyance of the unit” if the withdrawal occurs “within 9 business days after receipt of” certain documents that the statute requires be conveyed to a condominium purchaser. Plaintiff acknowledged that the statutory protection applies only to a “purchase agreement,” which the statute defines as “an agreement under which a developer agrees to sell and a person agrees to purchase a condominium unit.” MCL 559.109(5). She asserted that William Clous, defendant’s president, deeded the land at issue to Wistrand Woods in 2018; in September 2022, Grand Traverse County issued a building permit to defendant; and in October 2022, Wistrand Woods conveyed the subject property to defendant. She alleged that Wistrand Woods “was a mere instrumentality of Defendant used to evade that part of the Condominium Act the Legislature enacted to provide condominium buyers a ‘cooling off’ period.”

In lieu of answering plaintiff’s complaint, defendant moved for summary disposition under MCR 2.116(C)(7) and (8). Defendant pointed to paragraph 13 of the purchase agreement, in which the parties agreed that “[a]ny dispute or claim in law or equity arising out of this agreement . . . shall be submitted to neutral, non-binding mediation prior to the commencement of . . . litigation.” Defendant argued that “MCR 2.116(C)(7) is the proper subrule for deciding whether to grant a motion for summary disposition for failure to exhaust grievance and arbitration procedures,” *Mollett v City of Taylor*, 197 Mich App 328, 332; 494 NW2d 832 (1992), and that an agreement to mediate is therefore properly enforced under that rule. In the alternative, defendant argued that the mediation agreement could be enforced under MCR 2.116(C)(8) as a condition precedent to plaintiff’s action that she had failed to satisfy before filing suit.

At a hearing on the motions, the trial court discussed the parties’ arguments. After doing so, it remarked:

We’re . . . at the beginning of the case, and we know . . . summary disposition under (C)(10) would generally be premature; however, even accepting all of the well pled allegations in the complaint as true and construing them in plaintiff’s favor, it is clear at this stage of the case that the agreement is valid and binding, as such no factual development could justify recovery at this stage given the requirements of the agreement. Section 13 of the agreement is clear.

It’s also clear that plaintiff did not first go through mediation, as was required.

So, given all of that plaintiff—excuse me, the Court will deny plaintiff’s motion for summary disposition.

And, while generally under ([I])(5) the party would be able to amend, the Court will find that would be futile in this case given the Court will also grant defendant’s motion pursuant to (C)(7).

It therefore denied plaintiff’s motion for summary disposition and granted defendant’s motion under MCR 2.116(C)(7). In addition, the trial court granted defendant’s request for attorney fees, concluding that “plaintiff improperly filed this complaint as opposed to properly going through mediation.” This appeal followed.

II. STANDARD OF REVIEW

“We review de novo a trial court’s decision on a motion for summary disposition, reviewing the record in the same manner as must the trial court to determine whether the movant was entitled to judgment as a matter of law.” *Bronson Methodist Hosp v Auto-Owners Ins Co*, 295 Mich App 431, 440; 814 NW2d 670 (2012). Our review is limited to the evidence presented to the trial court when the motion was decided. *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 475-476; 776 NW2d 398 (2009). “To the extent this matter presents questions concerning the proper interpretation of contractual or statutory language, our review is also de novo.” *Dobbelaere v Auto-Owners Ins Co*, 275 Mich App 527, 529; 740 NW2d 503 (2007).

Under MCR 2.116(C)(7), a trial court may grant summary disposition when certain affirmative defenses are raised by the moving party. Under MCR 2.116(C)(10), a trial court may grant summary disposition when “there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.” Documentary evidence in support of a motion for summary disposition is required “when the grounds asserted do not appear on the face of the pleadings” as well as for all motions brought under subrule (C)(10). MCR 2.116(G)(3)(a)-(b).

III. DISCUSSION

On appeal, plaintiff argues that the trial court did not properly resolve the parties’ competing motions for summary disposition. We agree and vacate its order.

At the hearing on the parties’ motions for summary disposition, the trial court said that “even accepting all of the well pled allegations in the complaint as true and construing them in plaintiff’s favor, it is clear at this stage of the case that the agreement is valid and binding.” But plaintiff’s complaint alleged that she “timely withdrew from the agreement as allowed by law,” relying on MCL 559.184(2).¹ That statute, if applicable, provides a right of withdrawal. The trial court therefore erred—if all of the allegations in plaintiff’s complaint are true, the agreement, including its commitment to mediate before going to court, was *not* valid and binding. We express no opinion on whether MCL 559.184(2) applies or whether plaintiff satisfied its requirements. Rather, we conclude that the trial court could not grant summary disposition under MCR 2.116(C)(7) to enforce the mediation agreement without first addressing plaintiff’s allegation that the purchase agreement was unenforceable.

The trial court’s remaining rulings must also be vacated. The court denied plaintiff’s motion because it concluded that the mediation provision barred the action, but, as explained, the court could not enforce that provision without first addressing plaintiff’s challenge to the purchase

¹ Because the trial court did not identify any defects in plaintiff’s complaint, we assume that it was adequately pleaded. That said, the trial court suggested it might have had concerns with plaintiff’s complaint when it said that generally MCR 2.116(I)(5) allows a party to amend but “that would be futile in this case.” Our remand does not preclude further scrutiny of the adequacy of plaintiff’s pleadings.

agreement's enforceability. And because the award of attorney fees was predicated on defendant's motion being meritorious, that award likewise cannot stand.

We vacate the trial court's order and remand for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Matthew S. Ackerman

/s/ James Robert Redford

/s/ Kathleen A. Feeney

STATE OF MICHIGAN
COURT OF APPEALS

HALEY SANDULA,

Plaintiff-Appellant,

v

EASTWOOD CUSTOM HOMES, INC.,

Defendant-Appellee.

UNPUBLISHED

August 19, 2026

11:47 AM

No. 375509

Grand Traverse Circuit Court

LC No. 2025-037385-CK

Before: ACKERMAN, P.J., and REDFORD and FEENEY, JJ.

FEENEY, J. (*concurring*).

I respectfully concur with the majority’s opinion, but I write separately to discuss my concern with granting summary disposition under MCR 2.116(C)(7) based on a nonbinding mediation provision.

MCR 2.116(C)(7) provides that the trial court may grant summary disposition in favor of the moving party when, “[e]ntry of judgment, dismissal of the action, or other relief is appropriate because of . . . an agreement to arbitrate or to litigate in a different forum” “The existence of an arbitration agreement and the enforceability of its terms are judicial questions for the court, not the arbitrators.” *Fromm v Meemic Ins Co*, 264 Mich App 302, 305; 690 NW2d 528 (2004). “To ascertain the arbitrability of an issue, a court must consider whether there is an arbitration provision in the parties’ contract, whether the disputed issue is arguably within the arbitration clause, and whether the dispute is expressly exempt from arbitration by the terms of the contract.” *Id.* at 305-306 (quotation marks and citation omitted).

In this case, the plain language of the purchase agreement did not include an arbitration agreement or requirement to litigate in a different forum; instead, it included an agreement to participate in “non-binding mediation” Nonbinding mediation would not preclude plaintiff from otherwise seeking redress in the trial court; therefore, nonbinding mediation could not “dispos[e] of the claim before commencement of the action” like the other avenues listed under MCR 2.116(C)(7). Defendant has not cited any jurisprudence in which summary disposition under MCR 2.116(C)(7) was the appropriate remedy for a party’s failure to undergo a contract’s nonbinding mediation clause, nor can I find any jurisprudence demanding such a result.

In any event, because the trial court failed to address the threshold issue of plaintiff's challenge to the purchase agreement's enforceability, I agree with the majority opinion that remand for further proceedings is appropriate.

/s/ Kathleen A. Feeney

STATE OF MICHIGAN
COURT OF APPEALS

HALEY SANDULA,

Plaintiff-Appellant,

v

EASTWOOD CUSTOM HOMES INC.,

Defendant-Appellee.

UNPUBLISHED

August 19, 2026

11:47 AM

No. 375509

Grand Traverse Circuit Court

LC No. 2025-037385-CK

Before: ACKERMAN, P.J., and REDFORD and FEENEY, JJ.

ACKERMAN, P.J. (*concurring*).

I concur in full with the majority opinion. I write separately to note my respectful disagreement with Judge FEENEY’s suggestion that a nonbinding mediation agreement cannot properly be enforced under MCR 2.116(C)(7).

By its terms, MCR 2.116(C)(7) applies when “dismissal of the action . . . is appropriate because of . . . an agreement to arbitrate or to litigate in a different forum.” Judge FEENEY asserts that “the plain language of the purchase agreement [in this case] did not include an arbitration agreement or requirement to litigate in a different forum.” In my view, the mediation agreement at issue qualifies as an agreement to “litigate in a different forum” within the meaning of MCR 2.116(C)(7). I believe that the contrary interpretation reads MCR 2.116(C)(7) too narrowly and fails to consider it in the context of the overall function of MCR 2.116(C).

The grounds for summary disposition listed in MCR 2.116(C) cannot be understood as an exhaustive enumeration of either the dispositive theories a party may raise or the authority a trial court may exercise. The intention is that “[t]he stated grounds are broad enough to include any legal issue that may be dispositive of a claim or defense.” 1 Longhofer & Quick, Michigan Court Rules Practice—Text (8th ed), § 2116.8, p 520. The absence of a specifically identified theory from the rule does not establish that the theory is unavailable.

Judicial estoppel illustrates the point. It is well established as a legitimate basis for summary disposition, even though it is not apparent which particular subrule of MCR 2.116(C) most naturally encompasses it. See *Spohn v Van Dyke Pub Sch*, 296 Mich App 470, 478-479; 822 NW2d 239 (2012). Because the rule does not purport to *create* options for moving parties to

invoke or *empower* trial courts to act, the fact that none of the grounds for summary disposition in MCR 2.116(C) is clearly tailored to judicial estoppel is not dispositive; it remains a viable theory even so.

Viewed from that perspective, I see no reason to reject defendant's motion merely because MCR 2.116(C)(7) does not expressly refer to nonbinding mediation. I therefore respectfully disagree with Judge FEENEY's complaint that "[d]efendant has not cited any jurisprudence in which summary disposition under MCR 2.116(C)(7) was the appropriate remedy for a party's failure to undergo a contract's nonbinding mediation clause." If the mediation agreement was enforceable and plaintiff failed to comply with it, then defendant should be entitled to have the case dismissed without prejudice until plaintiff satisfies that contractual prerequisite. The remaining question is simply which subrule is most applicable to that viable defense.

In my view, MCR 2.116(C)(7) is the subrule best suited to considering such a request. Although the phrase "litigate in a different forum" may not be the most natural fit, MCR 2.116(C)(7) is the subrule most closely analogous to the contractual defense asserted here because the parties agreed to pursue an alternative dispute-resolution process before litigating. Conceivably, the motion might also be understood as asserting that "[t]he party asserting the claim lacks the legal capacity to sue," MCR 2.116(C)(5), because plaintiff could not proceed with litigation until she fulfilled the contractual mediation requirement.¹ But the timing for filing a (C)(5) motion is the same as a (C)(7) motion, MCR 2.116(D)(2), and the materials that can or must be submitted in support of a (C)(5) motion are the same as for a (C)(7) motion, see MCR 2.116(G)(2), (3)(a), (4) & (5). I therefore see no reason to require trial courts and litigants to parse which rule applies, and I believe that creating uncertainty about MCR 2.116(C)(7)'s applicability here would introduce unnecessary confusion into trial practice.

Of course, none of these observations undermine my support for the majority opinion. I therefore concur in full.

/s/ Matthew S. Ackerman

¹ Consider that this Court cannot agree on whether lack of standing is tested under MCR 2.116(C)(5) or some other subrule of MCR 2.116(C). Compare *Sprenger v Bickle*, 302 Mich App 400, 402-405; 839 NW2d 59 (2013) (affirming trial court's holding under MCR 2.116(C)(5) that the plaintiff lacked standing), with *Salem Springs, LLC v Salem Twp*, 312 Mich App 210, 215 n 2; 880 NW2d 793 (2015) ("[S]tanding may be challenged in connection with a motion for summary disposition under MCR 2.116(C)(8) or (10) . . .").